

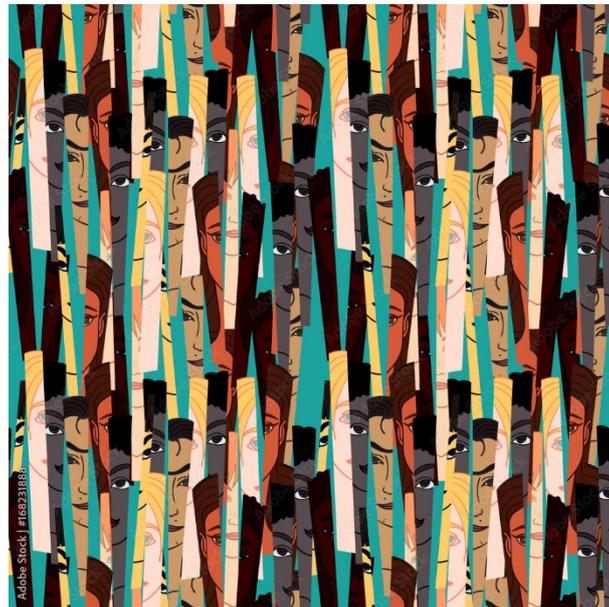
STUDY

Requested by the LIBE committee



# Protection against racism, xenophobia and racial discrimination, and the EU Anti-racism Action Plan

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Policy Department for Citizens' Rights and Constitutional Affairs  
Directorate-General for Internal Policies  
PE 730.304– May 2022

EN

# Protection against racism, xenophobia and racial discrimination, and the EU Anti-racism Action Plan

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## **Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, provides an analysis of the distinctive features of racism, xenophobia and racial discrimination in the EU and selected EU Member States. It further examines various forms of racism, xenophobia and racial discrimination, their target groups and the impact of the COVID-19 pandemic. The study assesses anti-racism policies and legislation to determine effectiveness of the national and EU legislation and measures envisaged in the EU Anti-racism Action Plan on eradication of racism, xenophobia and racial discrimination. The study identifies gaps that need to be filled and provides recommendations on how to create engagement at all levels to achieve meaningful change and equality.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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## LIST OF ABBREVIATIONS

<b>AI</b>	Artificial Intelligence
<b>AGG</b>	Allgemeines Gleichbehandlungsgesetz (General Equality Law) – DE
<b>AIA</b>	Artificial Intelligence Act
<b>AMSD</b>	Audiovisual Media Services Directive
<b>ARAP</b>	EU Anti-racism Action Plan
<b>ARDI</b>	The European Parliament Anti-Racism and Diversity Intergroup
<b>BLM</b>	Black Lives Matter
<b>CEPOL</b>	European Union Agency for Law Enforcement Training
<b>CERD</b>	Committee on the Elimination of Racial Discrimination – HU
<b>CJEU</b>	Court of Justice of the European Union
<b>CNCDH</b>	Commission nationale consultative des droits de l'homme (National Consultative Commission on Human Rights) – FR
<b>CoE</b>	Council of Europe
<b>CSO</b>	Civil Society Organisation
<b>DDD</b>	Défenseur des droits – FR
<b>DIHR</b>	Danish Institute for Human Rights – DK
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRI</b>	European Commission Against Racism and Intolerance
<b>EDRi</b>	European Digital Rights
<b>EELN</b>	European Equality Law Network
<b>ENAR</b>	European Network Against Racism

<b>EPRS</b>	European Parliamentary Research Service
<b>ERGO</b>	European Roma Grassroots Organisations
<b>ERRC</b>	European Roma Rights Centre
<b>ETA</b>	Equal Treatment Act – PL
<b>FADA</b>	Federal Anti-Discrimination Agency – DE
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>GIHR</b>	German Institute for Human Rights – DE
<b>GNCHR</b>	Greek National Commission for Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICRED</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>IHRA</b>	International Holocaust Remembrance Association
<b>LET</b>	Law on Equal Treatment – LT
<b>LGBTI</b>	Lesbian/Gay/Bisexual/Transgender/Intersex
<b>NAPAR</b>	National action plan against racism
<b>NCCD</b>	National Council for Combating Discrimination – RO
<b>NCEI</b>	National Council of Ethnic and Integration Issues – BG
<b>NetzDG</b>	Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG) (Network Enforcement Act) - DE
<b>NGO</b>	Non-Governmental Organisation
<b>NHRI</b>	National Human Rights Institution
<b>NRIS</b>	National Roma Integration Strategy
<b>NSI</b>	National Statistical Institute – BG
<b>NSU</b>	Nationalsozialistischer Untergrund (National Socialist Underground) - DE
<b>OCFRH</b>	Office of the Commissioner for Fundamental Rights of Hungary – HU

<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OEOO</b>	Office of the Equal Opportunities Ombudsperson – LT
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OSCAD</b>	Osservatorio per la sicurezza contro gli atti discriminatori (Observatory for Security against Discriminatory Acts) – IT
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>OSCE ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>PADA</b>	Protection Against Discrimination Act – BG
<b>RIC</b>	Reception and Identification Centre – EL
<b>RVRN</b>	Racist Violence Recording Network
<b>SAC</b>	Supreme Administrative Court – BG
<b>TEU</b>	Treaty on the European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UNAR</b>	Ufficio Nazionale Antidiscriminazioni Razziali (National Office against Racial Discrimination) – IT
<b>UNESCO</b>	UN Educational, Scientific and Cultural Organization

## LIST OF COUNTRY CODES

<b>BG</b>	Bulgaria
<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>CY</b>	Cyprus
<b>CZ</b>	Czech republic
<b>DE</b>	Germany
<b>DK</b>	Denmark
<b>EE</b>	Estonia
<b>EL</b>	Greece
<b>ES</b>	Spain
<b>FI</b>	Finland
<b>FR</b>	France
<b>HR</b>	Croatia
<b>HU</b>	Hungary
<b>IE</b>	Ireland
<b>IT</b>	Italy
<b>LT</b>	Lithuania
<b>LU</b>	Luxembourg
<b>LV</b>	Latvia
<b>MT</b>	Malta
<b>NL</b>	Netherlands
<b>PL</b>	Poland

**PT** Portugal

**RO** Romania

**SE** Sweden

**SI** Slovenia

**SK** Slovakia

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## EXECUTIVE SUMMARY

This study analyses **distinctive features** of racism, xenophobia and racial discrimination. It examines international, EU and national anti-racism policies, legislation and the EU Anti-racism Action Plan to determine whether they are fit to eradicate structural racism, xenophobia and antisemitism effectively, and to identify whether there are gaps that need to be filled – both at the EU and national level. The study further provides recommendations on how to create engagement at all levels to achieve meaningful change and equality.

There is an **identifiable and irrefutable problem with racism in the EU and its Member States**. The European Union Fundamental Rights Agency (FRA) states that racism remains a persistent issue within the EU, seriously affects lives of individuals, and that over half of Europeans believe that racism is widespread in their country.<sup>1</sup>

Racism, xenophobia and discrimination are phenomena that can occur either between individuals (**individual racism**) or be embedded in organisations and institutions (**institutional racism**). **Discrimination by law enforcement authorities** is a key element of institutional racism and occurs in all selected Member States.

Various groups, communities and individuals are subject to racism, xenophobia and discrimination. The European Network Against Racism (ENAR)<sup>2</sup> identifies five main groups particularly affected: (i) Roma and travellers, (ii) People of African descent and black Europeans, (iii) Muslims, (iv) Jews, (v) Migrants. In addition to these groups, racism against Asians and people of Asian descent and racism against indigenous people are examined in this study.

A broad set of rules exist at the international, EU and national level aimed at tackling racism, xenophobia and racial discrimination. At the **international level**, a legal framework has been developed through the work of the United Nations. That framework requires countries to work towards the elimination of all forms of racism, xenophobia and racial discrimination. Main instruments include the Universal Declaration of Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. As an international organisation, the Council of Europe (CoE) promotes the rule of law, democracy, human rights and social development, in particular through the **European Convention on Human Rights** (ECHR)<sup>3</sup>. The ECHR sets out the legally binding obligation for its members to guarantee a list of human rights to everyone within their jurisdiction (not just citizens) and the **European Commission against Racism and Intolerance** (ECRI), which plays a particular role as it monitors problems of racism, xenophobia, antisemitism, intolerance and racial discrimination.

The **EU's legal architecture** that was developed over the past 20 years, however, **still builds on concepts of racism as a phenomenon occurring between individuals**. As such, it seeks to combat discrimination, hate speech and hate crime. The EU Anti-racism Action Plan marks a shift in the understanding of racism at the EU level by recognising the **structural dimension of racism**, the **specific forms of racism** affecting different racialised groups in Europe, as well as the **concept of intersectionality**.

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<sup>1</sup> FRA, *Fundamental Rights Report 2021*, op. cit.

<sup>2</sup> ENAR, available at: <https://www.enar-eu.org/Specific-forms-of-racism>.

<sup>3</sup> Full text of the Convention, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

The publication of the EU Anti-racism Action Plan marked an important threshold in the EU's approach to combating racism. It introduced concepts and an understanding of the root causes of racism which previous policy documents shied away from. It marks the first time that an EU policy has acknowledged racism as a system that stems from the continent's history of slavery and colonialism, whose legacies still create inequalities today.<sup>4</sup>

The action plan was welcomed by civil society organisations as a step forward in anti-racism and anti-discrimination. First, the mere **existence of an action plan was viewed positively** as it sets a political priority and provides a framework against which the actions taken can be assessed. Second, it is the first EU policy document to recognise the **structural dimension of racism**. The action plan's focus is on encouraging and supporting Member States to **develop and adopt national action plans against racism (NAPARs)**. NAPARs are an important tool for questioning the reasons behind the lack of implementation of existing legislation in force in Member States and can complement the tackling of more elaborate forms of racism. The action plan proposes actions to develop methods that would allow for the collection of robust, consistent and comparable data **disaggregated by racial or ethnic origin** while ensuring respect for privacy and Member States' national contexts.<sup>5</sup> Other elements of the action plan which were welcome include the acknowledgement of the need to address **racism in law enforcement**; the need to ensure **mainstreaming**; the emphasis **on engaging civil society and grassroots organisations** and the steps announced by the European Commission to **improve racial diversity and representation within its ranks**.

The EU equality directives are implemented through **anti-discrimination laws** in all the Member States studied. This has significantly enhanced legal protection against racism, xenophobia and racial discrimination. In some countries, this takes the form of **single equality laws**, whereas in others anti-discrimination laws are enacted in **various legal codes** covering different grounds and elements of discrimination. In addition, some Member States went beyond the legal obligations set by the equality directives, namely by increasing the number of grounds of protection.

At national level, there is also a comprehensive body of legislation tackling racism and discrimination. These are included in constitutional provisions, criminal law and legislation on equal treatment. All countries included in this study have **provisions on non-discrimination in their constitutions**. These vary, however, in terms of the grounds of non-discrimination covered. While provisions on incitement to hate crime and hate speech seem to be in place in the Criminal Codes of most of the selected Member States, some gaps can be discerned in terms of practical application. For example, the Criminal Codes in some countries do not fully cover the list of enumerated grounds outlined by the Framework Decision, or the definition of certain concepts or criminalisation of certain acts. That constitutes a significant barrier to protection against racism, xenophobia and racial discrimination.

The 2001 Durban Declaration called upon each country to develop and elaborate **national action plans against racism (NAPARs)**. The EU Anti-racism Action Plan further encourages Member States to develop NAPARs by the end of 2022 and offers support in developing guiding principles for these. According to FRA, 21 Member States had some form of action plan in 2020.<sup>6</sup> However, a closer look at the title and content of NAPARs shows discrepancies. Some Member States, such as Belgium and Austria, were developing their action plans. Spain and Hungary are examples of countries that have

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<sup>4</sup> European Commission, Communication of 17 July 2019 on Strengthening the rule of law within the Union: A blueprint for action, COM(2019) 343 final, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2019\)343&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2019)343&lang=en).

<sup>5</sup> *ibid.*

<sup>6</sup> *Ibid.*

plans that span many years and were developed many years ago. There is also great diversity in the titles and aspects covered by the action plans.

Particular issues emerging for the study include:

The **incorrect transposition and implementation of EU legislation** by some Member States reduced the effectiveness of the legislative framework. As such, this study suggests recommendations to encourage Member States to fully implement the existing legislative framework, ensure the existence of fully equipped and functional equality bodies, and the collection of disaggregated equality data. Racism and discrimination have deep structural roots which are imbedded in the history of most European states. The **need to foster understanding and acknowledgment of the causes of racism** is important. Acknowledging the legacy of Europe's role in colonialism and imperialism, followed by its need to welcome a workforce after the Second World War, and the perpetuating structural inequalities that it created, is an important step. This study recommends the development of initiatives to foster this greater understanding, and tackle institutional and structural racism. Finally, the lack of involvement of racialised people or their representative organisations in the policy-making process hampers effort to remove barriers preventing certain people from enjoying equal access to services and opportunities. This study recommends actively increasing diversity in the people involved in the policy-making process.

The recommendations for this study are structured around three themes.

#### a. Implementation of the legislative framework

**Recommendation a.1** – The European Commission should continue to monitor effectively the transposition and implementation of EU anti-discrimination legislation in the Member States and to initiate infringement proceedings against Member States that are shown to be in breach.

**Recommendation a.2** - The European Commission could put in place implementation measures of the the EU Antiracism Action Plan with clear and measurable targets and progress monitoring. This could be done by introducing regular review of the EU Antiracism Action Plan in the same way as the 'Rule of Law Review Cycle' proposed by the Commission<sup>7</sup>. The cycle would cover all Member States and culminate in the adoption of an annual anti-racism report that summarises the situation in Member States as regards the implementation of the EU Antiracism Action Plan.

**Recommendation a.3** – Member States should ensure equality bodies have the necessary competences, powers and resources to perform their tasks independently and effectively and be accessible to all in line with the 2018 recommendations of the European Commission on standards for equality bodies.<sup>8</sup>

**Recommendation a.4** – The lack of robust, consistent and comparable data disaggregated by racial or ethnic origin is a barrier to identifying and addressing existing structural inequalities. Member States

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<sup>7</sup> European Commission, Communication of 17 July 2019 on Strengthening the rule of law within the Union: A blueprint for action, COM(2019) 343 final, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2019\)343&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2019)343&lang=en).

<sup>8</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018, on standard for equality bodies, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018H0951>.

should follow the High-Level Group on Non-discrimination, Equality and Diversity's subgroup on equality data's guidance note<sup>9</sup> to collect disaggregated data.

**Recommendation a.5** – Member States should be encouraged to develop effective and comprehensive National Anti-racism Action Plans and to ensure their regular review and implementation.

**Recommendation a.6** – There is no agreement yet on the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, the Commission's proposal from July 2008 (the so called 'Equal Treatment Directive or Horizontal Directive'). Efforts should be made to finally agree to adopt this Directive.

### **b. Tackling the root causes of racism**

**Recommendation b.1** – Member States should encourage the development of initiatives to foster a greater understanding of the historical causes of racism.

**Recommendation b.2** – The European Union should fund research to collect information on education materials used in Member States to identify areas where disputed facts are presented as reality.

**Recommendation b.3** – The European Union should support effort to tackle institutional racism, in particular from law enforcement authorities. This could include: recommendation to introduce a reasonable suspicion standard for police search activities, ensure training and monitoring of instances of racially-motivated misconduct by the police.

### **c. Policymaking process**

**Recommendation c.1** – European and Member State institutions should encourage the participation and/or consultation of civil society organisations representing racialised groups in the policymaking process. This can take the form of creation of a permanent forum of civil society organisations fighting against racism, xenophobia and racial discrimination.

**Recommendation c.2** – The European Institutions should set an example in the use of positive framing, such as speaking of 'racial justice' rather than 'racism', or 'broadening the curriculum' instead of 'decolonising the curriculum'.

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<sup>9</sup> High-Level Group on Non-discrimination, Equality and Diversity's subgroup, Guidance note on the collection and use of equality data based on racial or ethnic origin, 2001, available at:

[https://ec.europa.eu/info/sites/default/files/guidance\\_note\\_on\\_the\\_collection\\_and\\_use\\_of\\_equality\\_data\\_based\\_on\\_racial\\_or\\_ethnic\\_origin.pdf](https://ec.europa.eu/info/sites/default/files/guidance_note_on_the_collection_and_use_of_equality_data_based_on_racial_or_ethnic_origin.pdf).

## 1. INTRODUCTION

Racism and xenophobia remain a persistent issue within the EU and seriously affect the lives of individuals, their prosperity, well-being and safety.<sup>10</sup> More than half of Europeans believe that racism is widespread in their country. People of African and Asian descent, Muslims, Roma and Jewish people all continue to suffer from individual and systemic racism. According to the European Union Fundamental Rights Agency (FRA), one in three black people is a victim of racial harassment and one in five Roma faces discrimination in everyday life.<sup>11</sup>

The murder of George Floyd in Minneapolis in May 2020 was the trigger for anti-racist demonstrations in the United States and Europe. However, the Black Lives Matter (BLM) movement arose following the acquittal of a man who on 26 February 2012 had shot to death Trayvon Martin, a black man walking in the street in Sanford in the United States. In Europe, the wave of demonstrations was of particular significance in countries with a history of anti-racist mobilisation or that had experienced instances of death of black people at the hands of the police.<sup>12</sup>

### 1.1. Scope of the study

This study provides an analysis **of the distinctive features** of racism, xenophobia and racial discrimination. It examines international, EU and national anti-racism policies and legislation and the EU Anti-racism Action Plan to determine whether they are fit to eradicate structural racism, xenophobia and antisemitism effectively, and to identify whether there are gaps that need to be filled – both at the EU and national level. The study will also provide recommendations on how to create engagement at all levels to achieve meaningful change and equality.

The study provides an overview and analysis of the **situation in the EU and selected Member States** (see Table 1) with specific regard to the **causes** and **nature** of racism and xenophobia and the various **dimensions** of racism, xenophobia and racial discrimination. It examines the **various forms** of racism, xenophobia and racial discrimination and their target groups, including intersectional discrimination and the **impact of the COVID-19 pandemic** on racism and xenophobia. It further provides an overview of the European and **international legislative and policy framework** for tackling racism, xenophobia and racial discrimination on the grounds of racial and ethnic origin. It looks into **recommendations made by relevant international bodies** and the **relevant case-law** of the Court of Justice of the European Union, the European Court of Human Rights and, where applicable, most relevant national courts. The study **identifies gaps and constraints related to effective implementation of the European and international legislative and policy framework** for tackling racism, xenophobia and racial discrimination. In addition, it provides an assessment of **existing policies and legislation for**

<sup>10</sup> FRA, *Fundamental Rights Report 2020*, available at <https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>.

<sup>11</sup> FRA, 'Widespread racism continues to plague Europe', 21 June 2019, available at <https://fra.europa.eu/en/publications-and-resources/infographics/widespread-racism-continues-plague-europe#infographics-body>; FRA, 'The plight of Roma sees little change', 21 June 2019, available at <https://fra.europa.eu/en/publications-and-resources/infographics/plight-roma-sees-little-change>.

<sup>12</sup> DeZIM, *Black Lives Matter in Europe – Transnational Diffusion, Local Translation and Resonance of Anti-Racist Protest in Germany, Italy, Denmark and Poland*, Research Notes +, DRN #06, 2 July 2021, p. 30, available at: [https://www.dezim-institut.de/fileadmin/Publikationen/Research\\_Notes/DeZIM\\_Research\\_Notes\\_06\\_RZ\\_210702\\_web-1.pdf](https://www.dezim-institut.de/fileadmin/Publikationen/Research_Notes/DeZIM_Research_Notes_06_RZ_210702_web-1.pdf).

**combating racism and racial discrimination** in the selected EU Member States, comprising target groups and the main manifestations of racism, national anti-racism measures including National Action Plans Against Racism (NAPARs), policies and legislation and analysis of the state of play of implementation of anti-racism legislation and policies in the Member States. The study also assesses the EU Anti-racism Action Plan 2020-2025 and the measures it proposes to tackle racism and racial discrimination in the EU. Finally, the study **provides policy recommendations** on measures to strengthen protection against racism, xenophobia and racial discrimination in the EU.

## 1.2. Methodology

Interviews and desk research (in particular of EU and international legislation, guidelines and standards) was undertaken with key stakeholders, including civil society organisations, representatives of EU institutions and academic researchers.

In order to collect data on all relevant elements for analysis of the situation, research was undertaken in 10 selected Member States. These were chosen to reflect the diversity of the phenomenon and to help identify different policy responses. The reasons for the selection are provided in the table below. Interviews and desk research were performed at the national level in these countries.

**Table 1: Reasons for country selection**

Member State	Reasons
Bulgaria	Bulgaria is one of the Member States with the largest Roma communities. Furthermore, the country has experienced a rise in anti-migrant sentiment as a result of an influx of migrants crossing the country.
Germany	Racism, antisemitism and Islamophobia, including violent hate crimes, remain a concern in Germany. This trend can mainly be explained by political factors over the last decade. For example, Germany received an extraordinarily large number of asylum-seekers in 2015. In parallel, Germany has experienced a number of racially or religiously motivated attacks, such as the shooting in Hanau or in the synagogue in Halle.
Denmark	Until the mid-1960s, the Danish population was exceptionally homogenous in terms of ethnic and religious background. However, in recent years, a significant transition has taken place from a socially close-knit society to a multi-ethnic and religiously diverse society. However, that development has gone hand in hand with an increase in racial discrimination and xenophobia in Denmark.
Greece	The country has experienced a rise in racist and xenophobic attitudes and behaviour fuelled by two factors, namely (i) the economic crisis of 2009, which resulted in a severe economic downturn and imposition of austerity measures, and (ii) the position of Greece as an entry point for refugees and asylum-seekers in the EU and the associated challenges of hosting a large number of migrants on its territory.
France	France is a large Member State with a pronounced colonial history. Défenseur des droits, the country's equality body, describes it as having a 'discrimination problem'. <sup>13</sup> Examples of all

<sup>13</sup> CNCDH, *Rapport 2020 sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, July 2021, available at: <https://www.cncdh.fr/fr/publications/rapport-2020-sur-la-lutte-contre-le-racisme-lantisemitisme-et-la-xenophobie>.

Member State	Reasons
	forms of racism identified by the European Network Against Racism (ENAR) are observed in France.
Hungary	Recent years have seen a marked intensification of xenophobic and racist attitudes and sentiments in Hungary. Due to limited pluralism in the media and politics, anti-migrant and anti-Muslim language has permeated public discourse. Members of racial and ethnic minority groups in Hungary suffer unequal treatment in society as well as institutional discrimination.
Italy	Italy has experienced a rise in racist and xenophobic sentiment. In addition, there is a critical lack of public discussion of racism in the country, resulting in the belief that racism is either an issue not affecting the country or a recent phenomenon.
Lithuania	Although racial discrimination and xenophobia are present in Lithuanian society, Lithuanians perceive themselves as racially tolerant and collective denial of the existence of racism is common. Antisemitic sentiments flared up and came to the fore in 2019 in relation to re-evaluation of the legacy of certain historical figures who played a role in Lithuanian independence, in light of their anti-Jewish role during the Second World War.
Poland	According to a number of surveys, Poland tends to be one of the less open and more intolerant Member States. For example, 66% of Poles have an unfavourable opinion of Muslims in their country, 31% have an unfavourable opinion of Jews and 51% an unfavourable opinion of Roma. <sup>14</sup> The latest Eurobarometer query on antisemitism showed that 41% of Poles believe that “expressions of hostility and threats towards Jewish people in the street or other public places” are a problem. <sup>15</sup>
Romania	Racial discrimination and xenophobia have been a systemic issue throughout Romania’s history. The underlying causes are diverse, including historical revisionism, political exploitation of nationalism and media manipulation. Roma people were held as slaves in Romania until 1864. <sup>16</sup>

### 1.3. Structure

The study is divided into six chapters. **Chapter 1** provides an overview of the **study structure** and presents the objectives and research questions of the study, as well as the methodology used.

**Chapter 2** outlines the specific forms of racism and their distinctive features in the Member States studied. **Chapter 3** gives an overview of the **European and international legislative and policy framework** relating to racism, discrimination and xenophobia, and the identified gaps and constraints. **Chapter 4** provides an assessment of **the EU Anti-racism Action Plan (ARAP)** and how it addresses the identified gaps. **Chapter 5** provides information on the **legal framework and strategies and their implementation** in the selected Member States, as well as an assessment of their effectiveness, looking

<sup>14</sup> Pew Research Centre, European Public Opinion Three Decades After the Fall of Communism Most embrace democracy and the EU, but many worry about the political and economic future, 2019, pp 80-86.

<sup>15</sup> Eurobarometer (2019). “Perceptions of Antisemitism”. Available at: <https://europa.eu/eurobarometer/surveys/detail/2220>.

<sup>16</sup> Crowe, D. A. (1991), ‘The Gypsy Historical Experience in Romania’, in Crowe, D.A. and Kolsti, John (eds.), *The Gypsies of Eastern Europe*, London: M.E. Sharpe, available at: <https://www.taylorfrancis.com/chapters/mono/10.4324/9781315490250-9/gypsy-historical-experience-romania-david-crowe-john-kolsti-ian-hancock>.

at national action plans against racism (NAPARs) in particular. Finally, conclusions and recommendations are presented in **Chapter 6**.

In addition, the appendices to this study contain 10 country reports (Bulgaria, Germany, Denmark, Greece, France, Hungary, Italy, Lithuania, Poland and Romania).

## 2. SPECIFIC FORMS OF RACISM

### KEY FINDINGS

- Racism can take many forms and can occur either **between individuals** or be **embedded in organisations and institutions**.
- **Different groups, communities and individuals** are subject to racism, xenophobia and discrimination, including antigypsyism, Afrophobia, Islamophobia, antisemitism, racism against migrants and other forms of racism. Each specific form of racism has distinctive features, with certain forms being more prominent in some Member States than in others. Reasons for such differences may include historical or political factors.
- **Individual racism** is the most commonly addressed form of racism, but while institutional racism is a common form of racism, it is only gradually being recognised by the authorities in Member States.
- Policing (by law enforcement or border control authorities) is an area where **institutional racism** is very prominent; this form of racism is present in all Member States.

Racism, xenophobia and racial discrimination are phenomena that can occur either between individuals (individual racism) or be embedded in organisations and institutions (institutional racism). While individual racism is easily recognisable (for example, through racial slurs, individual discrimination or acts of violence), it does not arise in a vacuum. Societies' beliefs lead to inequalities, which are rooted in the operation of a society that excludes substantial numbers of members of particular groups or communities from significant participation in institutions or access to certain services. This chapter provides an overview of some of the most common forms of racism, their target groups, the specific features of racism and discrimination that some groups and communities are subject to in the EU (Section 2.1), followed by a description and analysis of institutional racism in the EU (Section 2.2).

### 2.1. Forms of racism

Various groups, communities and individuals are subject to racism, xenophobia and discrimination. These groups and communities share the reality of the perceived value of a person being undermined by stereotypes based on prejudice.

The general lack of statistical data on ethnic and religious minorities has been identified as a concern by international organisations as it hinders the monitoring and evaluation of human rights protection, as well as the adoption of policies and measures in favour of minorities.<sup>17</sup>

<sup>17</sup> Greek National Commission on Human Rights (2021), *Observations on Greece's combined 23rd and 24th periodic report to the Committee on the Elimination of Racial Discrimination (CERD) on the International Convention on the Elimination of All Forms of Racial Discrimination*, pp. 10-11, available at: <https://www.nchr.gr/en/news/1274-gnchr-observations-on-greece%E2%80%99s-combined-23rd-and-24th-periodic-report-to-the-committee-on-the-elimination-of-racial-discrimination-cerd.html>.

The EU Anti-racism Action Plan 2020-2025<sup>18</sup> provides examples of forms of racism, including anti-black racism, antigypsyism, antisemitism and anti-Asian racism, as well as anti-Muslim hatred. The European Network Against Racism (ENAR)<sup>19</sup> identifies five main groups particularly affected by racism and discrimination:

- Roma, Sinti, Travellers and other Romani speaking subgroups and travellers
- People of African descent and black Europeans
- Muslims
- Jews and
- Migrants.

In addition to these groups, this study also examines racism against Asian people and racism against indigenous people.

While defining the specific forms of racism is important for the purpose of analysis, the groups and communities that are the target of racism do not always recognise themselves as belonging to these groups. Rather, these forms of racism refer to the way in which these groups are perceived by the majority and are therefore a mental construct of the majority.<sup>20</sup> Furthermore, other forms of racism exist.

Box 1 below provides a summary and definition of the key terms used in this study. Further definitions are provided in the relevant sections.

#### **Box 1: Definition of common terms used in this study**

**Direct discrimination** – treating a person less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.<sup>21</sup>

**Indirect discrimination** – a practice 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.<sup>22</sup>

**Racial discrimination** – any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the

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<sup>18</sup> European Commission, A Union of equality: EU Anti-racism Action Plan 2020-2025, COM(2020)565 final, September 2020, available at: [https://ec.europa.eu/info/sites/default/files/a\\_union\\_of\\_equality\\_eu\\_action\\_plan\\_against\\_racism\\_2020\\_-2025\\_en.pdf](https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf).

<sup>19</sup> ENAR, available at: <https://www.enar-eu.org/Specific-forms-of-racism>.

<sup>20</sup> Carmichael, S. and Hamilton, C. V. (1967), *Black Power: the Politics of Liberation in America*, Grove.

<sup>21</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive), Article 2(2)(a), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>.

<sup>22</sup> Ibid., Article 2(2)(b).

recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>23</sup>

**Racialisation** – the processes by which a group of people is defined by their 'race.' Processes of racialisation begin by attributing racial meaning to people's identity and, in particular, as they relate to social structures and institutional systems, such as housing, employment and education. In societies in which 'White' people have economic, political, and social power, processes of racialisation have emerged from the creation of a hierarchy in social structures and systems based on 'race'. The visible effects of processes of racialisation are the racial inequalities embedded within social structures and systems.<sup>24</sup>

**Racism** is defined by the UN as 'ideas or theories of superiority of one race or group of persons of one colour or ethnic origin'.<sup>25</sup> However, a more sophisticated definition of racism is provided in the EU Anti-racism Action Plan. It acknowledges the different forms of racism as follows:

*'Overt expressions of individual racism and racial discrimination are the most obvious. All too often, racial or ethnic origin is used as a ground to discriminate [...]. People of Asian and African descent, Muslims, Jewish and Roma people have all suffered from intolerance. But other, less explicit forms of racism and racial discrimination, such as those based on unconscious bias, can be equally damaging. Racist and discriminatory behaviours can be embedded in social, financial and political institutions, impacting on the levers of power and on policy-making. This structural racism perpetuates the barriers placed in the way of citizens solely due to their racial or ethnic origin.'*<sup>26</sup>

– rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that represent obstacles to groups or individuals in achieving the same rights and opportunities that are available to the majority of the population.<sup>27</sup>

**Institutional racism** – explicit manifestations of racism at the direction and policy level, as well as unwitting discrimination at the organisational level. Indirect, institutional racism is more subtle, hidden but equally pervasive and damaging in nature. It is observed in 'processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people'.<sup>28</sup>

<sup>23</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Article 1(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

<sup>24</sup> Schaefer, R. (ed.), *Encyclopaedia of Race, Ethnicity and Society*, 2008, available at: <https://sk.sagepub.com/reference/ethnicity/n455.xml>.

<sup>25</sup> UN Convention on the Elimination of All Forms of Racial Discrimination, Article 4, available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

<sup>26</sup> European Commission, Anti-racism Action Plan, op. cit., pp. 1-2.

<sup>27</sup> OHCHR definition, available at: <https://www.ohchr.org/Documents/Issues/Racism/IWG/Session8/MirjanaNaicevska.doc>.

<sup>28</sup> ENAR, *Racist crime & institutional racism in Europe 2014-2018*, p. 9, available at: [http://www.enar-eu.org/IMG/pdf/shadowreport2018\\_final.pdf](http://www.enar-eu.org/IMG/pdf/shadowreport2018_final.pdf).

**Xenophobia** – attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.<sup>29</sup>

### **Forms of racism**

**Antigypsyism.** - there are various definitions of antigypsyism. FRA uses the terminology of the European Commission against Racism and Intolerance (ECRI).<sup>30</sup> The Alliance against Antigypsyism has developed a more sophisticated working definition of the phenomenon as a:

*'historically constructed, persistent complex of customary racism against social groups identified under the stigma 'gypsy' or other related terms, and incorporates:*

1. a homogenising and essentialising perception and description of these groups;
2. the attribution of specific characteristics to them; and
3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracising effect and which reproduce structural disadvantages'.<sup>31</sup>

**Afrophobia** is defined by ENAR as *'a specific form of racism that refers to any act of violence or discrimination including racist hate speech, fuelled by historical abuses and negative stereotyping, and leading to the exclusion and dehumanisation of people of African descent. It can take many forms: dislike, bias, oppression, racism and structural and institutional discrimination, among others'*. Accordingly, Afrophobia can be seen as *'the result of the social construction of race to which generic and/or cultural specificities and stereotypes are attributed (racialisation)'* which *'is deeply embedded in the collective European imagination and continues to impact the lives of people of African descent and Black Europeans.'*<sup>32</sup>

**Antisemitism** is defined by the International Holocaust Remembrance Alliance (IHRA), FRA and the Organization for Security and Co-operation in Europe (OSCE) as

*'a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities'*

<sup>29</sup> UNESCO, 'Glossary of Migration Related Terms', available at: <https://en.unesco.org/themes/fostering-rights-inclusion/migration>.

<sup>30</sup> It defines antigypsyism as a 'specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination', see FRA, *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, 2018, available at: <https://fra.europa.eu/en/publication/2018/persisting-concern-anti-gypsyism-barrier-roma-inclusion>.

<sup>31</sup> Alliance against Antigypsyism, *Antigypsyism – a reference paper*, June 2007, available at: [https://antigypsyism.eu/?page\\_id=17](https://antigypsyism.eu/?page_id=17).

<sup>32</sup> See ENAR, 'What is Afrophobia?', available at: <https://www.enar-eu.org/Frequently-asked-questions>. A detailed discussion of the terminology used can be found in the discussion presented on pp. 3-4 of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, *Afrophobia: acknowledging and understanding the challenges to ensure effective responses* quoted above.

The IHRA's definition also includes 11 examples of antisemitism.<sup>33</sup> This definition has been adopted or endorsed by the European Commission and 20 EU Member States.<sup>34</sup>

**Anti-Asian racism** is a form of racism targeting Asians and people of Asian descent. Beyond the racism these populations are subject to, the emergence of the Covid-19 pandemic has added a new dimension to the phenomenon. The OSCE has reported that numerous instances of intolerant discourse and hate-motivated attacks against Asians and people of Asian descent occurred, particularly in the early phase of the pandemic.<sup>35</sup>

**Racism against indigenous people** – this form of racism came to the forefront following the UN Sub-commission on Prevention and Discrimination and Protection of Minorities' commissioning of a study on 'The Problem of Discrimination against Indigenous Populations'. In Europe, Saami and Inuit people are two groups of indigenous people.<sup>36</sup>

### 2.1.1. Antigypsyism

#### a. Overview

The term 'Roma', which derives from the word in the Romani language for man or person is the traditional appellation for various groups, many of which are Romani-speaking, including Roma, Sinti, Travellers, Ashkali, Manush, Jenische, Kaldarash and Kalé and other groups.<sup>37</sup> The term therefore does not refer to a homogenous community, and not all groups encompassed in the term recognise themselves as Roma. These groups do, however, have shared histories and experiences of racism, discrimination and exclusion from society.<sup>38</sup> The term antigypsyism is built around the majority's projection of an imagined out-group of 'gypsies', which simultaneously constructs an imagined in-group. As such, it highlights the constructed nature of the phenomenon as perceived by the majority and includes all groups and communities affected by it.<sup>39</sup>

In this study, the term 'antigypsyism' is used to refer to racism against Roma people and other groups and communities mentioned above. The term is favoured by several advocacy organisations, including the Alliance against Antigypsyism, the ERGO Network, the European Roma Rights Centre (ERRC) and the International Holocaust Remembrance Alliance (IHRA).<sup>40</sup>

<sup>33</sup> IHRA, working definition of antisemitism, available at: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

<sup>34</sup> See updated list of countries that have adopted or endorsed IHRA's definition of antisemitism at: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism/adoption-endorsement>.

<sup>35</sup> OSCE, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Addressing Anti-Asian Racism and Xenophobia: Challenges and Opportunities Public event held online, 8 June 2021, available at: <https://www.osce.org/odihr/510656>

<sup>36</sup> United Nations, The Fight of Indigenous People in the Nordic countries, available at: <https://unric.org/en/the-fight-of-indigenous-people-in-the-nordic-countries/>

<sup>37</sup> United National, 'Roma, Sinti, Travellers – Dignity NOT Discrimination', available at: <https://www.un.org/en/fight-racism/vulnerable-groups/roma-sinti-travellers>.

<sup>38</sup> ENAR, 'Who are the Roma?', available at: <https://www.enar-eu.org/Frequently-asked-questions-1167>.

<sup>39</sup> Alliance against Antigypsyism, *Antigypsyism – a reference paper*, June 2007, available at: [https://antigypsyism.eu/?page\\_id=17](https://antigypsyism.eu/?page_id=17).

<sup>40</sup> See Alliance against Antigypsyism at: [https://antigypsyism.eu/?page\\_id=17](https://antigypsyism.eu/?page_id=17); ERGO Network at: <https://ergonetWORK.org/issues/combating-antigypsyism/>; ERRC at: <http://www.errc.org/news/a-beginners-guide-to-antigypsyism> and IHRA at: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antigypsyism-anti-roma-discrimination>.

Romani people are often described as the largest minority in the EU, with between 10 and 12 million Roma living in the Union. The socio-economic situation of Romani people is among the worst in the EU. According to FRA, 80 % of Roma live below the at-risk-of-poverty threshold. Romani people are subject to an extremely high level of racism and discrimination. A third of Roma people reported having experienced some form of harassment and physical violence. In addition, 41 % had felt discriminated against due to their origin at least once in the past five years.<sup>41</sup>

There is also strong anti-Roma prejudice among the general population. Twenty per cent of the EU population would feel uncomfortable if one of their colleagues at work were Roma, less than half (45 %) would be comfortable or indifferent if their child had a relationship with a Roma person, and only 18 % reported having friends or acquaintances who are Roma.<sup>42</sup>

A specific feature of discrimination against Roma people relates to their poor access to specific services, especially education and healthcare. Half of Roma children surveyed attended pre-school or kindergarten, and a very small proportion continued school after compulsory education. Sixty-three per cent of Roma aged between 20 and 64 are not employed (as opposed to the EU average of 12 %).<sup>43</sup> Only 74 % of Roma are covered either by the national basic health insurance scheme or by additional insurance; this figure falls to 45 % for Roma in Bulgaria and 54 % for Roma in Romania.

Another specific issue faced by many Roma people is the segregation and ghettoization they experience in terms of housing. Forty-one per cent of Roma people felt discriminated against because of being Roma when looking for housing, and one-third live in housing without running water.

However, much of this racism and discrimination goes unreported or is underreported. Only 12 % of Roma have reported their experiences of discrimination to an authority, and 82 % do not know of an organisation offering support to victims of discrimination.<sup>44</sup>

In some countries, such as Romania, Roma people were enslaved until the mid-nineteenth century, and even after the emancipation of slaves, prejudices have remained. Roma people were a target of the genocide perpetrated by National Socialist Germany and its allies during the Second World War, when the Nazi regime sought to extinguish Romani people and culture.<sup>45</sup> Even after the defeat of the Nazi regime, campaigns of forced sterilisation of Romani people were carried out in European countries, including Czechoslovakia (and subsequently the Czech Republic up to the 1990s)<sup>46</sup> and Sweden (up to 1976)<sup>47</sup>.

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<sup>41</sup> FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II) – Roma – Selected findings*, 2016, available at: <https://fra.europa.eu/en/publication/2016/second-european-union-minorities-and-discrimination-survey-roma-selected-findings>.

<sup>42</sup> European Commission, *Special Eurobarometer 437, Discrimination in the EU in 2015*, available at: <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKY/2077>.

<sup>43</sup> FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II) – Roma – Selected findings*, 2016, p. 10, available at: <https://fra.europa.eu/en/publication/2016/second-european-union-minorities-and-discrimination-survey-roma-selected-findings>.

<sup>44</sup> FRA, *EU-MIDIS II – Roma*, op. cit., p. 42.

<sup>45</sup> Alliance against Antigypsyism, op. cit., p. 7.

<sup>46</sup> Albert, G. and Szilvasi, M., 'Intersectional Discrimination of Romani Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic', in *Health and Human Rights Journal*, December 2017, available at: <https://www.hhrjournal.org/2017/12/intersectional-discrimination-of-romani-women-forcibly-sterilized-in-the-former-czechoslovakia-and-czech-republic/>.

<sup>47</sup> openDemocracy, 'Sweden's dirty little secret', 9 October 2013, available at: <https://www.opendemocracy.net/en/can-europe-make-it/swedens-dirty-little-secret/>.

As with other groups that are subject to racism, a key feature of antigypsyism is the act of 'othering' Roma communities. That historically involved racial ideologies, before a gradual shift to the concept of a distinct 'culture' forming a separate constructed group.<sup>48</sup>

As discussed below, one of the distinctive features of antigypsyism is its high level of social acceptance in society. While there is often a moral stigma attached to other forms of racism, there is wider social acceptance of discriminatory and exclusionary language targeting Roma people.

On 25 October 2017 the European Parliament adopted a resolution on fundamental rights aspects in Roma integration in the EU<sup>49</sup>. The European Parliament stressed that despite efforts at national, European and international level, persistent anti-Gypsyism can be detected at all levels of European society. The resolution called for a number of actions such as: setting up a truth and reconciliation commission, carrying out check of Member States' performance on policies supporting Roma communities, the full implementation of the national Roma inclusion strategies, assessing EU programmes and funding opportunities, securing equal rights and fighting anti-Gypsyism through training, intensifying work with NGOs to deliver best practice training on countering prejudice as well as on the effective countering of hate speech campaigns. On 12 February 2019, the European Parliament adopted a resolution on the need for a strengthened post-2020 Strategic EU framework for National Roma Inclusion Strategies and stepping up the fight against anti-gypsyism<sup>50</sup>. In its 17 September 2020 resolution on the implementation of National Roma Integration Strategies<sup>51</sup> Parliament called on the Commission to develop a 'Romani mainstreaming policy' to integrate the perspective of the Romani people at all stages and levels of mainstream policies, programmes and projects and to present a legislative proposal for equality, inclusion and participation of Roma and the fight against antigypsyism. Member States were invited to develop policies that contribute to the active inclusion of the Romani people into societies. Parliament called on Member States to formally recognise antigypsyism as a particular form of racism against Romani people.

Other key features of antigypsyism are institutional racism and policing, which are discussed in greater detail in Section 2.2.

## b. Antigypsyism in the Member States

Antigypsyism is an issue in all the selected Member States.

According to the 2011 census, 4.9 % of the Bulgarian population (325 000 people) identified themselves as Roma.<sup>52</sup> In **Bulgaria**, the root causes of anti-Gypsyism are related to Roma people's perceived 'foreignness'. This innate 'otherness' was exacerbated by the phenomenon of ethnicising the Bulgarian identity in the nineteenth century, which centred around the unity of ethnicity and religion

<sup>48</sup> Alliance against Antigypsyism, *Antigypsyism – a reference paper*, June 2007, available at: [https://antigypsyism.eu/?page\\_id=17](https://antigypsyism.eu/?page_id=17).

<sup>49</sup> European Parliament resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism, available at: [https://www.europarl.europa.eu/doceo/document/A-8-2017-0294\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2017-0294_EN.html).

<sup>50</sup> European Parliament resolution of 12 February 2019 on the need for a strengthened post-2020 Strategic EU Framework for National Roma Inclusion Strategies and stepping up the fight against anti-Gypsyism, available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0075\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0075_EN.html).

<sup>51</sup> European Parliament resolution of 17 September 2020 on the implementation of National Roma Integration Strategies: combating negative attitudes towards people with Romani background in Europe, available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0229\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0229_EN.html).

<sup>52</sup> *National Roma integration strategy of the Republic of Bulgaria 2012-2020*, p. 23, available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-bulgaria\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-bulgaria_en). The figure is from 2011 as the results of the 2021 census are not yet available.

in defining the national ideal, in opposition to the religious, ethnic and racial difference of minority groups.<sup>53</sup> Systemic processes and trends that define the exclusion and marginalisation of Roma people and Roma communities in Bulgaria are: 1) poverty and economic exclusion, 2) unequal access to quality education, 3) housing deprivation, 4) stigmatisation and hate speech, and 5) excessive policing.

Forceful removal on behalf of local authorities from illegal dwellings – which are usually the primary and only homes of the families inhabiting them – is a problem, which in Bulgaria disproportionately (almost entirely) affects the Roma community.<sup>54</sup>

International calls to halt the unlawful evictions of Roma people by the Bulgarian state authorities were voiced as early as 2015, with Michael Georg Link, then Director of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, underlining that ‘such actions must comply with international standards and provide for adequate housing for those evicted’.<sup>55</sup>

The level of perceived segregation in Bulgaria increased by 13 % between 2011 and 2016.<sup>56</sup> The Ombudsman of the Republic of Bulgaria has noted<sup>57</sup> not only that hate speech in general is persistently present in all spheres of public life (‘in the media, on the internet, in interpersonal communication, and most disturbingly in institutions’), but also ‘social sensitivity’ concerning this issue seems to have decreased. Hate speech and hate crimes in Bulgaria have remained overwhelmingly underreported<sup>58</sup> and under-sanctioned.<sup>59</sup>

Although **Denmark** has a relatively small Roma population (there are no official statistics on the number of Roma who live in Denmark, but estimates range from 1 000 to 10 000 persons in 2017),<sup>60</sup> the situation of Roma has long been characterised by low levels of school enrolment and high unemployment.<sup>61</sup> However, due to the lack of ethnic data, it is difficult to evaluate whether and the extent to which discrimination is a concern among Roma people in the Danish labour market and with respect to (social) housing.<sup>62</sup>

<sup>53</sup> Smith, A. D. (1983), ‘Ethnic Identity and World Order’, 12(2), *Millennium*, pp. 149-161, [doi:10.1177/03058298830120020601](https://doi.org/10.1177/03058298830120020601).

<sup>54</sup> Ombudsman of the Republic of Bulgaria (2021), *Annual Report of the Ombudsman of the Republic of Bulgaria. Resume*, Sofia, p. 95, available at: [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\\_SUMMARY\\_BG.pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020_SUMMARY_BG.pdf).

<sup>55</sup> OSCE Office for Democratic Institutions and Human Rights, ‘ODIHR Director Link calls for halting evictions of Roma and anti-Roma rhetoric in Bulgaria’, National Minority Issues, Roma and Sinti, 2015, available at: <https://www.osce.org/odihr/171901>.

<sup>56</sup> Lajčáková, J., Hojsík, M. and Karoly, M. (2020), *Combating Antigypsyism. Expert reports building on forward-looking aspects of the evaluation of the EU Framework for National Roma Integration Strategies*, European Commission, Brussels, p. 38 available at: [https://ec.europa.eu/info/sites/default/files/post2020\\_eu\\_roma\\_in\\_antigypsyism.pdf](https://ec.europa.eu/info/sites/default/files/post2020_eu_roma_in_antigypsyism.pdf).

<sup>57</sup> Ombudsman (Bulgaria), op. cit., p. 96.

<sup>58</sup> Lajčáková, J., Hojsík, M. and Karoly, M. (2020), op. cit., p. 25.

<sup>59</sup> Mijatović, N. (2020), Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Bulgaria from 25 to 29 November 2019*, Council of Europe, Strasbourg, p. 13 available at: <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-november-2019-by-dunja-m/16809cde16>.

<sup>60</sup> Council of Europe, ECRI, *Report on Denmark (fifth monitoring cycle)*, 16 May 2017, p. 27, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/denmark>.

<sup>61</sup> ECRI, *Report on Denmark*, op. cit., p. 27.

<sup>62</sup> European Commission, *Civil society monitoring report on implementation of the national Roma integration strategy in Denmark. Assessing the progress in four key policy areas of the strategy*, February 2019, pp. 13 ff., available at: <https://op.europa.eu/en/publication-detail/-/publication/bd3e8b87-7268-11eb-9ac9-01aa75ed71a1/language-en>.

There are no official statistics in **Germany** on the number of Sinti and Roma<sup>63</sup>, although the Council of Europe estimates they make up a population of 70 000 to 140 000<sup>64</sup>. A large proportion of Roma face discrimination in the school system and the housing market. For example, Roma children from Eastern European countries in particular are often referred by municipalities to special integration classes with a high proportion of pupils with an immigration background and kept in those classes for longer than necessary. This means that these children are separated from pupils attending the regular classes.<sup>65</sup> In the private housing market, Sinti and Roma often face abusive practices of tenants and landlords. That manifests itself in very low standards, the threat of eviction and unlawful rent increases.<sup>66</sup> Roma from Bulgaria and Romania also experience serious restrictions in the exercise of their right of freedom of movement, including access to the German labour market and social benefits, alongside massive and biased media coverage.<sup>67</sup> In addition, racism against Roma in public places often involves non-verbal communication. Besides verbal abuse, Roma people experience looks and whispering, disparagement, denial of belonging, criminalisation, physical violence and attacks.<sup>68</sup>

The number of Roma people living in **Greece** is not known with certainty. The lack of official quantitative data has several negative implications, including difficulties for Roma in accessing social inclusion schemes. However, the Council of Europe estimates the number of Roma people in the country at 235 000, accounting for 2.47 % of the population.<sup>69</sup>

Segregation in education and housing is one of the central issues in terms of Roma inclusion in Greece. With regard to education, 41 % of the Greek population report that they would feel uncomfortable if their child had Roma classmates, which is the most negative attitude of all EU countries.<sup>70</sup> Indirect practices of segregation, such as the operation of single-culture schools (in practice Roma-only schools) persist,<sup>71</sup> despite several court cases adjudicated by the European Court of Human Rights.<sup>72</sup> Lack of reliable official data is another obstacle to the development of adequate legal and policy responses.<sup>73</sup> With regard to housing, a recurring issue is the refusal of some municipalities to issue a specific

<sup>63</sup> Due to the persecution and holocaust of Sinti and Roma during the period of Nazi rule, many Sinti and Roma oppose strongly against the collection of any data about them. See: Reuss, Anja / Mack, Jonathan, 'Data Collection on Equality, Discrimination and Antigypsyism, Central Council of German Sinti and Roma, in: Dimensions of Antigypsyism in Europe', published by the European Network Against Racism (ENAR) and the Central Council of German Sinti and Roma, Brussels 2019, p. 249f.

<sup>64</sup> See Minority rights report on Germany available at: <https://minorityrights.org/minorities/romasinti/>

<sup>65</sup> European Commission, *Civil society monitoring report on implementation of the national Roma integration strategies in Germany. Focusing on structural and horizontal preconditions for successful implementation of the strategy*, March 2018, p. 8, available at: <https://op.europa.eu/en/publication-detail/-/publication/5941179e-b1ac-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-105835548>.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Bundesministerium des Innern, für Bau und Heimat (2021), *Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation. Bericht der Unabhängigen Kommission Antiziganismus*, p. 173, available at: <https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/heimat-integration/bericht-unabhaengige-kommission-Antiziganismus.html>.

<sup>69</sup> See the European Commission page on Roma inclusion in Greece, available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-greece\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-greece_en).

<sup>70</sup> European Commission (2019), *Special Eurobarometer 493: Discrimination in the European Union*, p. 136, available at: [https://data.europa.eu/euodp/en/data/dataset/S2251\\_91\\_4\\_493\\_ENG](https://data.europa.eu/euodp/en/data/dataset/S2251_91_4_493_ENG).

<sup>71</sup> Roma Civil Monitor. *Country Fiche: Greece*, available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3172/c2-greece.pdf>.

<sup>72</sup> European Commission (2017), *Roma and the Enforcement of Anti-discrimination law*, p. 16, available at: <https://ec.europa.eu/newsroom/just/redirection/document/47560>.

<sup>73</sup> Ibid., p. 19.

document required for a real estate purchase if the buyer is Roma.<sup>74</sup> Access to housing in general is problematic for the Roma community, including qualifying for housing subsidies. High unemployment is another persistent issue. A particular area of concern is the especially low official employment level of Roma women (compared to Roma men). There is resistance at the local level for local inclusion of Roma, even when municipalities attempt to address the issue.

Hostility towards the Roma population (estimated at between 120 000 to 180 000)<sup>75</sup> has been part of **Italian society and politics**, especially in recent years<sup>76</sup>. There is a common misconception in Italy that all Roma are nomadic (accordingly, Roma are often referred to as 'nomadi'). As such, housing policies for Roma populations have focused on building inadequate 'nomad camps' since the 1980s, creating additional difficulties for the families living in these camps (in terms of access to education, healthcare etc.). The hostility culminated in a series of violent attacks on Roma populations, starting in Ponticelli.<sup>77</sup> As a result of these incidents, anti-Roma rhetoric developed further and resulted in the reinforcement of legislative powers (such as the introduction of an aggravating circumstance when a crime is 'committed by someone who is illegally on the territory of the state', which has since been deemed unconstitutional by the constitutional court<sup>78</sup> and clearly targeted members of the Roma population who are nationals of another EU Member State). Violence against Roma camps has been a regular occurrence in Italy since.

In **Poland**, where the Roma population is estimated at 13 000 people (approximately 0.1 % of the population),<sup>79</sup> the Polish state does not recognise antigypsyism as a specific form of racism, or as a root cause of their exclusion. In addition, the term 'antigypsyism' does not feature in Polish laws and regulations. Consequently, there is no structure established by the government to monitor and analyse antigypsyism.<sup>80</sup> However, since 2005, Roma have been legally recognised as an ethnic minority in Poland.<sup>81</sup> Forty percent of Polish respondents in the Special Eurobarometer 493 believe that anti-Roma discrimination is 'widespread' in their country, while 52% of Polish respondents believe it is 'rare'<sup>82</sup>.

In **Romania**, where the Roma population accounts for close to 9 % of the population (approximately 1.8 million people),<sup>83</sup> most of the examples of racism and racial discrimination have been observed in the context of the Roma ethnic minority. Particularly in the case of Roma, long-lasting racist stereotypes

<sup>74</sup> Greek Ombudsman. *Equal Treatment Special Report 2020*, p. 54, available at: <https://www.synigoros.gr/?i=stp.en.specialreporten>.

<sup>75</sup> Minority Rights group International fiche for Roma in Italy, available at: <https://minorityrights.org/minorities/roma-25/>

<sup>76</sup> See Appendix G. Country Report – Italy, in particular section G.2 for more information on the dimensions of racism, xenophobia and racial discrimination.

<sup>77</sup> See Appendix G. Country Report – Italy, in particular section G.2 for details of incidents and occurrences of antigypsyism.

<sup>78</sup> See Faraguna, P., *Report on the Italian Constitutional Court's Case Law*, available at: <https://journals.openedition.org/revus/2176?qathStatCon=true>.

<sup>79</sup> Council of Europe figures quoted by the European Commission, on the website on Roma inclusion, available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-poland\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-poland_en).

<sup>80</sup> *Ibid.*, p. 10

<sup>81</sup> Ministry of Internal Affairs and Administration (2005), Act on National and Ethnic Minorities and Regional Language, available at: <http://mniejszosci.narodowe.mswia.gov.pl/mne/prawo/ustawa-o-mniejszosciac/6492,Ustawa-o-mniejszosciach-narodowych-i-etnicznych-oraz-o-jezyku-regionalnym.html>.

<sup>82</sup> Special Eurobarometer 493, 2019. Discrimination in the European Union, p. 39, available at: [https://data.europa.eu/data/datasets/s2251\\_91\\_4\\_493\\_eng?locale=en](https://data.europa.eu/data/datasets/s2251_91_4_493_eng?locale=en).

<sup>83</sup> The figures are disputed, with the 2011 census providing the figure of 621 573 people, and the National Agency for Roma giving an estimate of 1.5 to 2 million, in line with the estimate provided by the Council of Europe (1.8 million), see the CoE country profile, available at: <https://pjp-eu.coe.int/en/web/access-to-justice-for-roma-women/romania>.

affect everyday life in fields such as education, housing, labour and policing, thereby perpetuating structural inequality and institutional racism.

Discrimination at the workplace limits Roma people's future potential, thereby contributing to their marginalisation.<sup>84</sup> In this environment, Roma who have been pushed into racialised working-class conditions are considered inferior. Their marginalised status is conducive to their exploitation and the 'reproduction of cheap labour force'.<sup>85</sup> This is compounded by blatant disdain for the inclusion of Roma's history in Romanian schools and textbooks.<sup>86</sup> School segregation is another manifestation of institutionalised racism and discrimination. However, the situation seems to be improving (8% of Roma children study in segregated schools in Romania) and is not as bad as in EU Member States such as Bulgaria (60%), Slovakia (62%) and Hungary (61%).<sup>87</sup>

Institutional racism towards Roma also occurs in the context of housing policy and takes the form of precarious housing conditions and evictions. For instance, the first case of a Roma housing rights violation occurred in 2001 in Piatra Neamț, when the city mayor removed 150 families and relocated them to unused commercial old buildings away from the city.<sup>88</sup> Another example concerns a Roma district in Bucharest where utilities are much worse than the average for Bucharest.<sup>89</sup> Racism in the field of housing also manifests itself in the failure of local councils to collect rubbish in Roma neighbourhoods as frequently.<sup>90</sup>

Even though **Lithuania** has a relatively small Roma population (2 571 persons)<sup>91</sup>, antigypsyism appears to be the most common ground for discrimination. Forty-eight percent of Lithuanian respondents in the Special Eurobarometer 493 believe that anti-Roma discrimination is 'very' or 'fairly' widespread in their country (compared to 15% for religion or belief, 18% for ethnic origin, and 23% for skin colour).<sup>92</sup>

One specific area in which anti-Roma discrimination plays out is housing. In its report on Lithuania as part of the fifth monitoring cycle, ECRI recommended that Lithuania take steps to resolve the difficult housing situation of Roma, in particular in the Kirtimai settlement, by either providing social housing or subsidies for the private rental market as well as working with private actors to overcome prejudices

<sup>84</sup> Militaru, E., Stanila, L., Vasilescu, M.D., 'Investigating labor market discrimination in Romania', *Sustainability*, Vol. 12, No. 4983, 2020, available at: <https://www.mdpi.com/2071-1050/12/12/4983>.

<sup>85</sup> Vincze, E., 'Ghettoization: The production of marginal spaces of housing and the reproduction of racialized labour'; Petrovici, N., Picker, G., Rat, C., Vincze, E., *Racialized Labor in Romania: Spaces of Marginality at the Periphery of Global Capitalism*, Palgrave, 2019, pp. 63-95, p. 64, available at: [https://www.academia.edu/37060942/Spaces\\_of\\_Marginality\\_at\\_the\\_Periphery\\_of\\_Global\\_Capitalism\\_Racialized\\_labour\\_in\\_romania\\_neighborhoods\\_communities\\_and\\_urban\\_marginality\\_Palgrave\\_Macmillan\\_2018](https://www.academia.edu/37060942/Spaces_of_Marginality_at_the_Periphery_of_Global_Capitalism_Racialized_labour_in_romania_neighborhoods_communities_and_urban_marginality_Palgrave_Macmillan_2018).

<sup>86</sup> End, M., 'History of antigypsyism in Europe: The social causes', in Kyuchokov Hristo (ed.), *New Faces of Antigypsyism in Modern Europe*, H-Soz-u-Kult, Prague, 2012, available at: <https://www.hsozkult.de/conferencereport/id/tagungsberichte-4466>.

<sup>87</sup> FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – Selected findings*, 2018, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-eu-minorities-survey-roma-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf).

<sup>88</sup> Mandache, M., 'A brief insight into the systemic racism Roma face in accessing housing in Romania', *FEANTSA, Homeless in Europe: Roma Experiences of Homelessness in Europe*, 2020, available at: [https://www.feantsa.org/public/user/Resources/magazine/2020/Winter%20Roma/FEA\\_008-20\\_magazine\\_winter\\_v3.pdf](https://www.feantsa.org/public/user/Resources/magazine/2020/Winter%20Roma/FEA_008-20_magazine_winter_v3.pdf).

<sup>89</sup> Abu-Hamed, T., Negev, M., Sinea, A., Teschner, N. and Vornicu, A., 'Extreme energy poverty in the urban peripheries of Romania and Israel: Policy, planning and infrastructure', *Energy Research & Social Science*, Vol. 66, No. 101502, 2020, available at: <https://www.sciencedirect.com/science/article/abs/pii/S2214629620300797>.

<sup>90</sup> *The Guardian*, "'Roma suffer under EU's environmental racism,' report concludes', 6 April 2020, available at: <https://www.theguardian.com/world/2020/apr/06/roma-suffer-under-eus-environmental-racism-report-concludes>.

<sup>91</sup> Minority Rights group International, available at: <https://minorityrights.org/minorities/roma-10/>

<sup>92</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 39, available at: [https://data.europa.eu/data/datasets/s2251\\_91\\_4\\_493\\_eng?locale=en](https://data.europa.eu/data/datasets/s2251_91_4_493_eng?locale=en).

against renting properties to Roma people. In its follow-up to the recommendations, ECRI concludes that the recommendation has been only partially implemented and efforts need to be scaled up.<sup>93</sup>

## 2.1.2. Afrophobia

### a. Overview

The phenomenon of Afrophobia targets and affects people of African descent/black Europeans. Although the term 'Afrophobia' is not universally accepted, it is used by the European Commission, the Council of Europe High Commissioner for Human Rights, the United Nations Working Group of Experts on People of African Descent and the European Network Against Racism (ENAR).<sup>94</sup>

Afrophobia has deep historical roots permeated by exploitative racism in the form of slavery, which was practiced for centuries and was a key driver of wealth creation in Europe. One of the distinctive features of Afrophobia in Europe is the racial profiling that people of African descent/black Europeans are subject to. As discussed below (Section 2.2), discrimination and institutional racism have been experienced by people of African descent/black Europeans in their interactions with law enforcement authorities. The murder of George Floyd by a white police officer in Minneapolis, and the subsequent social movement initiated in the US, quickly spread internationally. In Europe, this led to an understanding by a large swathe of society of the violence that people of African descent/black Europeans have been subject to.<sup>95</sup>

Afrophobia targets black people 'intended as all those individuals, groups and communities that define themselves as "Black".'<sup>96</sup> While people of African descent/black Europeans have been an integral part of the social fabric of Member States for generations, they face widespread prejudice and exclusion. According to FRA, almost a third of people of African descent/black Europeans (30%) had experienced racist harassment in the five years prior to the survey (2015-16).<sup>97</sup> Five per cent of respondents stated that they had experienced a violent racist attack over the same timeframe.<sup>98</sup>

As with other forms of racism and harassment, the proportion of incidents reported by people of African descent/black Europeans is extremely low, with only 14% of incidents reported to the police or other social services. Furthermore, nearly a quarter of people of African descent/black Europeans in the 12 Member States for which data were collected (24%) had been stopped by the police in the previous five years. This figure highlights the racial profiling experienced by people of African descent/black Europeans when stopped by the police. This issue is discussed further in Section 2.2.

<sup>93</sup> ECRI. 2019. ECRI Conclusions on the implementation of the recommendations in respect of Lithuania subject to interim follow-up. CRI(2019)25.

<sup>94</sup> European Commission, EU High Level Group on combating racism, xenophobia and other forms of intolerance, *Afrophobia: acknowledging and understanding the challenges to ensure effective responses*, November 2018, available at: [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=55651](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55651).

<sup>95</sup> DeZIM, op. cit.

<sup>96</sup> EU High Level Group on combating racism, xenophobia and other forms of intolerance, *Afrophobia*, op. cit.

<sup>97</sup> The EU-MIDIS II survey specifically looked at minority groups in the EU. The figure presented here relates to an average of 12 Member States (Finland, Luxemburg, Ireland, Germany, Italy, Denmark, Sweden, Austria, France, Portugal, the UK and Malta); the technical report for the EU-MIDIS II survey is available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-midis-ii-technical-report\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-technical-report_en.pdf).

<sup>98</sup> FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II) – Being Black in the EU*, 2018, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-being-black-in-the-eu\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf).

On 26 March 2019 the European Parliament adopted a resolution on fundamental rights of people of African descent in Europe<sup>99</sup>. Parliament called on Member States and the EU institutions to recognise that people of African descent in Europe are subjected to racism, discrimination and xenophobia and to the unequal enjoyment of human and fundamental rights. The resolution referred to the need to officially acknowledge the histories of people of African descent in Europe, including slavery and the transatlantic slave trade, and those committed under European colonialism. Parliament called on Member States to develop national anti-racism strategies that address the comparative situation of people of African descent.

There are existing initiatives such as Black History Month in the UK, which seeks to create '*an engaging space of mutual reflection, examination, evaluation, planning and action to free society of the vestiges of imperialism and colonialism in order to reorder society in our collective [...] interest*'.<sup>100</sup>

### b. Afrophobia in the Member States

According to Eurobarometer, 83 % of **Danish** respondents reported that they would feel comfortable working on a daily basis with people of African descent/black Europeans and 76 % would feel comfortable if their child was in a love relationship with a person of African descent/black European.<sup>101</sup> However, according to a 2018 FRA survey, 41 % of respondents of African descent/black Europeans in Denmark indicated that they had experienced racist harassment in the five years before the survey.<sup>102</sup> Most people of African descent/black European respondents in Denmark (92 %) identified themselves as Muslim when asked about their religion,<sup>103</sup> and 61 % of respondents who felt discriminated against because of their skin colour in Denmark also said that they had experienced religious discrimination.<sup>104</sup> According to the 2017 report of the European Commission against Racism and Intolerance (ECRI), members of the black community in Denmark have reported ongoing experiences of discrimination, in particular in the fields of employment and housing. Reportedly, people of African descent/black Europeans often experience refusals in both fields due to their skin colour.<sup>105</sup> However, apart from this reported evidence, no official data or other forms of reliable information are available. In this context, ECRI criticised relevant state institutions that have so far not endeavoured to fill this gap and the fact that information collected by relevant community groups on this topic has so far not been published or taken into consideration by the authorities.<sup>106</sup>

The first institutional document codifying racist and discriminatory practices in **France** was the Code Noir, a 1685 royal decree defining the conditions of slavery in the French colonies. It codified the rules relating to slavery, but its scope was much wider, imposing Catholicism on slaves and forbidding protestant slave owners from imposing their religion. The elements of the Code Noir pertaining to segregation – which also applied to free people of colour – were extended to the territory of France in 1777 and forbade the entry of black people into France. The Code Noir was abolished by the

<sup>99</sup> European Parliament resolution of 26 March 2019 on fundamental rights of people of African descent in Europe, available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html) .

<sup>100</sup> See Black History Month website, available at: <https://www.blackhistorymonth.org.uk/article/section/bhm-intros/black-history-month-uk/>.

<sup>101</sup> *Special Eurobarometer 493*, op. cit., p. 25.

<sup>102</sup> FRA (2018), *Being Black in the EU*, op. cit., p. 15.

<sup>103</sup> FRA (2018), *Being Black in the EU*, op. cit., p. 23.

<sup>104</sup> FRA (2018), *Being Black in the EU*, op. cit., p. 39.

<sup>105</sup> ECRI, *Report on Denmark*, op. cit., p. 26.

<sup>106</sup> *Ibid.*

Revolutionary convention in 1794 but was re-established by Napoleon in 1802. Slavery was finally abolished in France in 1848.<sup>107</sup>

Anti-black racism largely has its roots in and is fed by a lack of understanding of the physical, psychological and symbolic violence that targeted people of African descent/black Europeans in France, as well as the country's colonial history.<sup>108</sup> In 2018, the annual report of the Commission nationale consultative des droits de l'homme (National Consultative Commission on Human Rights, CNCDH) revealed paradoxical findings; on the one hand, the country's population of people of African descent/black Europeans is among the most accepted, while on the other hand it is one of the racial groups most discriminated against. The majority of French people (59%) agree that all human races are equal, while 33% of the population are of the opinion that human races do not exist.<sup>109</sup> The CNCDH points to a paradox with regard to Afrophobia. While the black minority is – along with the Jewish minority – the racialised group that has the best image in France, people of African descent/black Europeans are subject to regular and numerous occurrences of discrimination and to anti-black racism built against a constructed 'white norm'. According to the CNCDH, this phenomenon has its roots in the colonial period. A person of African descent/black European is 32% less likely to find a place to live than others in France. There is also a widespread issue relating to policing and Afrophobia, discussed in Section 2.2 below.

Twenty-one per cent of **Lithuanian** respondents report that they would feel uncomfortable working on a daily basis with a black person and 44% would feel uncomfortable if their child was in a love relationship with a person of African descent/black European.<sup>110</sup> People of African descent/black Europeans in Lithuania report that they feel hesitant to raise anti-discrimination issues with their employers for fear of negative repercussions due to the complaint.<sup>111</sup> Other areas of discrimination against people of African descent/black Europeans in Lithuania are education, housing, policing, negative portrayals and stereotyping by the media and some politicians, as well as hate speech and hate crimes against Black people.<sup>112</sup> For example, with regard to education, black students report bullying incidents in places of education. In the area of policing, people of African descent/black Europeans are at greatest risk of being racially profiled and stopped and searched. Thirty per cent of Sub-Saharan survey respondents in Lithuania report being stopped by the police in the last five years.<sup>113</sup> In June 2020, youth activists organised a Black Lives Matter march to express solidarity with protesters in the United States and other countries who were shining a light on issues of institutional racism. The march was met with a strong backlash and denial that such issues exist or are relevant in the Lithuanian context.<sup>114</sup>

<sup>107</sup> Castaldo, A., *Codes Noirs, de l'esclavage aux abolitions*, DALLOZ, 2006.

<sup>108</sup> See Appendix E. Country Report – France for a more detailed exploration of the links between the country's colonial history and racism.

<sup>109</sup> CNCDH, *Rapport 2020 sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, July 2021, p. 24, available at: [https://www.cncdh.fr/sites/default/files/rapport\\_racisme2020\\_basse\\_def.pdf](https://www.cncdh.fr/sites/default/files/rapport_racisme2020_basse_def.pdf).

<sup>110</sup> European Commission, *Special Eurobarometer 493*, op. cit., p. 28, available at: [https://data.europa.eu/data/datasets/s2251\\_91\\_4\\_493\\_eng?locale=en](https://data.europa.eu/data/datasets/s2251_91_4_493_eng?locale=en).

<sup>111</sup> The number of people of African descent/black Europeans in Lithuania is small, with the migration department quoting the figure as under 300, see <https://www.delfi.lt/news/daily/lithuania/vilniuje-gyvenantis-afrikietis-lietuviams-reikia-pamirsti-okupacija-ir-mokytis-atvirumo.d?id=60500687>.

<sup>112</sup> ENAR (2016), *Fact sheet briefing – Afrophobia in Lithuania*, available at: [https://www.enar.eu.org/IMG/pdf/lithuania\\_fact\\_sheet\\_briefing\\_final.pdf](https://www.enar.eu.org/IMG/pdf/lithuania_fact_sheet_briefing_final.pdf).

<sup>113</sup> ENAR (2019), *Data-Driven Policing: The Hardwiring of Discriminatory Police Practices across Europe*, p. 8, available at: <https://www.statewatch.org/media/documents/news/2019/nov/data-driven-profiling-web-final.pdf>.

<sup>114</sup> LRT.lt., 'Anti-racism rally bares divide between Lithuania's young and old', 11 June 2020, available at: <https://www.lrt.lt/en/news-in-english/19/1187544/anti-racism-rally-bares-divide-between-lithuania-s-young-and-old>.

Discrimination against people of African descent/black Europeans exists in **Poland**. The number of people of African descent/black Europeans in Poland is estimated at between 2 000 and 3 000, although this figure only appears to include immigrants.<sup>115</sup> Fourteen per cent of Polish respondents reported that they would feel uncomfortable working on a daily basis with a black person,<sup>116</sup> and 26 % of Polish respondents would feel uncomfortable if their child was in a love relationship with a black person.<sup>117</sup> Areas of discrimination against people of African descent/black Europeans in Poland include display of slogans, hate speech and hate crimes. For example, in May 2019, a black student from the United States was attacked by two men in front of a hotel entrance in Warsaw.<sup>118</sup> The Black Lives Matter movement in Poland was relatively small compared to other countries, with 17 protests organised in 11 Polish cities. Accordingly, media coverage was also limited, but protests nevertheless seem to have sparked a debate on anti-black racism in Poland. However, the protests did not reach a large audience.<sup>119</sup>

According to Eurobarometer, 77% of **German** respondents reported that they would feel comfortable working on a daily basis with a black person and 63% would feel comfortable if their child was in a love relationship with a black person<sup>120</sup>. However, according to a 2018 FRA survey, skin colour is the most commonly mentioned ground of discrimination, and Germany has one of the highest rates of discrimination on the ground of skin colour observed (37%)<sup>121</sup>. In addition, 48% of respondents of African descent in Germany indicated that they experienced racist harassment in the five years before the survey. Results of discrimination include restricted access to social housing and a low proportion of ownership of the dwelling.

The German Federal Anti-Discrimination Agency stated in its annual report 2020 that the Black-Lives-Matter movement has put the situation of black people in Germany in the focus of the debate around racial discrimination. The topic is very present and has also affected the work of the Agency: it received a total of 2 101 inquiries about discrimination on grounds of racist or ethnic origin in 2020. This corresponds to an increase of almost 79% compared to the previous year, a larger increase than in the four previous years combined<sup>122</sup>.

In countries such as **Bulgaria** and **Romania**, given the relatively low population of people of African descent/black Europeans the occurrences of Afrophobia have been mainly attributable to personal prejudice and extreme manifestation of football hooliganism. In 2019 for example, the Bulgarian Football Federation was fined due to racist chants<sup>123</sup>.

<sup>115</sup> See Minority Rights Group, *Poland: Sub-Saharan Africans and the struggle for acceptance*, available at: <https://minorityrights.org/trends2018/poland/>.

<sup>116</sup> European Commission, *Special Eurobarometer 493*, op. cit., p. 25.

<sup>117</sup> Ibid., p. 28.

<sup>118</sup> "NEVER AGAIN" Association, *A selection of racist, xenophobic and homophobic events which occurred in Poland in 2019 are monitored by the 'NEVER AGAIN' Association and documented in the 'Brown Book'*, available at: [https://www.nigdywiecej.org/docstation/com\\_docstation/172/brown\\_book\\_2019.pdf](https://www.nigdywiecej.org/docstation/com_docstation/172/brown_book_2019.pdf).

<sup>119</sup> DeZIM (2021). op. cit., p. 29.

<sup>120</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 25ff.

<sup>121</sup> Fundamental Rights Agency (2018), *Second European Union Minorities and Discrimination Survey. Being Black in the EU*, p. 38.

<sup>122</sup> Antidiskriminierungsstelle des Bundes. Jahresbericht 2020. April 2021, p. 20.

<sup>123</sup> BBC, *Bulgaria fans' racism: Racist abuse of England players leads to stadium ban*, BBC Sport European Football, 2019. Available online at: <https://www.bbc.com/sport/football/50212951>.

### 2.1.3. Islamophobia

#### a. Overview

Islamophobia is a form of racism that refers to acts of violence and discrimination, as well as racist speech, fuelled by historical abuses and negative stereotyping and leading to exclusion and dehumanisation of Muslims, and all those perceived as such. Islamophobia can also be the result of structural discrimination.<sup>124</sup> One of the defining features of Islamophobia is that it targets individuals and groups who are perceived to be Muslim, regardless of whether or not they practise the Islamic faith.

Islamophobia is largely built on the process of orientalism studied by Edward Said in the 19th century. According to Said, western scholarship's portrayal of North Africa, the Middle East and Asia was built on an exaggerated defence and the presumption of Western superiority. This 'invented' or constructed view went beyond the scholarly field and became a widespread portrayal, as well as an instrument for domination, partly used to justify colonisation.<sup>125</sup> It became more widespread following theories such as Samuel Huntington's 'Clash of Civilizations' and others promoted in particular after the events of 11 September 2001.<sup>126</sup> In the past decade, conspiracy theories such as the 'great replacement', which claims that the white European population is being culturally and democratically replaced, have gained popularity and fuel Islamophobia. While Islamophobia has existed for decades in Europe, the mainstreaming of the phenomenon can be traced back to the 2009 referendum in Switzerland banning the construction of minarets in the country and the bans on some Islamic clothing in Belgium and France.<sup>127</sup>

Islamophobia has been fuelled by perceived anxiety over immigration and the integration of Muslim minorities into majority cultures in Europe.<sup>128</sup> Islamophobia has been exacerbated by the rise of populist politicians and a gradual acceptance of anti-Muslim discourse in the public sphere.

FRA found<sup>129</sup> that 10% of Muslims had felt discriminated against based on religion during the five years preceding that survey; 17% reported experiencing religious discrimination and 27% of all Muslim respondents said that they had encountered discrimination based on ethnic origin or immigrant background. This highlights one of the specific features of Islamophobia: it can stem from the perceived religion, origin or status of the person exposed to racism or discrimination.

<sup>124</sup> ENAR definition, available at: [www.enar-eu.org](http://www.enar-eu.org).

<sup>125</sup> Said, E. (1978), *Orientalism*. See also the discussion about *Orientalism* and Edward Said by Michael Woods in *London Review of Books*, available at: <https://www.lrb.co.uk/the-paper/v25/n20/michael-wood/on-edward-said>.

<sup>126</sup> According to Huntington's thesis set out in *The Clash of Civilizations and the Remaking of the World Order* (1996), conflicts of the future would take place between 'cultures' rather than countries. This thesis, which played a role in neo-conservative ideology, has been refuted by many scholars, in particular due to its simplistic understanding of civilisations and cultures. See a review published shortly after the book's publication that provides a critical discussion of its merits: Holmes, S., 'In search of new enemies', in *London Review of Books*, available at: <https://www.lrb.co.uk/the-paper/v19/n08/stephen-holmes/in-search-of-new-enemies>.

<sup>127</sup> Kallis, A. (2015), 'Islamophobia in Europe: The radical right and the mainstream', available at: [https://www.researchgate.net/publication/311935510\\_Islamophobia\\_in\\_Europe\\_The\\_radical\\_right\\_and\\_the\\_mainstream](https://www.researchgate.net/publication/311935510_Islamophobia_in_Europe_The_radical_right_and_the_mainstream).

<sup>128</sup> The majority culture refers to the dominant cultural practice within a country, often referred to as 'the norm' for the entire society.

<sup>129</sup> The EU-MIDIS II survey took place between 2015 and 2016. The technical report is available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-midis-ii-technical-report\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-technical-report_en.pdf).

## b. Islamophobia in the Member States

**Bulgaria** has a sizeable Muslim population, mainly comprising historical communities (Turk, Pomaks, Roma), as well as a smaller Arab Muslim community. Despite the long-standing presence of Muslims in the country, anti-Muslim verbal assaults made even by high-level officials have become commonplace.<sup>130</sup> One important source of Islamophobia in the country is the teaching of history in schools. History textbooks still portray the Ottoman period through myths such as the forced conversion of Orthodox Christians to Islam. Nevertheless, despite the prominence of Islamophobic rhetoric, the number of attacks against Muslim people has decreased.<sup>131</sup>

Physical and verbal attacks on Muslims are high in **Denmark**. Violence against Muslims people accounted for 45 % of all religiously motivated crimes in 2020. Furthermore, Muslim women are highly disadvantaged compared to white women when applying for jobs. Political and media rhetoric has focused on 'saving' Muslim youth from the perceived psychological violence of Muslim men and religious communities.<sup>132</sup>

In **Germany**, Islamophobia is widespread and has even intensified in the last few years among sections of the population. In 2015, around 890 000 migrants, mostly Muslims, arrived in Germany.<sup>133</sup> At present, between 5.3 and 5.6 million Muslims with a migration background from a predominantly Muslim country of origin live in Germany. The proportion of Muslim religious members with a migration background in the total population in 2019 was between 6.4 and 6.7 %.<sup>134</sup> The German Interior Ministry registered 1 026 anti-Muslim attacks in 2020.<sup>135</sup> However, these statistics only represent the official cases. Research undertaken by anti-discrimination bodies has shown that discrimination against Muslims and Islamophobic hate crime are not isolated incidents in Germany, and that negative attitudes towards Muslims also influence institutional practices.<sup>136</sup>

Islamophobia is highly prevalent in public discourse in **France**. Controversies relating to Islam arise on a regular basis and often dominate the agenda. One of the difficulties in discussing the issue relates to the terminology and figures. Estimates of the number of Muslims in France range between 3 and 10 million people. The range reflects the lack of clear definition (in the statistics, 'Muslim' may mean a person of Muslim faith or be understood in a broader 'neo-ethnic' sense not attached to faith, but to an identity 'acquired by birth and origin'). In addition, given the political weight of Islamophobia in France,

<sup>130</sup> Şakir, A. N., *Islamophobia in Bulgaria: National Report 2020*, in: Bayraklı, E. & Hafez, F., *European Islamophobia Report 2020*, Vienna, Leopold Weiss Institute, 2021, p. 174, available at: <https://islamophobiareport.com/islamophobiareport.pdf>.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid., p. 240.

<sup>133</sup> Bundesamt für Migration und Flüchtlinge, *Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung*, Migrationsbericht 2015, p. 15, available at: [https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Migrationsberichte/migrationsbericht-2015.pdf?\\_\\_blob=publicationFile](https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Migrationsberichte/migrationsbericht-2015.pdf?__blob=publicationFile).

<sup>134</sup> Bundesamt für Migration und Flüchtlinge (2021), *Muslimisches Leben in Deutschland 2020*, p. 9, available at: <https://www.bamf.de/SharedDocs/ProjekteReportagen/DE/Forschung/Integration/muslimisches-leben-deutschland-2020.html?nn=283560>.

<sup>135</sup> Bundesministerium des Innern, für Bau und Heimat, Bundeskriminalamt, *Politisch motivierte Kriminalität im Jahr 2020, Bundesweite Fallzahlen*, p. 8, available at: [https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf?__blob=publicationFile&v=4).

<sup>136</sup> Netzwerk gegen Diskriminierung und Islamfeindlichkeit (2015), *Anti-Muslim Racism and Islamophobia in Germany*, p. 7, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DEU/INT\\_CERD\\_NGO\\_DEU\\_20112\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DEU/INT_CERD_NGO_DEU_20112_E.pdf).

some groups have an interest in artificially inflating the number of Muslims in France to back up dubious theories of replacement.<sup>137</sup>

Recent controversies include wearing of hijab in universities or shops or by parents accompanying school trips, teaching of Arabic at school etc. The term 'Islamophobia' emerged in France after one such controversy relating to the ban on wearing the hijab in school. Furthermore, the link between Islamophobia, migration and the socio-economic situation in the country is extremely strong. A large north African community came to France, when the country was in need of workers after the Second World War. Media representations of Muslims in France as being manipulated by foreign extremists emerged in the 1980s during labour disputes in automobile factories.<sup>138</sup> In the 1990s and 2000s, a dominant political and media discourse amalgamated suburbs (banlieues), petty criminality and radical Islam. According to many scholars and observers, such as Houda Asal, the French state has also played a role in the discrimination of Muslims in France, in particular through the use of anti-terrorism legislation, the dissolution of the Collectif contre l'islamophobie en France (Collective against Islamophobia in France – CCIF), as well as the increasing limitation of freedom for Muslim women wearing headscarves.<sup>139</sup> Following the terrorist attacks in January and November 2015, a state of emergency granted additional powers to the police that disproportionately targeted Muslims or those perceived as such.<sup>140</sup> After each terrorist attack, there were calls by public officials, such as the Minister of the Interior, for French Muslims to condemn the attacks, as if they were, by the mere fact of being Muslim, responsible for them.<sup>141</sup>

In **Hungary**, due to limited pluralism in the media and politics, anti-migrant and anti-Muslim language has permeated public discourse, targeting migrants as well as civic actors, such as American-Jewish billionaire George Soros, who has been accused of sponsoring the settlement of Muslim migrants in Europe.<sup>142</sup>

#### 2.1.4. Antisemitism

##### a. Overview

Antisemitism refers to hatred towards Jewish people or people perceived as Jewish. The concept of antisemitism was first used in the nineteenth century. It has its origins in the notion that Jewish people as Semites are different from the Indo-European population and can therefore not be amalgamated.

<sup>137</sup> See in particular Simon, P., 'Le nombre de musulmans en France et en Europe: la fabrique des chiffres', in *La société française et la construction du 'problème musulman'*, 2019, available at: <https://www.icmigrations.cnrs.fr/2019/04/17/defacto-6-005/>.

<sup>138</sup> Asal, H., 'L'islamophobie en France: le déni d'un phénomène bien réel', in *Racismes de France*, 2020, p. 171, available at: <https://www.cairn.info/racismes-de-france--9782348046247-page-170.htm>.

<sup>139</sup> *Islamophobia report*, op. cit., available at: <http://islamophobiareport.com/islamophobiareport.pdf>.

<sup>140</sup> See for example: Amnesty International, 'France: counter-terror measures following the murder of Samuel Paty raise human rights concerns', available at: <https://www.amnesty.org/fr/documents/eur21/3281/2020/en/>.

<sup>141</sup> See for example, *Le Monde*, 'Condamner les attentats au nom de leur religion: le dilemme des Français musulmans', 1 August 2016, available at: [https://www.lemonde.fr/religions/article/2016/08/01/condamner-publiquement-au-nom-d-une-religion-relevant-du-prive-le-dilemme-des-musulmans-en-france\\_4977199\\_1653130.html](https://www.lemonde.fr/religions/article/2016/08/01/condamner-publiquement-au-nom-d-une-religion-relevant-du-prive-le-dilemme-des-musulmans-en-france_4977199_1653130.html) or *The European Islamophobia report 2020*, available at: <http://islamophobiareport.com/islamophobiareport.pdf>, p. 320.

<sup>142</sup> Kalmar, I., 'Islamophobia and Anti-Anti-Semitism: the Case of Hungary and the "Soros Plot"', *Patterns of Prejudice*, Vol. 54 (1-2), 2020, pp. 182-198, available at: <https://www.tandfonline.com/doi/abs/10.1080/0031322X.2019.1705014>.

As such, the term implies that Jewish people are targeted due to their racial characteristics rather than their religious ones.<sup>143</sup>

Jewish people have been present in Europe for over 2000 years. Jewish communities started appearing in Europe during the Roman rule of Judea. Jewish people are – together with Roma people – the community that has been segregated and discriminated against most regularly and violently on European territory. Jewish people were subject to discrimination, pogroms and expulsions throughout history, including massacres during the crusades, having to wear distinctive clothing and expulsion from England, France, Spain and Portugal in the 14th and 15th centuries.<sup>144</sup>

The Holocaust was unprecedented total and systematic genocide perpetrated by Nazis and their collaborators, with the aim of annihilating the Jewish population. By 1945 nearly six million Jews had been murdered.<sup>145</sup> While Jewish people made up approximately 8% of the European population before 1939, today, there are an estimated two million Jewish people in Europe (0.3% of the population).

The overwhelming majority of Jewish people in the EU<sup>146</sup> (89%) feel that antisemitism has increased in their country in the previous five years, and almost as many (85%) consider it to be a serious problem. Antisemitism is seen as most problematic on the internet and social media (89%), followed by public spaces (73%), media (71%) and in political life (70%).<sup>147</sup> Over a quarter of Jewish people (28%) had experienced antisemitic harassment at least once in the 12 months before the survey, and 2% had experienced a physical attack over the same period. It can be seen from the results for each of the EU Member States surveyed that France had the highest proportion of respondents who worried about such issues (60% worried about antisemitic verbal insults and harassment and 58% about antisemitic physical attacks), followed by Germany (59% and 47%, respectively) and Belgium (55% and 41%, respectively).<sup>148</sup>

The pervasiveness of antisemitism in Europe has led over a third of Jewish people (34%) to avoid attending Jewish events because they do not feel safe as Jews there or on the way there. It has prompted 38% of Jewish people to consider emigration outside of the EU.<sup>149</sup>

On 1 June 2017 the European Parliament adopted a resolution on combatting antisemitism.<sup>150</sup> Parliament recalled that combating antisemitism is a responsibility for society as a whole. The resolution called on the Member States and the Union institutions and agencies to adopt and apply the IHRA's definition of antisemitism. The resolution welcomed the appointment of the Commission coordinator on combating anti-Semitism (in December 2015 the European Commission appointed the

<sup>143</sup> Deutsch, G., 'Anti-Semitism', in *Jewish Encyclopaedia*, available at: <https://jewishencyclopedia.com/articles/1603-anti-semitism>.

<sup>144</sup> See Ruderman, D. B. (2010), *Early Modern Jewry: A New Cultural History*, Princeton University Press.

<sup>145</sup> Yad Vashem, The World Holocaust Remembrance Center, *What was the Holocaust?*, available at: <https://www.yadvashem.org/holocaust/about.html#learnmore>.

<sup>146</sup> FRA's survey on Jewish people's experiences and perceptions of hate crime, discrimination and antisemitism included over 16 000 people in 12 Member States. These 12 Member States cover 97% of Jewish people in the EU. The data collection was performed in 2017. A full methodological note on the survey can be found on p. 73 of FRA, *Experiences and perceptions of antisemitism. Second survey on discrimination and hate crime against Jews in the EU*, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-experiences-and-perceptions-of-antisemitism-survey\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-experiences-and-perceptions-of-antisemitism-survey_en.pdf).

<sup>147</sup> Ibid., p. 15.

<sup>148</sup> Ibid., p. 33.

<sup>149</sup> Ibid. p. 32.

<sup>150</sup> European Parliament resolution of 1 June 2017 on combatting anti-Semitism, available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0243\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0243_EN.html).

first Coordinator on combating antisemitism and fostering Jewish life<sup>151</sup>). Parliament encouraged Member States to include antisemitism as an aggravating circumstance in criminal matters, to systematically and publicly condemn antisemitic statements, to promote the teaching about the Holocaust in schools and to ensure that teachers are adequately trained for this task. In its 25 October 2018 resolution on the rise of neo-fascist violence in Europe, the European Parliament called on the Member States to condemn and counteract all forms of Holocaust denial and to promote education on our common history, including the atrocities of World War II, such as the Holocaust, and the systematic dehumanisation of its victims over a number of years.<sup>152</sup>

On 5 October 2021 the European Commission published the EU Strategy on Combatting Antisemitism and Fostering Jewish Life (2021-2030)<sup>153</sup>. The Strategy, which is the first one aiming to combat antisemitism in the EU, is structured around three pillars: preventing and combating all forms of antisemitism; protecting and fostering Jewish life in the EU; education, research and Holocaust remembrance.

### b. Antisemitism in the Member States

In recent years, **Germany** has experienced a considerable rise in antisemitic acts. These acts increased in Germany from 1 268 in 2010 to 2 351 in 2020, while the number of antisemitic acts of violence increased from 37 to 57 over the same period (with a peak of 73 acts in 2019).<sup>154</sup> That is despite the Jewish population in Germany (ca. 118 000 people in 2018; 0.14 % of the general population<sup>155</sup>) being far smaller than in France (ca. 446 000 people in 2018; 0.69 % of the general population).<sup>156</sup> For example, on 9 October 2019, a heavily armed right-wing extremist attempted to force his way into a synagogue in Halle, intending to murder the worshippers gathered for the festival of Yom Kippur. His attempt failed, but the attacker still managed to kill two people at random<sup>157</sup>.

**Denmark** ranks as the country with the highest mean values of comfort with having a Jewish person as a neighbour or having someone from the family marry a Jewish person.<sup>158</sup> Nevertheless, a number of antisemitic attacks have occurred in recent years. In August 2014, a Jewish school was vandalised, and in the same month a radio reporter wearing a Jewish skullcap was attacked and removed from a café by a group of men. During the terror attack in Copenhagen on 14/15 February 2015, a Jewish security guard was killed outside a synagogue in which a bar mitzvah celebration was being held. Also

<sup>151</sup> European Commission website, available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/coordinator-combating-antisemitism-and-fostering-jewish-life\\_en#Heading1](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/coordinator-combating-antisemitism-and-fostering-jewish-life_en#Heading1).

<sup>152</sup> European Parliament resolution of 25 October 2018 on the rise of neo-fascist violence in Europe (2018/2869(RSP)), available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0428\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0428_EN.html)

<sup>153</sup> European Commission, Communication: "EU Strategy on Combatting Antisemitism and Fostering Jewish Life (2021-2030)", COM(2021) 615 final, available at: [https://ec.europa.eu/info/files/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030\\_en](https://ec.europa.eu/info/files/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030_en).

<sup>154</sup> FRA (2020), *Antisemitism – Overview of antisemitic incidents recorded in the European Union 2010-2020*, p. 45-46, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

<sup>155</sup> This figure, as well as the figure for France, includes people who self-identify as Jewish in social surveys and do not have another religion. The figures also include people who may not recognise themselves as Jewish but have Jewish parents and have not adopted a different religious identity. It further includes all converts to Judaism by any procedure, as well as other people who declare themselves to be Jewish even without having undergone conversion.

<sup>156</sup> Institute for Jewish Policy Research, 'Key data on Europe's Jewish populations 2018', available at: <https://www.jpr.org.uk/map>.

<sup>157</sup> Equal rights, equal opportunities. Annual Report of the Federal Anti-Discrimination Agency (2019), p. 12.

<sup>158</sup> FRA, *Antisemitism – Overview of antisemitic incidents recorded in the European Union 2010-2020*, 2020, p. 9., available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

in 2015, a church congregation in Copenhagen invited a rabbi to speak during Sunday service. However, the church was vandalised the night before.<sup>159</sup> The number of recorded extremist crimes targeting Jews increased from five in 2011 to 79 in 2020.<sup>160</sup>

Antisemitism is a paradoxical phenomenon in **France**. While over 90 % of the population feels that Jewish people are 'French people like others', a significant minority (22 %) of the population agree with the statement that 'Jews have too much power in France'. Almost half of the respondents agreed with statements such as 'Jews have a special relationship with money' (48 %) or 'for French Jews, Israel is more important than France' (49 %).<sup>161</sup>

The number of recorded antisemitic actions and threats increased for two consecutive years from 2017 to 2019, before a drop from 687 antisemitic actions and threats in 2019 to 339 in 2020. The highest number of antisemitic actions and threats in the 2010–2020 period was recorded in 2014 (851 cases).<sup>162</sup>

According to FRA, 95 % of respondents in France saw antisemitism as 'a very big' or 'a fairly big problem', the highest proportion among all Member States. Ninety-three per cent of respondents also said that the level of antisemitism had increased over the five years prior to the survey.

The CNCDH 2020 report focused on the emergence of antisemitic speech online, especially on YouTube. Opposition to the government's response to the COVID pandemic has also crystallised around elements such as antisemitism, with antisemitic placards appearing during some demonstrations.<sup>163</sup>

In **Hungary**, although antisemitism was formally renounced after 1945 (all antisemitic laws were repealed and many leading antisemitic politicians and intellectuals were put on trial),<sup>164</sup> racial discrimination at the state and society levels, especially against the Roma and Jewish minorities, persisted throughout the communist era.<sup>165</sup> One of the main problems in assessing the scale of antisemitism in Hungary is the lack of official data, which are not broken down by type of hate crime.<sup>166</sup> No official data on anti-Semitic hate crimes are recorded in Hungary<sup>167</sup>. Available unofficial data show that in the period 2013–2020 the number of anti-Semitic incidents gradually declined<sup>168</sup>. In 2020, a total number of 30 such incidents were recorded<sup>169</sup>. Mass atrocities and systemic discrimination against minorities in the past are not fully acknowledged in the history curriculum, which has provided a basis

<sup>159</sup> ECRI, *Report on Denmark*, op. cit., 2017, p. 18.

<sup>160</sup> FRA, *Overview of antisemitic incidents*, op. cit., p. 36.

<sup>161</sup> CNCDH, *Rapport 2020*, op. cit., p. 31.

<sup>162</sup> FRA, *Antisemitism - Overview of antisemitic incidents recorded in the European Union 2010-2020*, p. 41, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

<sup>163</sup> CNCDH, *Rapport 2020*, op. cit., p. 31.

<sup>164</sup> Hanebrink, P., 'Continuities and Change in Hungarian Antisemitism, 1945–1948', *Hungary and the Holocaust Confrontation with the Past*, Symposium Proceedings, Center for Advanced Holocaust Studies, United States Holocaust Memorial Museum, 2001, available at: [https://www.ushmm.org/m/pdfs/Publication\\_OP\\_2001-01.pdf](https://www.ushmm.org/m/pdfs/Publication_OP_2001-01.pdf).

<sup>165</sup> Hanebrink, P., 'Antisemitism in an Era of Transition: Continuities and Impact in Post-Communist Poland and Hungary', Guesnet, F. and Jones, G. (eds.), Frankfurt am Main: Peter Lang, 2014, *Slavic review*, Vol. 74 (3), 2015, pp. 624–625, available at: <https://www.peterlang.com/document/1047973>

<sup>166</sup> FRA, *Antisemitism - Overview of antisemitic incidents recorded in the European Union 2010-2020*, p. 51, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

<sup>167</sup> FRA, European Union Agency for Fundamental Rights, *Antisemitism: Overview of Antisemitic Incidents Recorded in the European Union, 2010-2020*, 2021, p. 51.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

for the resurgence of extremist antisemitism, notably among younger people.<sup>170</sup> For example, history textbooks de-emphasise the atrocities suffered by Jews and Roma during World War II and recommend as reading material the works of overtly antisemitic authors.<sup>171</sup> The 2011 Constitution does not acknowledge war crimes and crimes against humanity committed in the period 1920-1944 by extreme right-wing formations and the security forces of the independent Hungarian state, not only against 'the Hungarian nation and its citizens', but also against other peoples.<sup>172</sup>

In **Lithuania**, antisemitic sentiments flared up and came to the fore in 2019 in relation to the re-evaluation of the legacy of certain historical figures who played a role in Lithuanian independence, in light of their anti-Jewish role during the Second World War.<sup>173</sup> Initiatives by the municipality of Vilnius to re-name certain streets or remove memorial plaques were met with opposition, as well as a spike in incidents involving desecration of Jewish graves, places of worship and other places of symbolic importance to the Jewish community. However, the number of recorded antisemitic incidents is relatively low (three in 2020, five in 2019 and one in 2018).<sup>174</sup>

In **Romania**, the number of antisemitic incidents increased from seven in 2010 to 18 in 2020, with a peak of 22 in 2017.<sup>175</sup> Shortly before the First World War, antisemitism in the country mostly took the form of discrimination against Jews in public life and anti-Jewish political statements, whereas the post-First World War period was marked by organised antisemitic violence and movements against Romanian Jews, backed up by Romanian intellectuals and culminating in the Holocaust of Romania. During the Communist period, Romanian Jews were perceived as victims of fascism and war crimes. Nevertheless, antisemitism continued to exist in the country at that time, albeit expressed in a different form, namely accusations made by Romanian society against Jews of being responsible for the emergence of the Communist regime. Later, during Communism, antisemitism grew (which manifested itself, for example, in the vandalism of Jewish temples). After the end of Communism, antisemitism continued through antisemitic nationalism, a push towards Marshal Antonescu's rehabilitation, as well as the emergence of political programmes and radical organisational structures reminiscent of legionary movements of the interwar period.<sup>176</sup>

### 2.1.5. Racism against migrants

#### a. Overview

Many immigrants, refugees and asylum-seekers who are subject to manifestations of racism, racial discrimination, xenophobia and related intolerance also face other forms of racism (such as Afrophobia

<sup>170</sup> van Iterson, S., and Nenadović, M., 'The Danger of not Facing History: Exploring the Link Between Education About the Past and Present Day Anti-Semitism and Racism in Hungary', *Intercultural Education*, Vol. 24 (1-2), 2013, p. 94, available at: <https://www.tandfonline.com/doi/abs/10.1080/14675986.2013.782735>.

<sup>171</sup> Ibid. p. 95.

<sup>172</sup> Halmai, G., 'Silence of Transitional Constitutions: The "Invisible Constitution" Concept of the Hungarian Constitutional Court', *International Journal of Constitutional Law*, 2018, Volume 16, Issue 3, pp. 969-984, available at: <https://academic.oup.com/icon/article/16/3/969/5165820>.

<sup>173</sup> *Deutsche Welle*, 'Holocaust haunts Lithuania as names are erased from capital's map', 14 August 2019, available at: <https://www.dw.com/en/holocaust-haunts-lithuania-as-names-are-erased-from-capitals-map/a-50020424>

<sup>174</sup> FRA, *Antisemitism – Overview of antisemitic incidents recorded in the European Union 2010-2020*, p. 59, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

<sup>175</sup> FRA, *Antisemitism overview 2020*, op. cit., p. 71.

<sup>176</sup> Carsocea R., 'Anti-Semitism in Romania: Historical legacies, contemporary challenges', Series ECMI Working Papers No. 81, European Centre for Minority Issues (ECMI), 2014, available at: [https://www.ecmi.de/fileadmin/redakteure/publications/pdf/Working\\_Paper\\_81.pdf](https://www.ecmi.de/fileadmin/redakteure/publications/pdf/Working_Paper_81.pdf).

or Islamophobia, which are discussed above). The Durban Declaration revised in 2009<sup>177</sup> noted that discrimination and xenophobia against migrants is one of the main sources of contemporary racism. As such, racism against migrants is considered a specific form of racism, as migrants are exposed to racism due to their migrant status.

In 2017, ENAR carried out an online survey among migrants who had arrived in Germany, Greece, Hungary, Italy and Sweden in the last five years. The survey found high levels of discrimination and verbal abuse. Over three quarters of migrants surveyed (77%) reported experiencing difficulties in finding accommodation. A third of respondents had experienced verbal abuse and 12.6% had experienced discrimination at work. Another important issue is the low reporting of crime and abuse linked to a fear of deportation given their status.<sup>178</sup>

The coupling of immigration control and access to services (including the police) is one of the distinctive features of racism and discrimination against migrants.<sup>179</sup> The criminalisation of irregular migration makes people who are undocumented fearful of engaging with public authorities, and especially with the police, because they risk being detained and deported as a result.<sup>180</sup> Traditionally, the line between the enforcement of immigration rules and law enforcement is unclear. In addition, in countries where police checks are relatively common and are often the result of racial profiling (such as France or Belgium),<sup>181</sup> the fear of being identified as an irregular migrant or overstayer makes irregular migrants particularly vulnerable, and reduces trust in institutions, including the police.<sup>182</sup>

There are interesting examples of Member States trying to decouple immigration and law enforcement in an effort to build trust with state institutions. In the Netherlands, the Free In Free Out initiative allows irregular migrants to walk into a police station freely to report a crime with the assurance that they will leave freely, despite their immigration status.<sup>183</sup> In Ireland the police does not get involved in immigration cases, meaning that sex crimes and violence against women can be reported by irregular migrants without the fear of being deported.<sup>184</sup> There is also evidence that in Belgium some police zones decline to follow up on cases of irregular migrants when information has been gathered through other inquiries.<sup>185</sup>

## **b. Racism against migrants in the Member States**

Racism and discrimination against immigrants are particularly marked in countries on the main migration routes, as well as in countries which received migrants.

<sup>177</sup> Durban Declaration and Programme of Action (DDPA), as adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 and reviewed in 2009, available at: [https://www.un.org/en/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](https://www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf).

<sup>178</sup> ENAR, *Migrants, Speak up: What migrants tell us about their experiences living in the European Union, 2017*, available at: [https://www.enar-eu.org/IMG/pdf/enar\\_survey\\_migrants\\_speak\\_up\\_key\\_findings\\_final\\_lr.pdf](https://www.enar-eu.org/IMG/pdf/enar_survey_migrants_speak_up_key_findings_final_lr.pdf).

<sup>179</sup> See, for instance, PICUM, *Preventing harm, promoting rights: achieving safety, protection and justice for people with insecure residence status in the EU*, 2021, p. 4, available at: [https://picum.org/wp-content/uploads/2021/02/Preventing-harm-promoting-rights\\_EN.pdf](https://picum.org/wp-content/uploads/2021/02/Preventing-harm-promoting-rights_EN.pdf).

<sup>180</sup> PICUM, 'What justice for undocumented migrants?', 22 February 2021, available at: <https://picum.org/what-justice-for-undocumented-migrants/>.

<sup>181</sup> See Appendix E. Country Report – France for a description of the ID document checks in the country.

<sup>182</sup> Interview with a European civil society organisation carried out on 22 September 2021.

<sup>183</sup> COMPASS, *Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in the Netherlands*, September 2019, pp. 15-18, available at: <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Netherlands-country-report.pdf>.

<sup>184</sup> Interview with a civil society representative carried out on 28 September 2021.

<sup>185</sup> COMPAS, *Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Belgium*, September 2019, available at: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>.

**Germany** has long been one of the main destinations for irregular migration in Europe. In 2015, at the height of the migration crisis, Germany accepted around 890 000 migrants.<sup>186</sup> However, anti-immigrant movements in Germany have since swelled and are increasingly mainstream. According to findings of the Migrant Integration Policy Index (MIPEX), between 2014 and 2019, Germany's progress in creating more inclusive integration policies has slowed. In addition, according to the findings, Germany's approach does not provide long-term security for non-EU migrants and anti-discrimination protections are 'one of the weakest' out of all the countries surveyed.<sup>187</sup>

**Greece** saw the arrival of over 850 000 migrants in 2015 and 173 000 in 2016, and over 135 000 since.<sup>188</sup> These figures highlight the significant impact of the migrant influx on the country. One of the effects of the influx has been an increase in the popularity and spread of xenophobic ideologies among some segments of Greek society, giving rise to organised forms of racist violence.<sup>189</sup> Refugees, asylum-seekers, and economic migrants have been the main target of far-right extremist groups, who engage in physical and verbal assaults, harassment and threats, blockades of disembarkation ports, arson of accommodation sites and damage to personal property. These far-right extremist groups act as vigilante squads, self-assigning the task of law enforcement to themselves. Indeed, it is reported that of 107 recorded cases of attacks, 77 incidents were perpetrated by a group of at least two people.<sup>190</sup> Furthermore, most attacks are perpetrated in public spaces, public transportation, stores, banks and restaurants. In recent years, NGOs have repeatedly warned of increases in the number of attacks against refugees and migrants.<sup>191</sup>

According to some independent observers, such as Bajomi-Lázár, in **Hungary** the anti-migration campaign launched by the ruling party Fidesz between 2015 and 2016 is regarded as a significant driver of the subsequent increase in xenophobic attitudes from 45 % in 2015 to 54 % in 2016.<sup>192</sup> Seventy-six per cent of respondents in a 2016 public opinion poll expressed anti-Muslim attitudes, despite the very low Muslim presence in the country (0.4 % of the population).<sup>193</sup> Due to limited pluralism in the media and politics, anti-migrant and anti-Muslim language has permeated public discourse, targeting migrants as well as civic actors, such as American-Jewish billionaire George Soros, who has been accused of sponsoring the settlement of Muslim migrants in Europe.<sup>194</sup> The general climate of intolerance and hostility to 'otherness' is most powerfully expressed by the Prime Minister's open statement that '*we [Hungarians] do not want to become diverse in a way that we get mixed, our colour, our*

<sup>186</sup> Bundesamt für Migration und Flüchtlinge, *Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung, Migrationsbericht 2015*, p. 15, available at: <https://www.bamf.de/SharedDocs/Anlagen/EN/Forschung/Migrationsberichte/migrationsbericht-2015.html?nn=403964>.

<sup>187</sup> Migrant Integration Policy Index (2020), fifth edition, Findings for Germany, available at: <https://www.mipex.eu/germany>.

<sup>188</sup> See UNHCR data available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

<sup>189</sup> Reuters (2018), 'Racist violence creeping up in Greece, report finds', 28 March 2018, available at: <https://www.reuters.com/article/us-greece-racism-idUSKBN1H41VF>.

<sup>190</sup> UNHCR, *Racist Violence Recording Network. Annual Report 2020*, available at: <https://www.unhcr.org/qr/en/19763-racist-violence-recording-network-annual-report-2020.html>.

<sup>191</sup> Reuters (2018), 'Racist violence creeping up in Greece, report finds', 28 March 2018, available at: <https://www.reuters.com/article/us-greece-racism-idUSKBN1H41VF>.

<sup>192</sup> Bajomi-Lázár, P., 'An Anti-migration Campaign and Its Impact on Public Opinion: the Hungarian Case', *European Journal of Communication*, Vol. 34 (6), 2019, pp. 619-628, available at: <https://journals.sagepub.com/doi/abs/10.1177/0267323119886152>.

<sup>193</sup> Pew Research Center, *Europe's Growing Muslim Population*, 2017, available at: <https://www.pewforum.org/2017/11/29/europes-growing-muslim-population/>.

<sup>194</sup> Kalmar, I., 'Islamophobia and Anti-Anti-Semitism: the Case of Hungary and the 'Soros Plot'', *Patterns of Prejudice*, Vol. 54 (1-2), 2020, pp. 182-198, available at: <https://www.tandfonline.com/doi/abs/10.1080/0031322X.2019.1705014>.

*traditions, our national culture getting mixed with others. We don't want that. [...]*.<sup>195</sup> In the context of the influx of refugees, the Government implemented severe anti-migration policies, framed as being necessary to 'defend' the nation.<sup>196</sup> European Parliament resolution of 10 June 2015 on the situation in Hungary denounced the public consultation on migration launched by the Hungarian Government, arguing that the Government relied on xenophobic misconceptions, stigmatising asylum-seekers as welfare migrants and security threats.<sup>197</sup>

In 2015, **Italy** became part of one of the main routes for migrants, refugees and asylum-seekers seeking to reach the EU from North Africa. The unprecedented crisis left Italy bearing an unproportionally high number of migrants. This led to an increase in anti-migrant rhetoric and a rise in the share of the vote for parties adopting anti-immigration rhetoric, leading to the victory of the electoral cartel led by the Lega Nord, followed by the Movimento 5 Stelle (M5S). Political parties deploy anti-migrant rhetoric. According to some media reports, the Lega and Fratelli d'Italia both played on fear of migrants after an 18-year-old woman was allegedly murdered by an illegal immigrant in Macerata in early 2018. A few days later, a far-right extremist, wounded six African migrants in a shooting rampage that he claimed was revenge for the murder.<sup>198</sup>

In **Lithuania**, anti-migrant discrimination mostly affects people of colour, while ethnic Russian or Polish immigrants, for example, are not targeted as often. The 2015 immigration wave did not result in a large influx of refugees in Lithuania. Despite the reality on the ground, the discourse and perceptions of citizens were negatively affected, and anti-migrant sentiments were also stirred by news and incidents in other EU countries. Most recently, due to geopolitical tensions with Belarus, a significant number of immigrants from Middle Eastern countries were encouraged to cross the border from Belarus to Lithuania and Poland.<sup>199</sup> This has increased tensions in society, even including some discriminatory statements by politicians, high-profile figures and representatives of state institutions.<sup>200</sup> According to the 2019 survey, even before the current migration crisis, Muslims and refugees were among the most unfavourably perceived groups in the country.<sup>201</sup>

In **Romania** as well, the 2015 refugee crisis in the EU has been accompanied by increasing anti-migrant and anti-Muslim sentiments. In the case of Muslims, racism has been exacerbated by media manipulation and the alleged association of Muslims and migrants with terrorism. As a result of the politicisation of the immigration crisis, the right-wing political debate found fertile ground to exploit the social and economic problems of the population by portraying the 'other' as a scapegoat. The 2017 'I Get You' report by JRS Romania argues that public opinion is manipulated by political debate into

<sup>195</sup> EELN (European Equality Law Network), *Non-discrimination in Hungary, Country report*, 2020a, p. 124, available at: <https://www.equalitylaw.eu/country/hungary>.

<sup>196</sup> Krekó, P., Hunyadi, B., and Szicherle, P., 'Anti-Muslim Populism in Hungary: From the Margins to the Mainstream', Brookings, 2019, available at: <https://www.brookings.edu/research/anti-muslim-populism-in-hungary-from-the-margins-to-the-mainstream/>.

<sup>197</sup> European Parliament, European Parliament resolution on the situation in Hungary, 2015/2700(RSP), 2015, available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.html).

<sup>198</sup> *The Guardian*, 'Success of far-right Brothers of Italy raises fears of fascist revival', 3 August 2021, available at: <https://www.theguardian.com/world/2021/aug/03/success-of-far-right-brothers-of-italy-raises-fears-of-fascist-revival>.

<sup>199</sup> *Eurotopics*, 'Migrant crossings: escalation in Lithuania?', 5 August 2021, available at: <https://www.eurotopics.net/en/265406/migrant-crossings-escalation-in-lithuania>.

<sup>200</sup> Examples of such statements can be found at <https://www.euronews.com/2021/10/01/in-lithuania-anti-migrant-rhetoric-hardens-as-europe-awaits-brussels-next-move>.

<sup>201</sup> Thirty-nine percent of those surveyed would not want Muslims to live in their neighbourhood, and 27.4 % felt the same about refugees. See CES, *Lietuvos socialinių tyrimų centro etninių tyrimų instituto užsakymu atliktos visuomenės Nuostatų apklausos 2019 m. Rezultatai*, available at: [http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-apklauso-rezultatai\\_20191.pdf](http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-apklauso-rezultatai_20191.pdf).

thinking that ‘immigration takes jobs from the local population, depresses wages, and puts pressure on public services’ and that ‘aid allowances received by asylum-seekers are higher than some local workers make’. The report attributes anti-migrant fears and concerns to the simple fact that the mainstream population still does not receive correct information on issues concerning forced migration and is influenced by mainstreamed hate speech.<sup>202</sup> The aforementioned report cites a 2016 survey on Romanians’ perception of the 2015 immigrant crisis. Fifty-four per cent of the respondents disagreed with the presence of refugees in Romania for ‘fear of outbreak of violence or social warfare, cultural differences and customs, possible economic instability at national or European level.’<sup>203</sup> The report also notes the occurrence of racist attacks against Muslim refugees, especially during the most intense period of the refugee crisis. For instance, in 2016, two Syrian women were assaulted on the street in Bucharest because of wearing the hijab.<sup>204</sup>

#### 2.1.6. Other forms of racism

There are of course other forms of racism targeting various communities in Europe. Some forms of racism have features very similar to those listed above in Subsections 2.1.1 to 2.1.5. **Racism against people of north African origin**, which is very widespread in some countries such as France, is often amalgamated with Islamophobia as the communities targeted are the same.<sup>205</sup>

Another form of racism, which has been highlighted in the past few years, particularly as a result of the COVID-19 pandemic is **anti-Asian racism**. In **Denmark**, some evidence suggests that Danes of Asian origin have been increasingly subject to racist attacks since the start of the pandemic.<sup>206</sup> In France, over 30 % of people identified as Asian reported having experienced racist acts since January 2020, while over half reported having been refused entry to public or private places.<sup>207</sup> In **Hungary**, the rise in anti-Asian xenophobia has been particularly pronounced, due to a considerable degree to a proliferation in fake news and misinformation. There have been instances of racially motivated offences targeting people of Asian descent. A prominent example is that of an Asian university student who was insulted on the street of Pécs, in response to which the rector of the institution issued an open letter appealing to the local population not to assault foreign students.<sup>208</sup> In **Italy**, a rise in anti-Asian sentiment and acts was also reported, including attacks and boycotts of shops owned by people perceived as Asian.<sup>209</sup>

Another form of racism is racism targeting indigenous people. These groups include the Saami population in Sweden and the Inuit (Greenlanders) in Denmark. In the case of the latter, people with a **Greenlandic Inuit background in Denmark** face a number of challenges in relation to enjoying equal

<sup>202</sup> JRS Romania, *I get you – Promoting best practices to prevent racism and xenophobia towards forced migrants through community building*, JRS Europe, 2017, p. 4, available at: <https://jrseurope.org/wp-content/uploads/sites/19/2018/01/I-Get-You-Romanian-report.pdf>.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

<sup>205</sup> See for example Roy, O. (2005), *Islam et Occident*, Paris.

<sup>206</sup> ScandAsia – *Nordic News and Business Promotion in Asia*, ‘Danes with Asian genes report racism as a result of the Covid-19 pandemic, 7 September 2021’, available at: <https://scandasia.com/danes-with-asian-genes-report-racism-as-a-result-of-the-covid-19-pandemic/>.

<sup>207</sup> CNCDH, *Rapport 2020 sur la lutte contre le racisme, l’antisémitisme et la xénophobie*, July 2021, available at: <https://www.cncdh.fr/fr/publications/rapport-2020-sur-la-lutte-contre-le-racisme-lantisemitisme-et-la-xenophobie>.

<sup>208</sup> Bard, P. and Uszkiewicz, E., ‘Hate Crimes in Hungary During the Coronavirus Outbreak’, 2020, available online at: <https://jog.tk.hu/en/blog/2020/06/hate-crimes-in-hungary-during-the-coronavirus-outbreak>.

<sup>209</sup> See for instance *Al Jazeera*, ‘Coronavirus prompts “hysterical, shameful” Sinophobia in Italy’, 18 February 2020, available at <https://www.aljazeera.com/news/2020/2/18/coronavirus-prompts-hysterical-shameful-sinophobia-in-italy>. More information about anti-Asian racism in Italy can be found in the Country Report in Appendix G.

treatment and opportunities. Many of them experience low levels of education and high levels of unemployment<sup>210</sup>.

## 2.2. Institutional racism

The concept of institutional racism was developed in the United States by Stokely Carmichael and Charles V. Hamilton.<sup>211</sup> The functioning of society and its institutions is considered to produce racism through its structures, which automatically dominate certain communities and groups. One important characteristic of institutional racism is that the mechanism can exist without those exercising power being racist themselves. Looking at institutional racism allows for a more holistic approach to the way in which people who are subject to racism are affected. Institutional practices, policies, cultural representations and norms, and the legacy of historical oppression are all forms of structural racism leading to deeply embedded racial inequalities.<sup>212</sup> The following subsections focus on policing and other forms of institutional racism.

### 2.2.1. Policing and law enforcement

**Discrimination by law enforcement authorities** is a key element of institutional racism and occurs in all Member States. The groups and communities subject to this form of racism vary between Member States, often mirroring some of the distinctive features of racism and discrimination in these countries. In France, people from the black, north African, Muslim and Roma communities have all reported instances of police brutality over the years.<sup>213</sup> Brutality targeting the Roma population is common in Bulgaria and Romania. Reports of brutality and illegal push-back of migrants by Greek border guards and police have also come to light.<sup>214</sup> These examples highlight how some of the distinctive features of racism and discrimination (discussed in greater detail in the country reports presented in the appendices) impact the groups and communities that are the victims of police misconduct.

The wave of protests resulting from the assassination of George Floyd in Minneapolis was first dismissed by European leaders as an 'imported problem' highlighting that Europe did not have similar problems or racism as the United States.<sup>215</sup> However, it forced larger sections of society to acknowledge the extent to which racialised groups in Europe have been subject to brutality, violence and racial profiling by law enforcement authorities. The protests in Europe were the culmination of decades of dichotomy between the experiences of racialised groups and the low visibility and public

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<sup>210</sup> ECRI, *Report on Denmark*, op. cit., p. 26f.

<sup>211</sup> Carmichael, S. and Hamilton, C. V. (1967), *Black Power: the Politics of Liberation in America*, Grove.

<sup>212</sup> ENAR, 'A roadmap for EU institutions to address structural racism', June 2020, available at: <https://www.enar-eu.org/A-roadmap-for-EU-institutions-to-address-structural-racism>.

<sup>213</sup> Slaouti, O., Jobard F., 'Police, justice, État: discriminations raciales', in *Racismes de France*, 2020, available at: <https://www.cairn.info/racismes-de-france-9782348046247-page-41.htm>.

<sup>214</sup> ENAR, *Policing racialised groups – briefing: Disproportionate police brutality, violence and racial profiling (2020)*, available at: <https://www.enar-eu.org/Policing-racialised-groups-briefing-paper>.

<sup>215</sup> See for example Liam Kennedy, "'This is Not America": States of Emergency in Europe", *European journal of American studies* [Online], 15-4 | 2020, Online since 17 December 2020, connection on 09 July 2021, available at: <http://journals.openedition.org/ejas/16368> and Politico, 'No doubt' Europe better than US on race issues, EU commissioner says, available at: <https://www.politico.eu/article/margaritis-schinas-eu-better-than-us-on-race-issues/>

acknowledgement of these experiences by the majority.<sup>216</sup> Beyond police brutality, the disproportionate number of racialised people stopped by the police is a further problem. According to FRA, 41 % of people of African descent/black Europeans stopped by the police in the five years prior to the survey characterised the most recent stop as racial profiling.<sup>217</sup>

In **Bulgaria**, for example, violent treatment by police and 'crimes involving violence or threats of violence against Roma'<sup>218</sup> are cited as examples of practices threatening human rights and freedoms in Bulgaria. Personal accounts of experienced police ill-treatment and brutality against Roma people on the records kept by civil society organisations for decades are staggering.<sup>219</sup> The Bulgarian Helsinki Committee<sup>220</sup> also notes that physical abuse at the hands of the police in Bulgaria is widespread and disproportionately affects Roma people.<sup>221</sup> Independent research involving police officers, representatives of the judiciary, and members of Roma communities and legal case studies in Bulgaria, Romania, Hungary and Spain has concluded that 'Discriminatory and abusive police practices against Roma are widespread, often fuelled by negative stereotypes, and sometimes by outright hatred towards Roma'.<sup>222</sup>

Racial profiling, police violence and systemic discrimination by security forces are a big and recognised problem in **France**. In 2019, Défenseur des droits (the French equality body) found that police practices equated to racial and social profiling, based on discriminatory orders to stop 'gangs of black and north African people' and the systematic eviction of Roma people.<sup>223</sup> Studies carried out in France in the 1980s showed that at least since the 1970s, the decision to stop, arrest and ultimately prosecute people was influenced in large part by their physical appearance, with the rate being much higher for those categorised by the police as 'of African type' or 'north African type'.<sup>224</sup> Beyond the higher rates of prosecution among black and north African people, their treatment by the police differs significantly from how the rest of the population is treated. Forty-one per cent of young black or north-African people reported being addressed by the police with the informal 'tu' (versus 16 % for the population as a whole), while 21 % reported having been insulted, and 20 % brutalised by the police (versus 7 % and 8 % respectively for the general population).<sup>225</sup> The policing practice of stopping people for ID verification is widespread in France and is therefore of greater significance in the public debate. Carrying a valid ID card at all times is compulsory in France. Police officers have the right to randomly stop people to verify their identity. While there is no follow-up to the majority of identify checks, these controls account for almost a quarter of the deaths resulting from police interventions in the last 40 years. These deaths disproportionately affect populations living in suburbs with poor living conditions

<sup>216</sup> DeZIM institute, Research notes, Black Lives Matter in Europe Transnational Diffusion, Local Translation and Resonance of Anti-Racist Protest in Germany, Italy, Denmark and Poland, available at: [https://www.dezim-institut.de/fileadmin/Publikationen/Research\\_Notes/DeZIM\\_Research\\_Notes\\_06\\_RZ\\_210702\\_web-1.pdf](https://www.dezim-institut.de/fileadmin/Publikationen/Research_Notes/DeZIM_Research_Notes_06_RZ_210702_web-1.pdf)

<sup>217</sup> FRA, *Being Black in the EU*, op. cit.

<sup>218</sup> US DOS, *2020 Country Reports on Human Rights Practices: Bulgaria*, Bureau of Democracy, Human Rights, and Labour, 2021, available online at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/bulgaria/>.

<sup>219</sup> European Roma Rights Centre, *Police Abuse of Roma in Bulgaria*, 2002, available online at: <http://www.errc.org/cikk.php?cikk=1596>.

<sup>220</sup> Bulgarian Helsinki Committee (2021), *Official Reports and Signals of Police Violence by Members of the Ministry of Interior*.

<sup>221</sup> US DOS (2021), op. cit., p. 3

<sup>222</sup> Fair Trials (2020), *Uncovering Anti-Roma Discrimination in Criminal Justice Systems in Europe: Key Findings*, p. 6, available at: [https://www.fairtrials.org/sites/default/files/publication\\_pdf/Uncovering-anti%20%80%91Roma-discrimination-in-criminal-justice-systems-in-Europe-Key-findings\\_0.pdf](https://www.fairtrials.org/sites/default/files/publication_pdf/Uncovering-anti%20%80%91Roma-discrimination-in-criminal-justice-systems-in-Europe-Key-findings_0.pdf).

<sup>223</sup> Slaouti, O., Jobard, F., 'Police, justice, État: discriminations raciales', in *Racismes de France*, 2020, p. 41, available at: <https://www.cairn.info/racismes-de-france-9782348046247-page-41.htm>.

<sup>224</sup> Ibid. p. 42.

<sup>225</sup> Ibid. p. 43.

and few employment prospects. One highly publicised such instance was the death of Adama Traoré while being taken into custody in circumstances that are yet to be clarified. His death triggered a wave of protests against police brutality in the country.<sup>226</sup> Adama Traoré's case was highlighted by the report of the High Commissioner for Human Rights on racism, racial discrimination, xenophobia and related forms of intolerance<sup>227</sup> as symptomatic of institutional racism. Amnesty International takes a similar view, stating that the police in France engages in a longstanding and widespread practice of ethnic profiling that constitutes systemic discrimination.<sup>228</sup>

Instances of racist and xenophobic discrimination in **Greek law enforcement** have been attributed to organizational culture and structural issues. Racial profiling in policing is one aspect of the problem of institutional racism in Greece. For example, 47% of Roma people and 59% of South Asian people according to ENAR report on Greece indicated having been stopped by police.<sup>229</sup> The issue has become exacerbated in the context of restrictions of movement due to the coronavirus pandemic (lockdowns), in that checks are disproportionately targeting people due to their skin colour or ethnic origin. Beyond racial profiling in police stops, some law enforcement officials engage in ill-treatment or arbitrary and overreaching behaviour, including imposing fines, detention, and excessive force against Roma, migrants and refugees.<sup>230</sup> Denial or tolerance of mistreatment is a common response by police officers and has been attributed to institutional culture. Practical issues such as lack of translation services contribute to the precarious situation of some vulnerable groups in custody.<sup>231</sup>

In **Hungary**, racial discrimination is also embedded in the structures and practices of law enforcement authorities. The main facets of this problem include: institutional racism in the police, failure to investigate crimes on equal terms when the victims are Roma, systemic under-classification of hate crimes, racial profiling, detention of citizens on the basis of ethnic origin, disproportionate fines, more severe verdicts for Roma individuals, and violence against Roma and asylum-seekers during document verification and detention.<sup>232</sup>

Beyond these instances of racism in law enforcement, Equinox Initiative for Racial Justice (Equinox) lists a number of cases where violence by law enforcement authorities has led to deaths or has had a serious impact on the people targeted. They include instances such as the murder of Stanislav Tomáš in the Czech Republic, where a Romani man died while in being taken into custody as a result of actions taken by the police,<sup>233</sup> to examples of racism by border guards at the frontier of the EU.<sup>234</sup>

<sup>226</sup> A more detailed account of the case is presented in Annex E. Country Report – France.

<sup>227</sup> OHCHR, *Report: Agenda towards transformative change for racial justice and equality*, June 2021, available at: <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

<sup>228</sup> Amnesty International, 'France: Systemic Police Discrimination Requires Reforms', 27 January 2021, available at: <https://www.amnesty.org/en/latest/news/2021/01/france-systemic-police-discrimination-requires-reforms/>.

<sup>229</sup> ENAR. 2019. Data-driven policing: the hardwiring of discriminatory policing practices across Europe, p. 8-9.

<sup>230</sup> UN. 2015. Concluding Observations on the Second Periodic Report of Greece, p. 3-4.

<sup>231</sup> Council of Europe. 2019. Report. Round Table on Professional Policing: Treatment of Apprehended Persons and Consequences.

<sup>232</sup> European International Tolerance Centre, European Centre for Democracy Development, Institute for Ethnic Policy and Inter-ethnic Relations Studies, *Xenophobia, Radicalism and Hate Crime in Europe: 2016, 2017*, p. 39, available at: <https://www.radicalrightanalysis.com/wp-content/uploads/2021/02/Pan-European-Report-2017.pdf?media=1645028507>

<sup>233</sup> A summary of the case can be found at: <http://www.errc.org/news/public-defender-finds-czech-police-at-fault-in-the-death-of-romani-man-stanislav-tomas>.

<sup>234</sup> Equinox Initiative for Racial Justice (Equinox), *Who Protects Us from the Police? – Structural Racism in Law Enforcement in the European Union*, pp. 11-19, available at: <https://www.equinox-eu.com/wp-content/uploads/2021/10/Equinox-Who-Protects-Us-from-the-Police.pdf>.

Finally, there is a **widespread problem with the non-reporting or underreporting of police brutality and racial profiling**. One reason is the reluctance of many Member States to collect data and statistics based on ethnic origin. Another is the paucity of reporting and redress mechanisms, either due to lack of effectiveness, lack of knowledge of these procedures or lack of trust in the institutions responsible. This element – and in particular the role and effectiveness of equality bodies – is discussed in greater detail in Chapter 4.

In **Hungary**, the identification and countering of ethnic profiling in local fining practices is impeded by regulatory shortcomings, such as the prohibition on the police processing data on the ethnic origin of petty offenders, as well as deficiencies in the ordinance regulating police actions in a multicultural environment.<sup>235</sup> The police have also been unwilling to cooperate with civil society experts on the issue of ethnic profiling.<sup>236</sup>

**Italy**, like other European countries mentioned above, has adopted a post-racial approach to the collection of statistics, meaning that there are very few data on institutional racism, especially by police and law enforcement forces. Data on hate crime are collected by OSCAD, the Osservatorio per la Sicurezza Contro gli Atti Discriminatori, which is part of the Ministry of Interior.<sup>237</sup> The risks of subsequent non-reporting or underreporting of hate crimes has been highlighted by FRA and ECRI.<sup>238</sup> In terms of policing, for Italy there is no consistent analysis of racial profiling or police brutality. Some media reports point to events where violence or racist events have taken place in Italy.<sup>239</sup> However, some high-profile cases, appear to show that there is a problem that needs to be addressed. A recent high-profile case involved alleged violence by police against migrants on a train between Genoa and Ventimiglia on the French border after a video emerged and was broadcast on national television.<sup>240</sup>

In **Bulgaria**, there is no institutional body that gathers data and statistics about police brutality and/or registered cases and complaints. All these practices, which are evidenced by data from international and European civil society organisations (1 146 complaints of police brutality between 2000 and 2015) result in the persistent marginalisation and inequality of the Roma community in Bulgaria.<sup>241</sup>

Underreporting of hate crimes is also a widespread problem in **Lithuania**. Reasons include negative experiences in previous interactions with law enforcement bodies, lack of sensitivity or training of law enforcement officials to deal with hate crimes, as well as the common belief that the complaint will not lead to redress or have any positive outcome for the victim.<sup>242</sup> Even when hate crimes are reported, a further issue is their **under-recording** as hate crimes by law enforcement bodies. The element of racial bias in the perpetrator's motive is often omitted and pre-trial information on that aspect is not

<sup>235</sup> CERD (Committee on the Elimination of Racial Discrimination) (2019), Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, pp. 6, 21, available at: <https://digitallibrary.un.org/record/3862660>.

<sup>236</sup> Ibid.

<sup>237</sup> See Appendix G. Country Report – Italy for more detail.

<sup>238</sup> See, for example, FRA, *Encouraging hate crime reporting*, July 2021, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-hate-crime-reporting\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-hate-crime-reporting_en.pdf).

<sup>239</sup> See Appendix G. Country Report – Italy for a more detailed discussion of some of these events.

<sup>240</sup> ANSA, Italy: 'Prosecutors probe alleged police violence against migrants', 1 April 2021, available at: <https://www.infomigrants.net/en/post/31273/italy-prosecutors-probe-alleged-police-violence-against-migrants>, last accessed: 22 September 2021.

<sup>241</sup> See Liberties, 'Nobody Knows the True Number of Victims of Police Brutality in Bulgaria', available at: <https://www.liberties.eu/en/stories/the-number-of-victims-police-brutality-bulgaria/11376>.

<sup>242</sup> Office of the Equal Opportunities Ombudsperson (2021), *Independent Ombudsperson's Review on Institutional Response to Hate Speech*, p. 15, available at: <https://www.lygybe.lt/data/public/uploads/2021/04/independent-review-on-hate-speech2021.pdf> and interview with the ombudsperson.

collected.<sup>243</sup> Furthermore, testimonies of victims and witnesses from minority groups alleging hate crimes are not perceived as credible and are dismissed due to the pervasiveness of stereotypes linking minorities to dishonest, violent and criminal behaviour, or are simply not deemed important.<sup>244</sup>

### 2.2.2. Other forms of institutional racism

Beyond policing, institutional racism can take various forms. This subsection focuses on instances and examples of institutional racism in healthcare, education, housing and access to welfare.

FRA has highlighted the issue of **unequal access to healthcare**, focusing on the intersectional element of the problem. In a 2013 report, the agency stated that the barriers faced by migrants or ethnic minorities when accessing healthcare included language barriers, lack of information about entitlement to healthcare, financial and organisational barriers, accessibility and cultural barriers.<sup>245</sup> The barriers can result in certain people experiencing 'problems in accessing healthcare and receiving the same quality of treatment as others'.<sup>246</sup> While the report looked at inequalities and discrimination in access to healthcare, one of its conclusions was that 'health professionals are on the whole reluctant to acknowledge that unequal treatment can be present in healthcare'.<sup>247</sup> This points towards unequal access to healthcare having a dimension of institutional racism.

There are very few studies on the conceptualisation of **racism in healthcare**. One study following healthcare users in three Member States shows how 'two interrelated processes of unequal access to resources and inequalities in power can lead to the silencing of suffering and erosion of dignity, respectively'. According to the study, 'racism as an institutionalised social structure is enacted through subtle, invisible practices that are normalised into everyday medical routines'. These include reduced access to transplants and unequal access to resources.<sup>248</sup>

The COVID-19 pandemic has exacerbated the problem of access to healthcare. In Greece, measures on restrictions on movement in accommodation sites (refugee camps) for asylum-seekers and in Reception and Identification Centres (RICs) have been harsher than for the general population, with negative consequences when it comes to access to healthcare and education. For example, incidents of imposition of arbitrary fines for leaving the RIC despite possessing all the necessary documentation have been reported.<sup>249</sup> The coronavirus pandemic has also had a negative effect on the Roma communities' access to healthcare across the EU.<sup>250</sup>

**Education** is another area in which institutional racism occurs. For example, the segregation of Roma pupils in the **Hungarian** educational system is one of the most prominent ways in which institutional

<sup>243</sup> ENAR (2019), *Racist Crime & Institutional Racism in Europe. ENAR Shadow Report 2014-2018*, p. 19, available at: [https://ec.europa.eu/migrant-integration/library-document/2014-2018-enar-shadow-report-racist-crime-and-institutional-racism-europe\\_en](https://ec.europa.eu/migrant-integration/library-document/2014-2018-enar-shadow-report-racist-crime-and-institutional-racism-europe_en).

<sup>244</sup> Ibid., p. 19.

<sup>245</sup> FRA (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*, available at: <https://fra.europa.eu/en/publication/2013/inequalities-and-multiple-discrimination-access-and-quality-healthcare>.

<sup>246</sup> Ibid., p. 97.

<sup>247</sup> Ibid. p. 97.

<sup>248</sup> Hamed, S., Thapar-Björkert, S., Bradby, H., and Ahlberg, B. M. (2020). 'Racism in European Health Care: Structural Violence and Beyond', *Qualitative Health Research*, 30(11), 1662-1673. <https://doi.org/10.1177/1049732320931430>, pp. 1663, 1672.

<sup>249</sup> Racial Violence Report Network (2020), *Annual Report*, pp. 21-22, available at: <https://www.unhcr.org/gr/en/19763-racist-violence-recording-network-annual-report-2020.html>.

<sup>250</sup> FRA, 2020, 'Coronavirus Pandemic in the EU – Impact on Roma and Travellers', Bulletin #5, available at: <https://fra.europa.eu/en/publication/2020/covid19-rights-impact-september-1>.

racism manifests itself in the country. Roma children are placed in segregated schools and classes, or automatically assigned to correctional schools.<sup>251</sup> As a result, over 60 % of Roma children attend segregated schools and nearly 80 % of pupils in correctional educational institutions are Roma.<sup>252</sup> Segregation often amounts to direct discrimination, as education is of lower quality in segregated classes, which detrimentally affects children's future opportunities.<sup>253</sup> Disconcertingly, the former Minister of Human Capacities<sup>254</sup> has voiced his support for the segregation of Roma children on several occasions<sup>255</sup>, while a number of high-ranking politicians have questioned the 'justness' of compensation granted to Roma pupils educated in a segregated manner, thus undermining the effectiveness and credibility of de-segregation efforts.<sup>256</sup>

In **Romania**, school segregation is also an issue that is indicative of institutionalised racism and discrimination (8 % of Roma children study in segregated schools in Romania).<sup>257</sup> In **Greece**, 41 % of the population would feel uncomfortable if their child had Roma classmates, which is the most negative attitude among all EU countries.<sup>258</sup> Indirect practices of segregation, such as operation of single-culture schools (in practice Roma-only schools), persist<sup>259</sup> despite several court cases taken to the European Court of Human Rights.<sup>260</sup>

Educational segregation remains one of the biggest challenges, driven by systemic anti-Gypsyism in **Bulgaria** – Roma children are most vulnerable to early school dropout, to studying in entirely segregated schools and to achieving a lower-than-average level of education.<sup>261</sup>

**Employment** is to a large extent related to education, as a lower level of educational attainment translates to less well-paid jobs and difficulties in finding employment. The employment of Roma in **Denmark** has long been characterised by low levels of school enrolment and high unemployment.<sup>262</sup> It is widely acknowledged that Roma face difficulties in the labour market, though there are no official

<sup>251</sup> ECDD (European Centre for Democracy Development), 'Legislation Impacting Anti-discrimination and Anti-radicalisation Efforts', Civic Nation Internet project, 2021, available at: [https://civic-nation.org/hungary/government/legislation/legislation\\_impacting\\_anti-discrimination\\_and\\_anti-radicalisation\\_efforts/](https://civic-nation.org/hungary/government/legislation/legislation_impacting_anti-discrimination_and_anti-radicalisation_efforts/).

<sup>252</sup> Ibid.

<sup>253</sup> OCFRH (Office of the Commissioner for Fundamental Rights of Hungary) (2019), *Synergies of National and International Protection of Minorities Living in Hungary: Activities of the Ombudsman for Minority Rights of Hungary 2013-2019*, p. 25, available at: [https://www.ajbh.hu/documents/14315/131278/synergies+of+national+and+international+protection+of+minorities+living+in+hungary+e\\_book.pdf/20ff4ec2-eda2-8b56-8608-854c122cd051?version=1.0&t=1571209064906](https://www.ajbh.hu/documents/14315/131278/synergies+of+national+and+international+protection+of+minorities+living+in+hungary+e_book.pdf/20ff4ec2-eda2-8b56-8608-854c122cd051?version=1.0&t=1571209064906).

<sup>254</sup> In Hungary, this is the equivalent of a Minister of Education.

<sup>255</sup> Interview with civil society, October 2021.

<sup>256</sup> European Equality Law Network (2020), Flash report: 'Prime Minister Calls Damages Granted to Roma Pupils for Decade-long Segregation 'Unjust' During Pending Court Case', available at: <https://www.equalitylaw.eu/downloads/5071-hungary-prime-minister-calls-damages-granted-to-roma-pupils-for-decade-long-segregation-unjust-during-pending-court-case-116-kb>.

<sup>257</sup> FRA, *Second European Union Minorities and Discrimination Survey: Roma – Selected findings*, EU-MIDIS II, 2018, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-eu-minorities-survey-roma-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf).

<sup>258</sup> European Commission, *Special Eurobarometer 493*, op. cit., p. 136.

<sup>259</sup> Roma Civil Monitor, *Country Fiche Greece*, available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3172/c2-greece.pdf>.

<sup>260</sup> Cases include the landmark decision of *D.H. and others v Czech Republic*, where the Court found that the placement of Roma children in special classes and schools adapted for children with intellectual disabilities based on culturally biased tests amounted to discrimination on the grounds of ethnic origin, in violation of the Convention. See European Commission, 2017, *Roma and the enforcement of anti-discrimination law*, p. 16, available at: <https://op.europa.eu/en/publication-detail/-/publication/cd62f9fe-92ae-11e7-b92d-01aa75ed71a1/language-en>.

<sup>261</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey (EU-MIDIS II) Technical Report*, available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-midis-ii-technical-report\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-technical-report_en.pdf).

<sup>262</sup> ECRI (2017), *Report on Denmark (fifth monitoring cycle)*, 16 May 2017, p. 27, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/denmark>.

statistics or estimates regarding the unemployment rates among Roma.<sup>263</sup> In **Hungary**, research conducted in 2012 shows that unequal treatment based on colour and ethnic origin is one of the most common forms of workplace discrimination against disadvantaged groups.<sup>264</sup> In **France**, the national statistics institute has shown that there is an embedded racial discrimination in employment, with job-seekers 40 % less likely to find employment if they have a foreign background (*issus de l'immigration*).<sup>265</sup>

Institutionalised racism also occurs in the context of **housing policy**, manifesting itself in the form of precarious housing conditions and evictions. For instance, the first case of a Roma housing rights violation in **Romania** occurred in 2001, when a city mayor removed 150 families and relocated them to unused commercial old buildings away from the city.<sup>266</sup> Another example concerns a Roma district in Bucharest where utilities are much worse than average in Bucharest.<sup>267</sup> Racism in the field of housing also manifests itself in the failure of local councils to collect rubbish in Roma neighbourhoods as frequently. In Italy, access to housing is also a big issue, especially for Roma people. Housing policies for Roma populations have focused on building inadequate 'nomad camps' since the 1980s, creating additional difficulties for the families living in these camps (access to education, healthcare etc.). Some such camps are closed at short notice, pushing families living in these camps into even greater hardship.<sup>268</sup>

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<sup>263</sup> The Roma population in Denmark can largely be divided into two categories: national Roma and other EU citizens of Roma origin. FRANET national focal point (2012), Denmark, *Social Thematic Study, The situation of Roma in 2012*, Danish Institute of Human Rights, p. 3, available at: <http://fra.europa.eu/sites/default/files/situation-of-roma-2012-dk.pdf>.

<sup>264</sup> Ministry of Human Capacities of Hungary, *Hungarian National Social Inclusion Strategy II: Permanently Deprived – Children Living in Poor Families – Roma (2011-2020)*, 2014, pp. 33-34, available at: <https://romagov.hu/wp-content/uploads/2021/12/Strategy-II-EN.pdf>.

<sup>265</sup> Edo, A. and Jacquement, N., (INSEE), 'Discrimination à l'embauche selon l'origine et le genre: défiance indifférenciée ou ciblée sur certains groupes?', in *Economie et statistique*, No. 464-465-466, 2013, pp. 166-167, available at: <https://www.insee.fr/fr/statistiques/1378023?sommaire=1378033>.

<sup>266</sup> Mandache, M., *Homelessness in Europe*, op. cit.

<sup>267</sup> Abu-Hamed T. (2020), 'Extreme energy poverty', op. cit..

<sup>268</sup> The ERRC reports that on 26 July 2018, the Municipality of Rome cleared the settlement of Camping River, where for 13 years about 300 Roma people had lived. The municipality offered the inhabitants of the camp the sum of 800 euros per month to find themselves a rented house as part of their 'Roma Plan'. The proposal was poorly implemented; without a regular income, or any form of mediation on the part of the municipality, it was nearly impossible for the Roma to find someone willing to rent to them. Only 9 % of the 359 people in the camp found a solution as foreseen by the Roma Plan of the Municipality of Rome. Of all the Roma who were evicted from Camping River on 26 July in Rome, 52 % (152 people) ended up living on the streets, under bridges or in cars. A further 34 % (99 people) were transferred to reception centres or to temporary facilities. Available at: [http://www.errc.org/uploads/upload\\_en/file/5193\\_file1\\_italy-cescr-21-august-2019.pdf](http://www.errc.org/uploads/upload_en/file/5193_file1_italy-cescr-21-august-2019.pdf).

### 3. EUROPEAN AND INTERNATIONAL LEGISLATIVE AND POLICY FRAMEWORK

#### KEY FINDINGS

- At the **international level**, a legal framework has been developed through the work of the United Nations. That framework requires countries to work towards the elimination of all forms of racial discrimination.
- As an international organisation, **the Council of Europe (CoE)** promotes the rule of law, democracy, human rights and social development, in particular, the CoE's human rights body, the European Commission against Racism and Intolerance, monitors problems of racism, xenophobia, antisemitism, intolerance and racial discrimination. The European Convention on Human Rights sets out the legally binding obligation for its members to guarantee a list of human rights to everyone within their jurisdiction.
- A **broad set of rules** exist at the **EU level** aimed at tackling racism, xenophobia and racial discrimination. Some of the policies have a horizontal approach, while others focus on specific groups experiencing racism and xenophobia.
- Despite the number of legislative acts and policies to combat racism, xenophobia and racial discrimination at the international and EU level, **some gaps and constraints** related to their effective implementation exist.
- Member States need to be given **greater support and encouragement** to implement the Racial Equality Directive to address racism and discrimination. Furthermore, the Commission could make more use of infringement proceedings against Member States that are in breach of their obligations.
- **Data collection** relating to racial discrimination needs to be improved, underreporting of hate speech and hate crime needs to be tackled and the role of equality bodies across the EU Member States needs to be strengthened.
- Racism in **policing and law enforcement** in the EU is largely unaddressed in the existing legal framework.
- The continued **criminalisation of migrants** and blurred lines between law enforcement and immigration enforcement lead to increased discrimination against certain groups.
- Current legislative proposals, such as the Artificial Intelligence Act, do not include strong enough safeguards to prevent discrimination. That highlights the need to **mainstream anti-racism** in the policy design process.

This chapter provides an overview of the European and international legislative and policy framework for tackling racism, xenophobia and racial discrimination on the grounds of racial and ethnic origin. In addition, the chapter provides an overview of gaps and constraints related to the effective implementation of such frameworks, especially with regard to policy areas that have been unaddressed to date.

#### 3.1. International policy framework

EU action against discrimination, racism and xenophobia needs to be viewed within the international framework in which it takes place. The principle of equality and non-discrimination is proclaimed in the first article of the 1948 **Universal Declaration of Human Rights**. Article 1 states that 'all human beings

are born free and equal in dignity and rights'. This principle is reiterated in all international human rights treaties. Article 2 stipulates that 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. The **United Nations Declaration on the Elimination of All Forms of Racial Discrimination** (1963)<sup>269</sup> states that 'discrimination between human beings on the grounds of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples' (Article 1).

Currently all EU Member States are bound by the UN treaties that contain a prohibition on discrimination. The **International Convention on the Elimination of All Forms of Racial Discrimination** (ICERD)<sup>270</sup> (1969) is specifically devoted to the elimination of discrimination based on race. Article 1 defines racial discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.' The convention applies the prohibition of racial discrimination to all matters pertaining to both private and public life, provides for affirmative action, requires state parties to 'pursue by all appropriate means' measures to eliminate racial discrimination and not to 'sponsor, defend or support' racial discrimination.

ICERD established the **Committee on the Elimination of Racial Discrimination**. States that are party to ICERD must submit regular reports to the Committee on how they are fulfilling their treaty commitments.

The **International Covenant on Civil and Political Rights** (ICCPR)<sup>271</sup> (1966) includes provisions that shall be undertaken without discrimination on the basis of race and other factors. For example, Article 2 provides that: 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (Article 2.1). In addition, the ICCPR states that 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law' (Article 20.2) and that 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (Article 26).

The **Declaration on Race and Racial Prejudice**<sup>272</sup> (1978), adopted by the General Conference of the UN Educational, Scientific and Cultural Organisation (UNESCO), provides detailed and nuanced references to race and racism, noting that humans belong to a single species, have the right to be

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<sup>269</sup> Available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

<sup>270</sup> UN, General Assembly (1966), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 16 December 1966, UNTS vol. 660, p. 195, available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

<sup>271</sup> United Nations (UN), General Assembly (1966), International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations Treaty Series (UNTS) vol. 999, p. 171, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>272</sup> Available at: <https://www.ohchr.org/en/professionalinterest/pages/raceandracialprejudice.aspx>.

different and that differences between the achievements of different peoples are attributable to external factors. The **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities**<sup>273</sup> (1992) protects ‘national or ethnic, cultural, religious and linguistic identity of minorities’ pursuant to Article 1.1.

The **Durban Declaration** and the **Programme of Action**<sup>274</sup> released by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in September 2001, appeals to the responsibility of various levels of state governments (federal and local) to combat racism and acknowledges ‘the fundamental role of civil society in the fight against racism, racial discrimination, xenophobia and related intolerance, in particular in assisting States to develop regulations and strategies, in taking measures and action against such forms of discrimination and through follow-up implementation’ (par. 116 of the Declaration).

As an international organisation, the **Council of Europe** (CoE) promotes the rule of law, democracy, human rights and social development. In 1950, CoE member states adopted the **Convention for the Protection of Human Rights and Fundamental Freedoms** (better known as the **European Convention on Human Rights** (ECHR))<sup>275</sup> to help achieve these aims. The ECHR sets out the legally binding obligation for its members to guarantee a list of human rights to everyone within their jurisdiction (not just citizens). However, EU accession to the ECHR was blocked by the European Court of Justice in 2014 as it was ‘liable to upset the underlying balance of the EU and undermine the autonomy of EU law’.<sup>276</sup> Since then, solutions have been sought by the European Commission and the Council, the latter having reaffirmed its commitment to accession.<sup>277</sup> Implementation of the ECHR is reviewed by the **European Court of Human Rights** (ECtHR), which hears cases brought against Member States. The jurisprudence of the ECtHR also includes references to UN treaties, and the ECtHR has also emphasised that the ECHR cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law.<sup>278</sup> The case-law of the ECtHR has been influential in shaping a European response to discrimination on the basis of Article 14 of ECHR (prohibition of discrimination).<sup>279</sup>

The prohibition of discrimination is established in Article 14 of the ECHR, guaranteeing equal treatment in the enjoyment of the other rights set out in the Convention. Protocol 12 (2000) of the ECHR,<sup>280</sup> which

<sup>273</sup> Available at: <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>.

<sup>274</sup> Durban Declaration and Programme of Action, available at: [https://www.ohchr.org/Documents/Publications/Durban\\_text\\_en.pdf](https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf).

<sup>275</sup> Full text of the Convention, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>276</sup> Opinion of the Court (Full Court) of 18 December 2014. Opinion pursuant to Article 218(11) TFEU. Opinion pursuant to Article 218(11) TFEU — Draft international agreement — Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Compatibility of the draft agreement with the EU and FEU Treaties. Case Opinion 2/13, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013CV0002>.

<sup>277</sup> See EU accession to the ECHR, available at: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/accession-of-the-european-union-to-the-european-convention-on-human-rights>.

<sup>278</sup> ECtHR, *Harroudj v France*, No. 43631/09, 4 October 2012, para. 42. See for example ECtHR, *Khamtokhu and Aksenchik v Russia* [GC], Nos. 60367/08 and 961/11, 24 January 2017 referring to the CEDAW; ECtHR, *Nachova and Others v Bulgaria* [GC], Nos. 43577/98 and 43579/98, 6 July 2005 referring to the ICERD.

<sup>279</sup> See the ECtHR case-law guide on the prohibition of discrimination, available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_14\\_Art\\_1\\_Protocol\\_12\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf)

<sup>280</sup> Available at: [https://www.echr.coe.int/Documents/Library\\_Collection\\_P12\\_ET5177E\\_ENG.pdf](https://www.echr.coe.int/Documents/Library_Collection_P12_ET5177E_ENG.pdf).

has not yet been ratified by all EU Member States, expands the scope of the prohibition of discrimination to equal treatment in the enjoyment of any right, including rights under national law.<sup>281</sup>

The **European Social Charter**<sup>282</sup> is another of the CoE's main human rights treaties. Article E of the charter contains an explicit provision prohibiting discrimination. It provides protection against discrimination through a horizontal clause, covering grounds such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or 'other status'.

The principle of non-discrimination is also a governing principle in a number of other CoE instruments, **including the Framework Convention for the Protection of National Minorities**,<sup>283</sup> the **Protocol to the Convention on Cybercrime**<sup>284</sup> and the **Convention on Human Rights and Biomedicine**<sup>285</sup>.

In addition, the **European Commission against Racism and Intolerance** (ECRI), which was established in 1994 and is a human rights body of the Council of Europe, monitors problems of racism, xenophobia, antisemitism, intolerance and racial discrimination. It publishes periodic reports on CoE Member States and general policy recommendations addressed to the governments of all Member States, including guidelines that policymakers are invited to use when drawing up national strategies and policies.

Since 1996, ECRI has issued 16 General Policy Recommendations,<sup>286</sup> some of which detail specific elements or systems that need to be introduced in order to combat racism and intolerance effectively; other recommendations lay down guidelines to support the fight against racism in specific fields or focus on measures relating to specific vulnerable groups.

In summary, the principle of non-discrimination has been influential in shaping CoE standards and is seen as a fundamental right that needs to be protected.

### 3.2. EU legislative and policy framework

The Treaty of Rome provided protection against discrimination on the basis of nationality and pay discrimination on the basis of gender.<sup>287</sup> The 1997 Treaty of Amsterdam **established six criteria** under which the Union could take action against discrimination: (1) sex, (2) racial or ethnic origin, (3) religion

<sup>281</sup> FRA (2018), *Handbook on European non-discrimination law* (2018 edition), p. 18, available at: <https://fra.europa.eu/en/publication/2018/handbook-european-non-discrimination-law-2018-edition>.

<sup>282</sup> A revised version of the European Social Charter is available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=163>.

<sup>283</sup> Council of Europe, Framework Convention for the Protection of National Minorities (FCNM), CETS No. 157, 1995. See Articles 4, 6(2) and 9, available at: <https://rm.coe.int/16800c10cf>.

<sup>284</sup> Council of Europe, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, ETS 189. See Article 3 (1), available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=189>.

<sup>285</sup> Council of Europe, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, CETS No. 164, 1997. See Article 11, available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=164>.

<sup>286</sup> Compilation of ECRI's General Policy Recommendations, available at: <https://rm.coe.int/compilation-of-ecri-s-general-policy-recommendations-march-2018/16808b7945>.

<sup>287</sup> Articles 7 and 119 of the Treaty of Rome (Treaty establishing the European Economic Community), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11957E/TXT>.

or belief, (4) disability, (5) age or (6) sexual orientation.<sup>288</sup> This was an unprecedented legal empowerment of the Union and sent an impetus for action to be taken in tackling discrimination, particularly on ethnic and racial grounds. It was this legal background that – alongside other socio-political developments – empowered the authoring of the **Racial Equality Directive**<sup>289</sup> (Council Directive 2000/43/EC). The directive was complemented by the **Employment Equality Directive**<sup>290</sup> (Council Directive 2000/78/EC), which followed several months later, and was welcomed as a positive development, despite some legal scholars criticising it for its lack of clarity.<sup>291</sup> The quick adoption of these instruments is credited to the Member States' wish to strengthen the *acquis* before the EU's enlargement, as well as to a wave of optimism following ratification of the Treaty of Amsterdam.<sup>292</sup>

**Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law** obliges all EU Member States to provide for criminal sanctions in relation to incitement to violence or hatred based on race, colour, descent, religion or belief, national or ethnic origin, as well as dissemination of racist or xenophobic material and condonation, denial or trivialisation of genocide, war crimes and crimes against humanity directed against such groups.<sup>293</sup> Member States are also obliged to consider racist or xenophobic intent an aggravating circumstance.

The **Treaty of Lisbon**, which entered into force on 1 December 2009, made considerable changes to the constitutional framework of the EU by according the principle of equality and non-discrimination an even more central position.<sup>294</sup> Discrimination on the grounds of racial and ethnic origin is expressly prohibited and contravenes core EU values enshrined in **Article 2 of the Treaty on European Union** (TEU). **Article 3(3) TEU** includes a new provision that the Union 'shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child'. Furthermore, **Article 10 of the Treaty on the Functioning of the European Union** (TFEU) states that the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **Article 19 TFEU** sets out the legislative procedures that the Council and Parliament shall take to combat discrimination. Furthermore, the **Charter of Fundamental Rights of the European Union** became part of primary law and is legally binding.

<sup>288</sup> Article 6a of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11997D%2FTXT>.

<sup>289</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>.

<sup>290</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

<sup>291</sup> Waddington, L. B., & Bell, M. (2001), 'More equal than others: distinguishing European Union Equality Directives', *Common Market Law Review*, 38, pp. 587-611, available at: <https://www.semanticscholar.org/paper/More-equal-than-others%3A-distinguishing-European-Waddington-Bell/21194b50fe10c96ef5878e584c46195957197091>.

<sup>292</sup> Belavusau, U., & Henard, K. (2019), 'A Bird's Eye View on EU Anti-Discrimination Law: The Impact of the 2000 Equality Directives', *German Law Journal*, 20(5), pp. 614-636, available at: <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/DBE7FE0BA2BD43816A0BEE38A7451E9D/S2071832219000531a.pdf/a-birds-eye-view-on-eu-anti-discrimination-law-the-impact-of-the-2000-equality-directives.pdf>.

<sup>293</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJL 328, 6.12.2008, p. 55, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32008F0913>.

<sup>294</sup> Academy of European Law, The enhanced place of equality and other human rights in the EU, available at: [https://www.era-comm.eu/anti-discr/e\\_learning/module1\\_2.html](https://www.era-comm.eu/anti-discr/e_learning/module1_2.html).

However, the period following adoption of the Lisbon Treaty was marked by failure to adopt any new instrument to update the existing legislative framework. The most striking example is the Commission's proposed **Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**.<sup>295</sup> The proposal aimed to extend the material scope of application of the prohibition on discrimination to the fields of education, social protection (including healthcare and social security), social advantages and access to goods and services (including housing). It also attempted to introduce specific provisions on multiple discrimination, among other provisions. Opposition to the directive stemmed from a combination of different factors including (i) the increase in the number of negotiating parties compared to the 2000 equality directives (namely the Racial Equality and Employment Equality directives), (ii) the increase in radical right-wing parties and related rhetoric in a number of Member States, and (iii) concerns about the encroachment on national competencies.<sup>296</sup> To date, the proposal is blocked at the Council stage, but the Commission is seeking to revive the main elements of the proposal through a new initiative on reinforcing equality bodies presented as part of the 2022 work programme.<sup>297</sup> In parallel, the EU has adopted a number of instruments aimed at tackling other forms of discrimination, mainly on the basis of sex, sexual orientation and disabilities.<sup>298</sup>

The 2012 **Victims' Rights Directive**<sup>299</sup> lays out minimum standards for the rights, support and protection of victims of crime, without discrimination, including nationality or residence status, with particular focus on victims of crimes committed with discriminatory motives. The **Audiovisual Media Services Directive** (2010/13/EU) and **Directive (EU) 2018/1808** prohibit online hate speech.<sup>300</sup> The directive requires Member States to introduce appropriate measures to ensure that audiovisual media services do not communicate any incitement to hatred 'based on race, sex, religion or nationality'.<sup>301</sup>

Following the anti-racism protests resulting from the murder of George Floyd, the Commission's President announced in her State of the Union address in June 2020 that an action plan against racism would be drawn up.<sup>302</sup> In September 2020, the Commission published its **EU Anti-racism Action Plan**

<sup>295</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52008PC0426>.

<sup>296</sup> Belavusau, U., & Henrard, K. (2019). 'A Bird's Eye View on EU Anti-Discrimination Law: The Impact of the 2000 Equality Directives', *German Law Journal*, 20(5), 614-636. doi:10.1017/glj.2019.53, pp. 623-624, available at: <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/DBE7FE0BA2BD43816A0BEE38A7451E9D/S2071832219000531a.pdf/a-birds-eye-view-on-eu-anti-discrimination-law-the-impact-of-the-2000-equality-directives.pdf>.

<sup>297</sup> European Commission, 2022 work programme available at: [https://ec.europa.eu/info/publications/2022-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2022-commission-work-programme-key-documents_en).

<sup>298</sup> For example, Directive 2006/54/EC regarding equal treatment for men and women in matters of employment and occupation; Directive 2004/113/EC regarding equal treatment for men and women in the access to and supply of goods and services.

<sup>299</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>.

<sup>300</sup> Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, *Hate speech and hate crime in the EU and the evaluation of online content regulation approaches* (PE 655.135), available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)655135](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)655135).

<sup>301</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, available at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

<sup>302</sup> Ursula von der Leyen's State of the European Union speech, June 2020, available at: [https://ec.europa.eu/info/strategy/strategic-planning/state-union-addresses/state-union-2020\\_en](https://ec.europa.eu/info/strategy/strategic-planning/state-union-addresses/state-union-2020_en).

**2020-2025.**<sup>303</sup> This comprehensive document aims to tackle racism in all societal strata, including equal opportunities, education and access to training, employment opportunities, as well as funding for projects, accountable and just policing, and many other ambitious proposals.<sup>304</sup> The action plan sets out a series of measures, including the Commission ensuring that Member States fully implement relevant EU law. That also extends to the areas not yet covered by the non-discrimination legislation, such as law enforcement. A more detailed assessment of the action plan is presented in Chapter 5.

The **Artificial Intelligence Act** (Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence) is a proposed regulation by the European Commission that aims to introduce a common regulatory and legal framework to limit **algorithmic discrimination** (which often affects racialised people) by classifying artificial intelligence systems by risk. The act also proposes the introduction of a European Artificial Intelligence Board to encourage national cooperation and ensure that the regulation is observed.<sup>305</sup>

Beyond those horizontal policies, strategies focused on specific groups experiencing racism and xenophobia were also developed. The **EU Framework for National Roma Integration Strategies up to 2020**<sup>306</sup> was set up to encourage Member States to develop Roma inclusion strategies focused on four areas (education, employment, housing and healthcare). In 2020, the approach was adapted in the form of the **EU Roma strategic framework for equality, inclusion and participation**.<sup>307</sup> The strategic framework moves away from the socio-economic approach of the EU framework up to 2020 to replace it with a three-pillar approach of equality, inclusion and participation. As a follow-up, in March 2021, the **Council Recommendation on Roma equality, inclusion and participation**<sup>308</sup> was adopted, which is a renewed and strengthened commitment by the EU and Member States to tackle the inequality gap suffered by Roma. The Commission has also very recently announced an equally ambitious strategy to combat antisemitism. The **EU Strategy on Combating Antisemitism and Fostering Jewish Life** has a broad reach and extends to education, media, freedom of belief and other aspects.<sup>309</sup> On 9 December 2021 the Commission published its Communication on a more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime'. It seeks to strengthen the legal framework on tackling hate speech and hate crime and to extend the list of so-called 'EU crimes' (as set out in art 83 TFEU) to hate speech and hate crime.<sup>310</sup>

<sup>303</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a Union of equality: EU Anti-racism Action Plan 2020-2025, COM(2020) 565 final, September 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A0565%3AFIN>.

<sup>304</sup> Ibid.

<sup>305</sup> European Commission, Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts COM(2021)206 final, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2021\)206&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2021)206&lang=en).

<sup>306</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 COM (2011)173 final, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52011DC0173>.

<sup>307</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Roma strategic framework for equality, inclusion and participation, COM (2020) 620 final, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:620:FIN>.

<sup>308</sup> Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation 2021/C 93/01, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC\\_2021\\_093\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2021_093_R_0001).

<sup>309</sup> European Commission, EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030) COM(2021) 615 final, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2021:615:FIN>.

<sup>310</sup> European Commission, A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime, COM(2021) 777 final, available at: [https://ec.europa.eu/info/files/communication-extending-eu-crimes-hate-speech-and-hate-crime\\_en](https://ec.europa.eu/info/files/communication-extending-eu-crimes-hate-speech-and-hate-crime_en).

Table 2 below provides an overview of the EU legislative framework relevant to protection against racism, xenophobia and racial discrimination. Some instruments under negotiation (such as the Artificial Intelligence Act) are expected to provide more comprehensive and robust responses to current challenges vis-à-vis racism, xenophobia and racial discrimination.

**Table 2: EU legislative framework to protect against racism, xenophobia and racial discrimination**

Directive	Summary	Status
Racial Equality Directive Directive 2000/43/EC <sup>311</sup>	<p>The directive establishes minimum requirements for the implementation of the equal treatment principle with regard to racial and ethnic origin</p> <p>The directive establishes requirements for protection against discrimination in access to employment and training, working conditions, social protection (including social security and healthcare), education, and publicly available goods and services that can confer social advantage.</p> <p>The directive does not define 'racial or ethnic origin'; however, nationality is explicitly excluded from the directive's scope of application.</p>	In force since 19 July 2000
Employment Equality Directive (2000/78/EC) <sup>312</sup>	The directive establishes a general framework for equal treatment irrespective of religion and belief, as well as other grounds. Its scope is limited to employment and occupation.	In force since 2 December 2000
Charter of Fundamental Rights of the European Union <sup>313</sup>	Blanket protection of a wide range of political, social and economic human rights.	In force since December 2009
Framework Decision on Racism and Xenophobia Council Framework Decision 2008/913/JHA <sup>314</sup>	<p>The framework decision requires Member States to punish the following criminal offences:</p> <ul style="list-style-type: none"> <li>Public incitement to racist or xenophobic violence or hatred.</li> <li>Commission of a racist or xenophobic act by public dissemination or distribution of tracts, pictures or other material.</li> </ul>	In force since 6 December 2008

<sup>311</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>.

<sup>312</sup> Framework Employment Directive (Directive 2000/78/EC) against discrimination at work on grounds of religion or belief, disability, age or sexual orientation, available at: <https://ec.europa.eu/social/main.jsp?catId=166&langId=en>.

<sup>313</sup> Charter of Fundamental Rights of the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

<sup>314</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32008F0913>.

Directive	Summary	Status
	<ul style="list-style-type: none"> <li>Publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes in a manner likely to incite racist or xenophobic hatred.</li> <li>Hate speech.</li> </ul>	
Victims' Rights Directive (Directive 2012/29/EU) <sup>315</sup>	The directive lays out minimum standards for the rights, support and protection of victims of crime, with particular focus on victims of crimes committed with a discriminatory motive.	In force since 15 November 2012
Audiovisual Media Services Directive (2010/13/EU) and Directive (EU) 2018/1808 <sup>316</sup>	<p>The directive provides some protection against online hate speech. The directive requires Member States to introduce appropriate measures to ensure that audiovisual media services do not communicate any incitement to hatred 'based on race, sex, religion or nationality'.</p> <p>Amendments to the directive broadened its scope to new media outlets and broadcasting.</p>	In force since 18 December 2018
Council Recommendation on Roma equality, inclusion and participation <sup>317</sup>	<p>The Council recommendation aims to provide a renewed and strengthened commitment by the EU and its Member States to the shared objectives on Roma equality, inclusion and participation in order to push forward policy measures over the next decade to tackle the inequality gap suffered by the Roma population across Europe.</p> <p>The recommendation sets out measures that Member States may adopt to make progress towards these objectives in areas such as education, employment, health, housing, participation, as well as the fight against poverty, social exclusion, discrimination and anti-Gypsyism.</p>	Adopted on 12 March 2021
Artificial Intelligence Act (Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules	The proposal would provide tangible guarantees against discriminatory practices perpetuated by AI mechanisms.	Currently under consideration

<sup>315</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

<sup>316</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, available at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

<sup>317</sup> Council of the European Union, Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation 2021/C 93/01, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC\\_2021\\_093\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2021_093_R_0001).

Directive	Summary	Status
on artificial intelligence) <sup>318</sup>		
Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM/2008/0426 final) <sup>319</sup>	On 2 July 2008 the European Commission proposed an anti-discrimination directive known as the Equal Treatment Directive or Horizontal Directive. The proposal aims to further combat direct/indirect discrimination and harassment on multiple grounds.	Proposal still under negotiations in the Council.
EU Strategy on Combating Antisemitism and Fostering Jewish Life <sup>320</sup>	<p>The Strategy sets out measures focusing on:</p> <ul style="list-style-type: none"> <li>• preventing and combating all forms of antisemitism</li> <li>• protecting and fostering Jewish life in the EU</li> <li>• education, research and Holocaust remembrance.</li> </ul> <p>These measures are complemented by the EU's international efforts to address antisemitism globally.</p>	The strategy is due to be implemented over the period 2021-2030.

Source: Asterisk Research & Analysis

Beyond this legislative framework, several groups, programmes and agencies play a role in combating racism, xenophobia and racial discrimination. These include:

- The **European Union Agency for Fundamental Rights (FRA)**,<sup>321</sup> the Union's independent centre of reference and excellence for promoting and protecting human rights in the EU. FRA undertakes research on racism, xenophobia and racial discrimination, supports capacity-building and promotes collaboration among national institutions, in particular Equality bodies through EQUINET.
- The **EU High Level Group on combating racism, xenophobia and other forms of intolerance** was established by the European Commission to exchange and disseminate best practices between national authorities for tackling hate crime and hate speech.
- The **EU High Level Group on Non-discrimination, Equality and Diversity** was established in 2014 to foster co-operation and coordination between Member States and the Commission in addressing common concerns and advancing shared objectives relating to non-discrimination.
- The **Commission's Rights, Equality and Citizenship Programme** provides funding for additional anti-racism activities.

<sup>318</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>

<sup>319</sup> European Commission Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52008PC0426>

<sup>320</sup> European Commission, Communication: "EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030), COM(2021) 615 final, available at: [https://ec.europa.eu/info/files/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030\\_en](https://ec.europa.eu/info/files/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030_en).

<sup>321</sup> FRA website available at: <https://fra.europa.eu/en>.

- The **European Parliament Anti-Racism and Diversity Intergroup (ARDI)** promotes racial equality, counters racism, and educates about non-discrimination in the work of the European Parliament. It aims to be at the heart of parliamentary work for racial equality and against all discrimination based on racial or ethnic origin. The intergroup also addresses intersectional and multiple discrimination (see Box 1).

### Box 2: Anti-Racism and Diversity Intergroup (ARDI)

#### Anti-Racism and Diversity Intergroup (ARDI)

ARDI is one of the European Parliament's intergroups. As such it was re-established at the start of the parliamentary term. ARDI exists to promote racial equality, counter racism, and educate about non-discrimination in the work of the European Parliament. It aims to be at the heart of parliamentary work for racial equality and against all discrimination based on racial or ethnic origin. The intergroup also addresses intersectional and multiple discrimination.

Accordingly, it is an important tool for furthering the cause and rights of racialised people. However, as an intergroup, its renewal has to be confirmed at the start of each parliamentary term, which poses a threat to its continuous existence.

Source: ARDI website<sup>322</sup>

The European Commission has also created a number of positions to address specific forms of racism and discrimination, including:

- The position of **Coordinator on combating antisemitism and fostering Jewish life**, created in 2015, collaborates with Jewish organisations and communities. The coordinator acts as the contact point for relevant organisations and contributes to the overarching strategy to prevent and combat racism, intolerance and discrimination. The position is currently held by Katharina von Schnurbein, appointed by the European Commission.<sup>323</sup>
- The position of **Coordinator on combating anti-Muslim hatred** was also created in 2015. The coordinator plays a similar role for Muslim people and organisations. The coordinator's role is to ensure a coordinated approach to fighting anti-Muslim hatred in the fields covered by the Commission. The position is currently vacant as the Commission is still to appoint a replacement for Tommaso Chiamparino, who ended his assignment in July 2021.<sup>324</sup>
- The **Coordinator on combating racism** was created following adoption of the EU Anti-racism Action Plan 2020-2025. The coordinator liaises closely with people with a minority racial or ethnic background and relays their concerns to the Commission. The current coordinator, nominated in 2021, is Michaela Moura.<sup>325</sup>
- The **Task Force on Equality**, whose role is to mainstream equality in all policies, from design to implementation. It pursues an intersectional approach to equality mainstreaming to ensure that

<sup>322</sup> ARDI website available at: <https://www.ardi-ep.eu/>.

<sup>323</sup> More information available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/coordinator-combating-antisemitism-and-fostering-jewish-life\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/coordinator-combating-antisemitism-and-fostering-jewish-life_en).

<sup>324</sup> More information available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-anti-muslim-hatred\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-anti-muslim-hatred_en).

<sup>325</sup> More information available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/commissions-coordinator-combating-racism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/commissions-coordinator-combating-racism_en).

the different aspects of people's personal characteristics/identities are duly considered. The Task Force is composed of representatives of different Commission services.

### 3.3. Gaps and constraints to the effective implementation of the European and international legislative and policy framework

Despite the plethora of legislative acts and policies to combat racism, xenophobia and racial discrimination, some gaps and constraints related to their effective implementation exist.

At present, the **existing legislative framework only covers protection against discrimination on the grounds of employment**, but not social security and healthcare, education, or access to goods and services on the grounds of religion or belief, disability, age or sexual orientation. In addition, **there are barriers to access to justice for victims of discrimination, as well as to the effective national implementation of the Racial Equality Directive** and the functioning of the equality bodies.<sup>326</sup>

On 19 March 2021, the Commission adopted its third report on the application of the Racial Equality Directive and the Employment Equality Directive.<sup>327</sup> The report identified possible gaps and constraints related to the effective implementation of the directives, as well as avenues for follow-up. These included (1) strengthening the role of equality bodies; (2) supporting Member States in monitoring the application of the directives; (3) encouraging equality data collection; (4) tackling the underreporting of hate speech and hate crime; (5) encouraging full and/or correct transposition and implementation of the Framework Decision on Racism and Xenophobia; (6) overcoming barriers to justice for victims of discrimination, including problems with the existence and compliance of sanctions and remedies applied to instances of discrimination at the national level.<sup>328</sup> These gaps and avenues for follow-up are supported by the relevant literature – including in publications by FRA and the European Parliament – which points to horizontal gaps and barriers (protection beyond employment, access to justice and successful implementation of the equality directives)<sup>329</sup>.

#### (1) Strengthening the role of equality bodies

Article 13 of the Racial Equality Directive obliges Member States to **establish equality bodies to address racial and ethnic discrimination in a range of areas of life**, from employment, education and healthcare to the provision of goods and services. The Racial Equality Directive also sets out minimum requirements for the competences of equality bodies (Article 13), but largely allows Member States to decide on the institutional arrangements, the scope of the mandate and the range of functions that their equality bodies should have. The need for Member States to establish strong equality bodies that are independent and effective was already highlighted in ECRI's General Policy

<sup>326</sup> EPRS, *Equality and the Fight against Racism and Xenophobia – Cost of Non-Europe* report, March 2018, p. 7, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/615660/EPRS\\_STU\(2018\)615660\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/615660/EPRS_STU(2018)615660_EN.pdf).

<sup>327</sup> European Commission, COM(2021) 139 final, op. cit., available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2021:139:FIN>.

<sup>328</sup> Ibid.

<sup>329</sup> FRA (2021), *Equality in the EU 20 years on from the initial implementation of the equality directives*, 30 April 2021, available at: <https://fra.europa.eu/en/publication/2021/fra-opinion-eu-equality-20-years>; EPRS, *Equality and the Fight against Racism and Xenophobia – Cost of Non-Europe* report, March 2018, available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_STU\(2018\)615660](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2018)615660).

Recommendation No. 2 (2017).<sup>330</sup> It recommends that equality bodies have two key functions: (i) to promote equality and prevent discrimination and (ii) to support people exposed to discrimination and intolerance and to pursue litigation on their behalf. ECRI argued that equality bodies could also be given the third function of taking decisions on discrimination complaints. **Equality bodies should have the necessary competences, powers and resources** to perform their tasks effectively, and be **accessible to all**. Along similar lines, in June 2018, the European Commission issued a Recommendation on standards for equality bodies, encouraging Member States to ensure greater independence, extended competences and adequate resources for their national specialised bodies, among other things.<sup>331</sup> However, the recommendations of both ECRI and the Commission are non-binding.

All EU Member States have now designated a specialised body for the promotion of equal treatment irrespective of racial or ethnic origin, as required by Article 13 of the Racial Equality Directive. However, in its 2021 Staff Working Document on equality bodies and the implementation of the Commission Recommendation on standards for equality bodies,<sup>332</sup> the European Commission highlights that there is a wide margin of discretion to decide on the structure and functioning of the equality bodies. This has led to major differences in the mandate, functions, structure, independence and resources allocated to equality bodies across the EU. In addition, a limited and unequal level of implementation of the Commission's 2018 Recommendations has resulted in very different levels of protection against discrimination between Member States. The latest report by the Commission on the Racial Equality Directive states clearly that equality bodies across the EU-27 are hindered in exercising their role fully.<sup>333</sup>

The Commission's assessment found that in most Member States, the grounds and fields of discrimination set out in the 2018 Recommendation are protected under the mandate of one or more national equality bodies. However, **there are still gaps in the protection for some grounds and/or some fields in around a third of Member States** (although the report does not mention in which Member States this is the case). In many Member States, multi-ground bodies are in place. However, they need support through a clear organisational structure to ensure sufficient focus and resources for each of the grounds.<sup>334</sup> Equality bodies should also be vested with a broad set of powers and appropriate legal standing to enable them to offer effective assistance to victims. It is worth noting that currently **some equality bodies lack the legal standing to litigate in a court of law in their own capacity** (although the report does not mention in which Member States this is the case). The Commission's assessment also shows that only half of national equality bodies can directly assist victims or bring strategic litigation.<sup>335</sup>

The Commission also recommends that equality bodies be able to carry out investigations, issue appropriate sanctions and to follow-up on their decisions. According to the Commission's assessment,

<sup>330</sup> ECRI General Policy Recommendation No. 2 revised, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2>.

<sup>331</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018, on standard for equality bodies, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018H0951>.

<sup>332</sup> Commission Staff Working Document Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies Accompanying the document Report from the Commission to the European Parliament and Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the 'Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the 'Employment Equality Directive') SWD(2021) 63 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0063>.

<sup>333</sup> Ibid., p. 29.

<sup>334</sup> Ibid., p. 6.

<sup>335</sup> Ibid., p. 8.

**most equality bodies do not have sufficient resources or the independence to fully fulfil the important role of collecting data and reporting on the current situation of discrimination** and equality in their Member State. For example, in around a third of Member States, equality bodies do not carry out surveys or have not done so for several years, with a lack of sufficient resources appearing to be the main cause of inaction. In order to guarantee the independence of equality bodies, they should be set up as a separate legal entity with a budget that is protected by legal provisions and should have a transparent and competency-based selection procedure for their leadership and limited sanctions/accountability.<sup>336</sup>

Another cross-cutting issue is the inadequacy of resources of equality bodies in terms of funding and staff, which impacts negatively on the execution of all their responsibilities and activities, including data collection. In terms of ensuring available and accessible assistance to protect victims of discrimination, the Commission pointed out that additional efforts need to be made to cater for the victims' diverse needs and to bring equality bodies closer through physical presence and outreach to people. While equality bodies in all Member States engage in some form of cooperation and coordination, this happens to varying degrees of intensity and scope. However, regular and effective cooperation and coordination of equality bodies is needed and requires clear mechanisms of engagement that are formal, structured and transparent.<sup>337</sup> The lack of awareness of the existence of equality bodies is another example of a recurring challenge to the effectiveness of equality bodies. In a 2017 survey by FRA, 71 % of respondents from minority ethnic groups (EU average) were not aware of any organisation that offers support or advice to victims of discrimination. This awareness rate varies among EU countries/minority groups.<sup>338</sup>

With the above in mind, the Commission is currently assessing the option of setting binding minimum standards for equality bodies, building on the 2018 Recommendation, as well as on other sources such as ECRI's General Policy Recommendation No. 2 and the Paris Principles applied to National Human Rights Institutions.<sup>339</sup>

## **(2) Supporting Member States in monitoring application of the Racial Equality Directive**

In recent years, the Commission has reinforced monitoring of implementation of the Racial Equality Directive. A particular focus was put on discrimination against Roma children in education. In its 2021 application report,<sup>340</sup> the Commission highlighted the importance of closer monitoring by Member States of the implementation of the directive, in particular in relation to protection against victimisation and the application of effective, proportionate and dissuasive sanctions. The Commission will offer support in this regard, e.g. by commissioning a study on sanctions.

Implementation of the Racial Equality Directive is one of the few areas where the Commission has the power to initiate infringement proceedings in the field of racial discrimination. However there is

<sup>336</sup> Ibid., p. 19.

<sup>337</sup> Ibid., p. 28 f.

<sup>338</sup> FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II)*, p. 51, available at:

<https://fra.europa.eu/en/publication/2017/second-european-union-minorities-and-discrimination-survey-main-results>.

<sup>339</sup> Principles relating to the Status of National Institutions (The Paris Principles) Adopted by General Assembly resolution 48/134 of 20 December 1993, available at:

<https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

<sup>340</sup> Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the 'Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the 'Employment Equality Directive') {SWD(2021) 63 final}, available at: [https://ec.europa.eu/info/sites/default/files/report\\_on\\_the\\_application\\_of\\_the\\_racial\\_equality\\_directive\\_and\\_the\\_employment\\_equality\\_directive\\_en.pdf](https://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equality_directive_en.pdf).

evidence that the Commission is reluctant to initiate infringement proceedings against Member States, with only seven cases launched relating to the competence of the equality body (SI and FI), discrimination of Roma children in education (HU, SK and CZ) and non-conformity of sanctions (HU).<sup>341</sup> Civil society organisations believe that the Commission could be more proactive in using infringement proceedings to encourage or force Member States to address institutional racism and discrimination in the areas covered by the directive.<sup>342</sup>

### **(3 and 4) Encouraging equality data collection and tackling the underreporting of hate speech and hate crime**

The Racial Equality Directive (Article 13(2)) requires that equality bodies conduct independent surveys, publish independent reports and make recommendations on issues relating to racial discrimination. Collection of the right data can be useful not only for determining patterns and drawing conclusions – thereby enabling identification of whether measures work – but also for subsequent action on combating racism and discrimination. Evidence suggests, however, that there is still a clear lack of reliable data collection, particularly in the area of hate speech and hate crimes, often rendering these crimes invisible. This can create problems for prosecutors in their assessment and sentencing. A number of steps were undertaken at the EU level to address the lack of equality data and the need for practical guidance on equality data collection. In addition, Member States reported good practices of equality data collection.<sup>343</sup> Examples include a longitudinal survey organised by the German Federal Anti-Discrimination Agency (FADA) and the creation of a data hub on discrimination data in Finland. The sub-group on equality data of the European Commission's High Level Group on Non-Discrimination, Equality and Diversity published a guidance note on the collection and use of equality data based on racial or ethnic origin.<sup>344</sup>

However, many Member States are reluctant to collect equality data.<sup>345</sup> Therefore, there is still an important problem at the national level, and room for improvement in terms of the regularity and comparability of the data, the collection of data on complaints and on cases of discrimination (including on sanctions issued), and the gathering of data broken down by racial or ethnic origin, among other things.

In addition, underreporting remains a problem. As a result, many victims are left without any form of redress, which in turns negatively affects access to justice, as well as the effectiveness of the Racial Equality Directive more generally.<sup>346</sup>

<sup>341</sup> Infringement proceedings available for search at: [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/?lang\\_code=en/](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/?lang_code=en/).

<sup>342</sup> Interviews with a civil society organisation in Hungary, September 2021.

<sup>343</sup> European Commission, SWD(2021) 63 final, op. cit. p. 14 f., available at: [https://ec.europa.eu/info/sites/default/files/commission\\_staff\\_working\\_document\\_-\\_equality\\_bodies\\_and\\_the\\_implementation\\_of\\_the\\_commission\\_recommendation\\_on\\_standards\\_for\\_equality\\_bodies\\_en.pdf](https://ec.europa.eu/info/sites/default/files/commission_staff_working_document_-_equality_bodies_and_the_implementation_of_the_commission_recommendation_on_standards_for_equality_bodies_en.pdf).

<sup>344</sup> High Level Group on Non-Discrimination, Equality and Diversity – sub-group on equality data, Guidance note on the collection and use of equality data based on racial or ethnic origin, September 2021, available at: [https://ec.europa.eu/info/sites/default/files/guidance\\_note\\_on\\_the\\_collection\\_and\\_use\\_of\\_equality\\_data\\_based\\_on\\_racial\\_or\\_ethnic\\_origin.pdf](https://ec.europa.eu/info/sites/default/files/guidance_note_on_the_collection_and_use_of_equality_data_based_on_racial_or_ethnic_origin.pdf).

<sup>345</sup> *The Guardian*, 'France and Germany urged to rethink reluctance to gather ethnicity data', available at: <https://www.theguardian.com/world/2020/jun/16/france-and-germany-urged-to-rethink-reluctance-to-gather-ethnicity-data>.

<sup>346</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>.

A 2018 report on the 'Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia' also stated that law enforcement and criminal justice staff lack the skills and awareness to tackle hate crime effectively. Finally, in a fast-moving online environment, the Framework Decision on Racism and Xenophobia is not equipped to tackle the emerging threat of online hate speech.<sup>347</sup> These key gaps continue to persist, with several reports highlighting the variability of implementation across the Member States.<sup>348</sup>

#### **(5) Encouraging full and/or correct transposition and implementation of the Framework Decision on Racism and Xenophobia**

There are some issues concerning the full and/or correct transposition and implementation of the Framework Decision. By December 2021, the European Commission had sent letters of formal notice to eight Member States: Belgium, Bulgaria, Germany, Finland, Hungary, Luxemburg, Poland and Sweden.<sup>349</sup> Their national laws do not fully or accurately transpose EU rules on combating racism and xenophobia by means of criminal law. By October 2020, the Commission had sent letters of formal notice to Estonia and Romania on this matter.<sup>350</sup>

This lack of complete or correct transposition and implementation constitutes a significant barrier to protection against racism and xenophobia.<sup>351</sup>

#### **(6) Overcoming barriers to justice for victims of discrimination, including problems with the existence and compliance of sanctions and remedies applied to instances of discrimination at the national level**

Under Article 15 of the Racial Equality Directive and Article 17 of the Employment Equality Directive, Member States must provide for effective, proportionate and dissuasive sanctions applicable to breaches of national provisions prohibiting discrimination in line with the directives. However, the directives do not prescribe specific measures and instead allow Member States to decide on suitable remedies. This has been confirmed in several judgments by the European Court of Justice.<sup>352</sup> Judicial remedies may include fines, compensations, an injunction for the wrongdoer to perform or refrain from a certain action, publicising the wrongdoing, requiring an apology or imposing criminal sanctions.<sup>353</sup> Thus, sanctions may include financial compensation, but may also be non-pecuniary.

<sup>347</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law assessment of the Framework Decision in EPRS, Equality and the Fight against Racism and Xenophobia op. cit., p. 18, available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_STU\(2018\)615660](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2018)615660).

<sup>348</sup> See in particular FRA, *Equality in the EU 20 years on from the initial implementation of the equality directives*, April 2021, available at: <https://fra.europa.eu/en/publication/2021/fra-opinion-eu-equality-20-years>.

<sup>349</sup> See European Commission website; [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_6201](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201) and [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_441](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441).

<sup>350</sup> See European Commission website: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_1687](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687).

<sup>351</sup> Ibid., p. 18.

<sup>352</sup> See, *inter alia*, judgment of 31 May 2013 in *Asociația Accept* (Judgment of the Court (Third Chamber), 25 April 2013 *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*, Request for a preliminary ruling from the Curtea de Apel București - C-81/12, ECLI:EU:C:2013:275), paragraph 61; judgment of 17 December 2015 in *Arjona Camacho* (Judgment of the Court (Fourth Chamber) of 17 December 2015, *María Auxiliadora Arjona Camacho v Seguridad Seguridad España, SA*, Request for a preliminary ruling from the Juzgado de lo Social - C-407/14 ECLI:EU:C:2015:831), paragraph 30.

<sup>353</sup> European Commission, Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the 'Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the 'Employment Equality Directive'), {SWD(2021) 63 final}, Brussels, 19 March 2021, p. 10, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0002>.

A key shortcoming in the application of the EU legal provisions on non-discrimination relates to the sanctions applied across Member States. Research suggests that, as a whole, no single national enforcement system appears to be truly all-encompassing. Instead they are all mostly based on an individualistic and remedial approach.<sup>354</sup> According to legal practitioners, this approach does 'not guarantee effective redress nor does it act as an effective deterrent'.<sup>355</sup> The Court of Justice of the EU also provided guidance through some of its judgments on how to interpret the legal requirements on sanctions. According to the CJEU, remedies must (1) respect the principle of proportionality;<sup>356</sup> (2) guarantee real and effective judicial protection;<sup>357</sup> (3) ensure a genuinely deterrent effect and prevent further discrimination;<sup>358</sup> (4) impose penalties even in the absence of an identifiable victim<sup>359</sup>. In addition, any pecuniary reparation must be (1) adequate in relation to the loss and damage sustained; (2) not subject to a pre-determined upper limit;<sup>360</sup> (3) a purely symbolic sanction is not considered sufficient<sup>361</sup>.

However, the Commission's 2021 Report on equality bodies and the implementation of the Commission Recommendation on standards for equality bodies identified difficulties in implementation of the directives, namely in relation to compensation ceilings and cases without an identifiable victim. In addition, some national courts tend to establish rather moderate levels of damages, seem to favour non-monetary compensation or offer amounts of compensation at the lower end of the scale. These tendencies can discourage victims from taking legal action or from seeking pecuniary compensation in court.<sup>362</sup>

### 3.4. Other gaps and constraints

Beyond those identified above, there are additional gaps and constraints in the existing legislative and policy architecture:

**Racism in policing and law enforcement** is an area which is very problematic (as described in Subsection 2.2.1), but which has not been high on the European Commission's political agenda since the Equality Directive was passed as it argues that it falls outside of the EU's competency. The Racial Equality Directive, as one of the milestones of anti-discrimination legislation, does not apply to policing

<sup>354</sup> European network of legal experts in gender equality and non-discrimination (2020), *A comparative analysis of non-discrimination law in Europe 2020*, p. 95, available at: <https://www.equalitylaw.eu/downloads/5349-a-comparative-analysis-of-non-discrimination-law-in-europe-2020-1-31-mb>.

<sup>355</sup> Equinet (2020), *Future of equality legislation in Europe – Synthesis report of the online roundtable*, Brussels, Equinet Secretariat. See also: FRA (2021), *Equality in the EU 20 years on from the initial implementation of the equality directives*, 30 April 2021, p. 6, available at: <https://fra.europa.eu/en/publication/2021/fra-opinion-eu-equality-20-years>.

<sup>356</sup> See, inter alia, judgment of 31 May 2013 in *Asociația Accept* (Judgment of the Court (Third Chamber), 25 April 2013 *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*, Request for a preliminary ruling from the Curtea de Apel București - C-81/12, ECLI:EU:C:2013:275), paragraph 63; with regard to the general principle of proportionality in relation to sanctions, the Court cited Case C101/01 *Lindqvist*, 6.11.2003, ECLI:EU:C:2003:596. and Case C430/05 *Nttonik and Pikoulas*, 5.07.2007, ECLI:EU:C:2007:410 in the *Asociația Accept* judgment.

<sup>357</sup> See, *inter alia*, *Asociația Accept* judgment (footnote 83), paragraph 63.

<sup>358</sup> See *Feryn* judgment (footnote 65), paragraph 38; *Asociația Accept* judgment (footnote 83), paragraph 62. In several Member States (e.g. AT, BE, CZ, IT, LT, LU, LV, RO and SI), national legislation provides that (under some conditions) penalties may be imposed in the absence of a specific victim.

<sup>359</sup> *Ibid.*

<sup>360</sup> See judgment of 2 August 1993 in *Marshall* (C-271/91, ECLI:EU:C:1993:335), paragraphs 30-32.

<sup>361</sup> See judgment of 31 May 2013 in *Asociația Accept* (C-81/12, ECLI:EU:C:2013:275), paragraph 64.

<sup>362</sup> European Commission, SWD(2021) 63 final, op. cit., p. 10.

or law enforcement.<sup>363</sup> Rather, the directive focuses on methods of combating interpersonal racist violence by means of criminal law and therefore **leaves a gap in terms of legal protection for victims when discriminated against by law enforcement** officers. However, research findings confirm that racism and discrimination by police and law enforcement are widespread across the EU.<sup>364</sup> Such behaviour is not only unlawful but can also undermine trust in authorities and result in underreporting of racially motivated crimes, including hate speech and hate crimes. Civil society organisations have long called upon EU institutions to address the gap in the legal framework related to racism in policing and law enforcement.<sup>365</sup> The EU Anti-racism Action Plan 2020-2025 seeks to strengthen the area of non-discrimination in law enforcement. For example, it recommends (1) for FRA to establish and publish 'good practices' promoting 'fair policing'; (2) to collect more information on 'police attitudes towards minorities'; (3) for CEPOL to make training packages on 'human rights, ethnics and racism'; and (4) for CEPOL to attract more attention to 'fair and inclusive policing' among the older generations of police and law enforcement officers.<sup>366</sup>

However, civil society organisations and academics have highlighted a number of shortcomings of the action plan. For example, the action plan does not mention brutality, harassment or death caused by security forces, and does not take the extent of racism, discrimination and police violence in Europe into sufficient account.<sup>367</sup> In addition, the action plan does not address the connection between borders, migration policies and structural racism. In particular, it does not mention the intersectionality between law enforcement and migration.<sup>368</sup>

**The European response to irregular migration has focused on criminalisation.** The most recent example is the EU action plan against migrant smuggling (2021-2025).<sup>369</sup> The action plan perpetuates the image of smuggling operations operated by powerful criminal networks, whereas the reality is that the majority of those considered smugglers are friends and families of migrants.<sup>370</sup> Another problematic aspect of the criminalisation of migration is the increasing interoperability between migration and law enforcement databases. The interoperability regulations<sup>371</sup> establish a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum, migration, borders and visas. Among the risks identified in the development of this interoperability framework is the increased risk of 'discrimination on grounds of nationality [and]

<sup>363</sup> Equinox (2021), *'Who protects us from the police?' – Structural Racism in Law Enforcement in the European Union*, p. 21, available at: <https://www.equinox-eu.com/wp-content/uploads/2021/10/Equinox-Who-Protects-Us-from-the-Police.pdf>.

<sup>364</sup> For example: FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, p. 68 ff.

<sup>365</sup> See for example ENAR, *Policing racialised groups – briefing paper*, available at: [https://www.enar-eu.org/IMG/pdf/policing\\_racialised\\_groups\\_-\\_briefing\\_ojaku\\_without\\_cover\\_10\\_revised\\_22062020.pdf](https://www.enar-eu.org/IMG/pdf/policing_racialised_groups_-_briefing_ojaku_without_cover_10_revised_22062020.pdf).

<sup>366</sup> European Commission, COM(2020) 565 final, op. cit., p. 7 ff.

<sup>367</sup> Equinox, *Structural Racism in Law Enforcement*, op. cit., p. 25.

<sup>368</sup> Ibid.

<sup>369</sup> European Commission, A renewed EU action plan against migrant smuggling (2021-2025) – COM(2021) 591, available at: [https://ec.europa.eu/home-affairs/renewed-eu-action-plan-against-migrant-smuggling-2021-2025-com-2021-591\\_en](https://ec.europa.eu/home-affairs/renewed-eu-action-plan-against-migrant-smuggling-2021-2025-com-2021-591_en).

<sup>370</sup> European University Institute, 'Five Misconceptions about migrant smuggling', Policy Brief Issue 2018/07, May 2018, available at: <https://globalinitiative.net/wp-content/uploads/2018/05/Five-Misconceptions-About-Migrant-Smuggling-European-University-Institute-2018.pdf>.

<sup>371</sup> Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA and Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.

**discrimination on the basis of racial or ethnic origin**<sup>372</sup> due to the risk of data on different databases being used for purposes other than those originally intended.

Another gap relates to the **regulation of Artificial Intelligence (AI) and decision-making algorithms**. Some elements of the proposed Artificial Intelligence Act (AIA)<sup>373</sup> have been criticised by civil society, in particular the international advocacy group European Digital Rights (EDRi), with emphasis on:

- The lack of mechanisms to add unacceptable uses of AI in the future, leaving the door open for uses including predictive policing and use of AI to assess the risk of future criminality, which would likely exacerbate existing discrimination;<sup>374</sup>
- Threats to equality and non-discrimination linked to uses of biometric categorisation that are considered in the proposal to have a limited risk profile, but which can severely and unduly restrict fundamental rights;<sup>375</sup>
- The assumption that data quality can solve the issues emanating from high-risk AI systems; these systems exacerbate existing bias and structural inequalities, EDRi states that even with quality data, machine learning algorithms can lead to discrimination.<sup>376</sup>

The fact that the AIA proposal was put forward shortly after introduction of the EU Anti-racism Action Plan underlines a gap not in the legal framework itself, but in the process of designing legislation, as civil society representatives were not involved in the design (see Section 4.2 on the Anti-racism Action Plan). Mainstreaming anti-racism and non-discrimination is a key step in addressing institutional racism at play. The creation of the position of a Coordinator for anti-racism and the Task Force on Equality in the Commission are a step in the right direction, but an institutional cultural shift is required to ensure equality is at the core of policy design in the future.

The following chapter will provide an assessment of the EU Anti-racism Action Plan 2020–2025 in order to identify the ways in which it may pave the way for addressing the gaps in policy and legislation discussed in this chapter.

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<sup>372</sup> Cristina Blasi Casagran, 'Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU', *Human Rights Law Review*, Volume 21, Issue 2, June 2021, pp. 433–457, p. 454, <https://doi.org/10.1093/hrlr/ngaa057>.

<sup>373</sup> Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain union legislative acts, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>.

<sup>374</sup> EDRi, European Commission adoption consultation: Artificial Intelligence Act, Brussels, 3 August 2021, p. 14 available at: <https://edri.org/wp-content/uploads/2021/08/European-Digital-Rights-EDRi-submission-to-European-Commission-adoption-consultation-on-the-Artificial-Intelligence-Act-August-2021.pdf>.

<sup>375</sup> Ibid. p. 17.

<sup>376</sup> Ibid.

## 4. EU ANTI-RACISM ACTION PLAN

### KEY FINDINGS

- The EU Anti-racism Action Plan was not foreseen as part of the Commission's work programme and was **developed in response** to protests and pressure from civil society organisations.
- The action plan includes a **sophisticated definition of racism** and introduces the concepts of institutional and structural racism, as well as examples of specific forms of racism.
- The text of the **action plan addresses the gaps and challenges identified in Chapter 3 of this study**, including the strengthening of equality bodies, better implementation of the existing legal framework, a focus on the collection of quality and comparable data broken down by race and ethnicity, and the need to mainstream anti-racism policies.
- **Discrimination by law enforcement is mentioned** although the actions listed do not go beyond training and sharing best practices to prevent discriminatory attitudes, including profiling in law enforcement, the gathering of data on police attitudes towards minorities and addressing issues of underreporting.
- Overall, the **action plan was well received by civil society organisations**; in particular due to its **definition of racism**, the call for the development of **national action plans against racism** and the collection of **robust and comparable data** and acknowledgement of the need to address **racism in law enforcement**. The Commission's commitment to **mainstreaming** and **improving racial diversity and representation** within its ranks was also welcomed.
- On the other hand, criticism of the action plan includes the **lack of clear implementation and monitoring mechanisms**, the lack of defined measures to address structural **racism in law enforcement** and the **data collection issue**.
- There is also a perceived risk that the action plan resulted from a specific social and political context in 2020 following the death of George Floyd and that **anti-racism is accorded less priority** today than when the plan was adopted.

The publication of the EU Anti-racism Action Plan (ARAP) marked an important threshold in the EU's approach to combating racism. It introduced concepts and an understanding of the root causes of racism which previous policy documents shied away from. Published at a time when anti-racist mobilisation was forcing governments to face issues that they had sought to avoid in the past, it represented an important milestone.

### 4.1. Background

The murder of George Floyd in Minneapolis in May 2020 was the trigger for anti-racist demonstrations in the United States and Europe. However, the Black Lives Matter (BLM) movement arose following acquittal of a man who had shot to death Trayvon Martin, a black man walking in the street. In Europe,

the wave of demonstrations was of particular significance in countries with a history of anti-racist mobilisation or that had experienced instances of death of black people at the hands of the police.<sup>377</sup>

In line with other political leaders, Margaritis Schinas, the European Commissioner for Promoting our European Way of Life, was quoted as saying that there were no issues in Europe pertaining to police brutality.<sup>378</sup> In February 2021, over 150 civil society organisations wrote an open letter to Ursula von der Leyen, the President of the European Commission, urging the Commission to prioritise addressing police violence and structural racism in the EU.<sup>379</sup> Shortly after, the European Parliament adopted a resolution on the anti-racism protests following the death of George Floyd.<sup>380</sup> The resolution demonstrated the Parliament's willingness to act, and addressed issues of police brutality and structural racism. It also strongly condemned all forms of racism, hate and violence, as well as any physical or verbal attacks targeting people of a particular racial or ethnic origin, religion or belief, or nationality, in both the public and private spheres. The resolution further recalled that there is no place for racism and discrimination in our societies; and asked that the Commission and the Council take a strong and decisive stand against racism, violence and injustice in Europe. Over the following months, anti-racism organisations in Europe published policy briefs and suggestions on the content of the initiative announced by the European Commission as an action plan for racial equality.<sup>381</sup>

The EU Anti-racism Action Plan 2020-2025 was announced on 16 September 2020 during the State of the Union address by President von der Leyen at the European Parliament Plenary.<sup>382</sup> Two days later, on 18 September 2020, the Commission published its plan to step up action against racism in the European Union.<sup>383</sup> It aims to make 'a racism-free EU a reality'. The action plan sets out a series of measures to step up action and bring together actors at all levels to address racism more effectively in the EU.

## 4.2. The action plan

The action plan includes several breakthroughs in the fight against racism; these include the introduction of concepts such as structural, institutional and historical racism, as well as introduction of the concept of intersectionality. The action plan explicitly mentions colonialism, slavery and the Holocaust. It marks the first time that an EU policy has acknowledged racism as a system that stems from the continent's history of slavery and colonialism, whose legacies still create inequalities today.<sup>384</sup>

<sup>377</sup> DeZIM, op. cit., p. 30.

<sup>378</sup> *The Parliament Magazine*, 'Margaritis Schinas under fire for failing to respond to complaint by leading rights group', available at: <https://www.theparliamentmagazine.eu/news/article/margaritis-schinas-under-fire-for-failing-to-respond-to-complaint-by-leading-rights-group>.

<sup>379</sup> ENAR et al, Open Letter to European Commission President Ursula von der Leyen, 12 June 2020, available at: [https://www.enar-eu.org/IMG/pdf/open\\_letter\\_to\\_president\\_von\\_der\\_leyen\\_-\\_eu\\_anti-racism\\_summit\\_recommendations.pdf](https://www.enar-eu.org/IMG/pdf/open_letter_to_president_von_der_leyen_-_eu_anti-racism_summit_recommendations.pdf).

<sup>380</sup> European Parliament resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd (2020/2685(RSP)).

<sup>381</sup> See for example, ENAR Policy briefing – EC action plan for racial equality and justice, July 2020, available at: <https://www.enar-eu.org/Open-letter-A-chance-for-the-EU-to-make-history-invest-in-equality-and-justice>

<sup>382</sup> The full text of the speech is available at: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655).

<sup>383</sup> European Commission website: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en).

<sup>384</sup> Prof. Ilke Adam, in *Politico*, 'Opinion: EU's fight against racism isn't working', 19 March 2021, available at: <https://www.politico.eu/article/eus-fight-against-racism-isnt-working/>, last accessed on 1 November 2021.

The action plan consists of five parts:

The **introduction** sets out the reasons for the document and its background:

*'Racism comes in different forms. Overt expressions of individual racism and racial discrimination are the most obvious [...] but other, less explicit forms of racism and racial discrimination, such as those based on unconscious bias, can be equally damaging. Racist and discriminatory behaviours can be embedded in social, financial and political institutions, impacting on the levers of power and on policy-making. This structural racism perpetuates the barriers placed in the way of citizens solely due to their racial or ethnic origin.'*<sup>385</sup>

It also provides examples of forms of racism (anti-black racism, antigypsyism, antisemitism and anti-Asian racism, that link to religion or beliefs in cases such as anti-Muslim hatred).<sup>386</sup>

The **second section focuses on racism by individuals**; it first illustrates the **existing legal framework** for tackling racism and racial discrimination. It states that the Commission will report on implementation of the Racial Equality Directive, and that this report may lead to legislation being proposed in 2022 and to the initiation of infringement proceedings. This section also addresses the importance of the role and independence of equality bodies, as it encourages Member States to enable strategic litigation. Regarding other elements of the legal framework, this section mentions that infringement procedures will be launched with regard to enforcement of the Framework Decision on Combating Racism and Xenophobia. It also summarises other key legislative acts (such as the Audiovisual Media Services Directive (AMSD)). It suggests working with Member States to identify gaps and best practices in tackling violent extremism and working with IT companies to counter online hate speech and promote acceptance of diversity.<sup>387</sup>

The second section also looks at paths to **'tackle racism in everyday life'**. Here the action plan discusses discrimination by law enforcement authorities, but refrains from suggesting any action beyond training and sharing best practices to prevent discriminatory attitudes, such as profiling in law enforcement, the gathering of data on police attitudes towards minorities, and addressing issues of underreporting. Regarding other sectors, it states that (i) it will ensure that the proposal for a horizontal legislative framework on AI<sup>388</sup> addresses the risk of bias and discrimination of AI systems;<sup>389</sup> (ii) in the areas of employment, education, health and housing, 'where legal protection is not enough, the Commission will combat racism also through policy and funding programmes'.<sup>390</sup>

**Structural racism** is the focus of the action plan's third section, which comprises three subsections on (i) policies to turn the tide, (ii) a framework for delivery, and (iii) positive action by the EU. Recognising the importance of prejudice, stereotypes, lack of knowledge and disinformation in perpetrating racist attitudes, the action plan calls for the development and organisation of awareness-raising seminars on racial and ethnic stereotypes for journalists and civil society, mainstreaming inclusion and awareness in education policies and establishing key commemorative days linked to racism. In order to design, adapt and monitor the effectiveness of policies and the perpetuation of racist attitudes and structural

<sup>385</sup> European Commission, Anti-racism Action Plan, op. cit., pp. 1-2.

<sup>386</sup> Ibid. p. 2.

<sup>387</sup> Ibid. pp. 3-6.

<sup>388</sup> Now published as the Artificial Intelligence Act – see Chapter 3.

<sup>389</sup> As pointed out in this report, some civil society organisations such as EDRI disagree with this assessment.

<sup>390</sup> European Commission, Anti-racism Action Plan, op. cit., 7-13.

racism, the action plan calls for a consistent approach for EU and Member States on equality data collection for more and better data disaggregated by racial or ethnic origin.<sup>391</sup>

In terms of the **framework for delivery**, the action plan acknowledges the effectiveness of national action plans against racism and calls for all Member States to adopt them, providing guiding principles and offering support from the Commission in developing them. It also acknowledges work at the local level by the private sector. The importance of equality mainstreaming in developing EU policy is reiterated.<sup>392</sup> Continued support for equality objectives through EU funding, and combating racism and discrimination in external policies are also mentioned.<sup>393</sup>

With regard to **positive action**, the action plan discusses the need to ensure democratic participation and representation for people with a minority racial or ethnic background. The need to involve Member States, equality bodies, local level representatives and also civil society organisations in policy dialogue is mentioned as a key way to address the topics mentioned in the action plan, as well as to address the need for mainstreaming.<sup>394</sup>

Given the focus of the action plan on structural racism, its fourth section relates to the **EU's own human resources**. It lists a series of actions to be implemented by the Commission to foster diversity, including the creation of a Diversity and Inclusion Office, the collection of data on the diversity of the Commission staff, paths to encourage the employment of a more diverse workforce, and other actions fostering diversity in the Commission.<sup>395</sup>

The fifth and final section is the **conclusion** which recaps, among other things, the call for Member States to adopt their national action plans by the end of 2022.<sup>396</sup>

Overall, the action plan lists 18 actions to be undertaken by the Commission, 10 of which the Commission encourages Member States to take and one action whose implementation is shared between FRA and CEPOL. These actions are listed in the tables below.

**Table 3: EU Anti-racism Action Plan 2020-2025 – actions to be undertaken by the Commission**

ARAP heading	Action
2. Racism by individuals – tackling racism and racial discrimination through legislation	Report on implementation of the Racial Equality Directive in 2021
	By 2022, present any legislation required to address shortcomings, including to strengthen the role and independence of equality bodies
	Ensure full and correct transposition and implementation of the Framework Decision on Racism and Xenophobia across the EU, including through infringement procedures

<sup>391</sup> Ibid. pp. 13-16.

<sup>392</sup> The Task Force on Equality, whose role it is to support mainstreaming efforts within the Commission, was already created at the outset of the current Commission's mandate.

<sup>393</sup> European Commission, Anti-racism Action Plan, op. cit., pp. 16-21.

<sup>394</sup> Ibid. pp. 21-23.

<sup>395</sup> Ibid. pp. 23-25.

<sup>396</sup> Ibid. pp. 25-26.

ARAP heading	Action
2. Racism by individuals – beyond EU legislation, doing more to tackle racism in everyday life	Ensure that the legislative framework on AI will specifically address the risk of bias and discrimination built into AI systems
	Use policy measures and funding programmes to combat racism and discrimination in access to employment, education and training, healthcare, social protection and housing
	Ensure that the upcoming comprehensive strategy on children's rights will contain particular actions on tackling racism and discrimination
3. Structural racism – policies to turn the tide	Carry out a series of actions to address racial and ethnic stereotypes with the media, civil society and representatives of people with a minority racial or ethnic background
	Launch action to drive a consistent approach on equality data collection, in particular as regards data disaggregated by racial or ethnic origin
3. Structural racism – a framework for delivery	Put forward the main principles and elements required to produce effective national action plans against racism by the end of 2021, as a result of a joint work with the authorities of the Member States
	Issue a first report on the implementation of national action plans by the end of 2023
	Launch an annual designation of European capital(s) of inclusion and diversity
	Organise a high-level event on the consideration of racial and ethnic origin in private companies' diversity strategies in spring 2021
	Together with the High Representative, seek to further strengthen partnerships with key international, regional and bilateral partners towards a new revitalised approach to the anti-racism agenda
3. Structural racism – positive action by the EU	Strengthen its dialogue with Member States, equality bodies, civil society organisations and local level representatives for implementation of this action plan
	Appoint a coordinator for anti-racism
	Organise a summit against racism in spring 2021
4. The EU's own human resources	Lead by example as an institution by taking steps to significantly improve the representativeness of Commission staff through measures targeting recruitment and selection
	Invite other EU institutions to take steps in line with those of this action plan in order to foster diversity and inclusion in their respective workplaces

Source: Asterisk Research and Analysis assessment of the ARAP.

**Table 4: EU Anti-racism Action Plan 2020-2025 – actions Member States are encouraged to take**

ARAP heading	Action
2. Racism by individuals – tackling racism and racial discrimination through legislation	Ensure that EU law is fully transposed and properly applied in Member States
	Swiftly reach an agreement on the 2008 Commission proposal to implement equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation
2. Racism by individuals – beyond EU legislation, doing more to tackle racism in everyday life	Step up efforts to prevent discriminatory attitudes among law enforcement authorities and to boost the credibility of law enforcement work against hate crimes
	Map national responses to violent extremism and identify gaps and best practices in tackling it
3. Structural racism – policies to turn the tide	Actively address racial and ethnic stereotypes through the media, education, culture and sport
	Improve the collection of data disaggregated by racial or ethnic origin
3. Structural racism – a framework for delivery	Adopt national action plans against racism by the end of 2022
	Ensure that civil society representatives and equality bodies are involved in the design, implementation and evaluation of national action plans against racism
3. Structural racism – positive action by the EU	Adopt specific measures to avoid, or compensate for, disadvantages linked to discrimination on grounds of racial or ethnic origin where there is provision for protection
	Identify ways to promote duties to integrate equality considerations into the day-to-day work of public authorities

Source: Asterisk Research and Analysis assessment of the ARAP.

**Table 5: EU Anti-racism Action Plan 2020-2025 – Other actions to be taken**

ARAP heading	Action
2. Racism by individuals – beyond EU legislation, doing more to tackle racism in everyday life	FRA should collect data and disseminate good practices promoting fair policing
	CEPOL should deliver effective training programmes

Source: Asterisk Research and Analysis assessment of the ARAP.

### 4.3. Assessment of the action plan

#### 4.3.1. A document that represents a real breakthrough

The action plan was welcomed by civil society organisations as a step forward in anti-racism and anti-discrimination.

First, the mere **existence of an action plan is viewed positively** by civil society actors as it sets a political priority and provides a framework against which the actions taken can be assessed. The publication of a high-profile document by the Commission at the time when it was being called for by many civil society organisations was seen as a positive step.

Second, as mentioned in Section 4.2 above, it is the first EU policy document to recognise the **structural dimension of racism**. ENAR welcomed recognition in the action plan of the 'structural dimension of racism and the specific forms of racism affecting different racialised groups in Europe'.<sup>397</sup> The action plan provides a sophisticated definition of racism, including some specific forms. According to one civil society member interviewed, the definition is 'probably one of the best ones adopted institutionally in Europe'.<sup>398</sup> In their view, it is a real breakthrough in the understanding and comprehension of what is racism at the structural, institutional level and from an intersectional point of view. The adoption of such a definition brings hope that changes can be encouraged at the national level.

The action plan's focus is on encouraging and supporting Member States to **develop and adopt national action plans against racism**. The Durban Declaration of 2001 called for countries to develop NAPARs as a way of developing a diagnosis of the manifestations, causes and consequences of racism and xenophobia within the specific context of the country.<sup>399</sup> NAPARs are an important tool for questioning the reasons behind the lack of implementation of existing legislation in force in Member States and can complement the tackling of more elaborate forms of racism. They can also help Member States to address some of the structural action needed to be put in place. Finally, adoption of NAPARs also sends a strong symbolic message by placing the fight against racism higher on the national agenda.<sup>400</sup> The development of guiding principles will also allow for a minimum level of coherence and therefore comparability between Member States.

The lack of robust, consistent and comparable data **disaggregated by racial or ethnic origin** has been a problem faced by policymakers, activists and researchers and a key barrier to identifying and addressing existing structural inequalities. The fact that the action plan proposes actions to develop methods that would allow for the collection of such data while ensuring respect for privacy and Member States' national contexts is therefore a positive step.<sup>401</sup>

<sup>397</sup> ENAR, *Overdue action against racism by the European Union*, 23 September 2020, available at: <https://www.enar-eu.org/Overdue-action-against-racism-by-the-European-Union>.

<sup>398</sup> Interview with a member of a civil society organisation, 7 September 2021.

<sup>399</sup> Van Hout, B., *Tackling legacies of Europe's colonial past in the wake of Black Lives Matter – An interdisciplinary symposium*, OHCHR, 24 March 2021, available at: <https://europe.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2597&LangID=E>.

<sup>400</sup> ENAR (2019), *Lessons for effective national anti-racism policies, National Action Plans Against Racism*, pp. 5-6, available at: <https://www.enar-eu.org/National-Action-Plans-Against-Racism-Lessons-for-effective-national-anti-racism>.

<sup>401</sup> ENAR, *Overdue action against racism*, op. cit.

The acknowledgement of the need to address **racism in law enforcement** is also welcomed. Not only does this address the demands of the European Parliament, but it is also highly topical given the historical context in which the action plan was developed.<sup>402</sup>

Inclusion in the action plan of the need to ensure **mainstreaming** should ensure that its impact goes beyond the issues it covers. Ensuring future EU policies benefit all and do not contribute to further racial inequalities was welcomed by civil society organisations.<sup>403</sup>

The action plan’s emphasis on engaging civil society and grassroots organisations, and the recognition that the people most impacted by structural racism should have the power to be involved in change, was seen as a positive step.<sup>404</sup>

The steps announced by the European Commission to **improve racial diversity and representation within its ranks** and encourage other EU institutions to do the same was welcomed. It also signals a change in the understanding of the structure that perpetrates racism and discrimination.<sup>405</sup> The appointment of a coordinator for anti-racism was also viewed positively by the overwhelming majority of the civil society members interviewed as part of this study at the EU level.

Beyond the administration, ethnic minorities in general and people of colour in particular are unrepresented in the European Parliament. There are only 24 MEPs with a racial or ethnic minority background (representing 3.3 % of the total) from 12 Member States. While this is an issue common to all Member States, Member States and Parliament should actively seek to engage political groups to put forward more diverse candidates and promote initiatives to encourage voters, especially racialised ones, to participate in elections (including those to the European Parliament).<sup>406</sup>

As demonstrated by the positive reactions of civil society to the content of the action plan,<sup>407</sup> it addresses many of the gaps and challenges identified in Chapter 3 of this report. The table below provides a brief summary of the gaps and an assessment of the ways in which they are addressed by the EU Anti-racism Action Plan.

**Table 6: Extent to which the gaps and challenges identified in the EU policy framework are addressed by the EU Anti-racism Action Plan**

Gap	Mention in the ARAP (including page number)
Strengthening the role of equality bodies	Legislation announced on the strengthening of the role and independence of equality bodies in 2021 (p. 4).
Supporting Member States in monitoring the application of the Racial Equality Directive	Announced report on application of the directive, followed up by additional legislation, if necessary (p. 4).

<sup>402</sup> ENAR, *Overdue action against racism*, op. cit.

<sup>403</sup> ENAR, *Overdue action against racism*, op. cit.

<sup>404</sup> Fair Trials, Press release: Our response to the EU Action Plan on Racism, 18 September 2020, available at: <https://www.fairtrials.org/news/press-release-our-response-eu-action-plan-racism>.

<sup>405</sup> ENAR, *Overdue action against racism*, op. cit.

<sup>406</sup> ENAR, *ENAR’S election analysis: ethnic minorities in the new European Parliament 2019-2025*, available at: [https://www.enar-eu.org/IMG/pdf/2019\\_06\\_racial\\_diversity\\_eu\\_parliament\\_elected\\_meps\\_final.pdf](https://www.enar-eu.org/IMG/pdf/2019_06_racial_diversity_eu_parliament_elected_meps_final.pdf).

<sup>407</sup> See, for example, ENAR, *EU Anti-racism Action Plan: Civil Society recommendations 2021-2022*, available at: <https://www.enar-eu.org/EU-Anti-Racism-Action-Plan-Civil-Society-recommendations-2021-2022>.

Gap	Mention in the ARAP (including page number)
Encouraging collection of equality data	Roundtable on equality data bringing together key stakeholders (Including equality bodies, civil society, academics, EU institutions, EU authorities such as the European Data Protection Supervisor, FRA and other EU agencies, business, statistical institutes, health workers, international organisations, Member State representatives etc.) announced (p. 16).
Tackling the underreporting of hate speech and hate crime	Development of key guiding principles on how to encourage victims to report hate crime. FRA will issue a report on encouraging hate crime reporting in 2021 (p. 8). <sup>408</sup>
Encouraging full and/or correct transposition and implementation of the Framework Decision on Racism and Xenophobia	Commitment by the Commission to make a 'comprehensive effort' to ensure the full and correct transposition and implementation of the Framework Decision, including the launch of infringement procedures where necessary (p. 5).
Overcoming barriers to justice for victims of discrimination, including problems with the existence and compliance of sanctions and remedies applied to instances of discrimination at national level	Same as above.
Addressing racism in law enforcement	Acknowledgement of discrimination by law enforcement authorities, including the use of profiling. No clear measures announced beyond training and sharing best practices to prevent discriminatory attitudes (p. 7).
Mainstreaming of anti-racism in EU policymaking	Announced development of guidance and training on mainstreaming to support all those involved in the integration of an equality perspective into every stage of EU interventions, as well as the commitment to actively consult organisations representing people with a minority racial or ethnic background (p. 19).

Source: Asterisk Research and Analysis assessment of the ARAP.

Overall, the content of the EU Anti-racism Action Plan was received positively, especially in terms of its understanding of racism. In the words of Karen Taylor, Chair of the European Network Against Racism (ENAR), it provides *'open boxes [that] now need to be filled: it is crucial that the measures proposed are effectively carried out by both EU institutions and national governments. Without this commitment, this ambitious action plan will remain just a piece of paper.'*<sup>409</sup>

<sup>408</sup> The report was published in July 2021 and is available at: <https://fra.europa.eu/en/publication/2021/hate-crime-reporting>.

<sup>409</sup> ENAR, *Overdue action against racism*, op. cit.

### 4.3.2. Criticism of the action plan

Despite the mainly positive reactions, as outlined above, some criticism was voiced of the action plan and its implementation, which revolved around:

- the action plan's **implementation**
- specific **thematic areas** (such as policing, criminal justice and data collection)
- **mainstreaming**
- and **other areas**, such as the focus on individual racism.

One of the common critiques of the action plan is that, while it is an important step forward, there are **question marks about its implementation**. First, it does not promise a great deal in terms of concrete actions. Several of the actions listed relate to the effective implementation of already existing legislation (such as the Racial Equality Directive and the Framework Decision on Racism and Xenophobia).<sup>410</sup> In addition, the action plan lacks mechanisms to ensure its effective implementation. The conclusion section mentions that the Plan will be monitored and progress reported, but does not establish mechanisms for doing so.<sup>411</sup> It will therefore be important to set out a proper monitoring and evaluation plan.

Looking at more **thematic areas**, some organisations believe that there could be stronger measures to address racist and disproportionate policing, as it plays a key role in maintaining and fostering racial inequalities in Europe. The action plan mentions the use of profiling as a legitimate police tactic. Given that profiling by law enforcement is almost exclusively based on racial or ethnic criteria, the legitimisation of this technique is of concern. According to FRA, 'to be lawful, stop and search actions and referrals to second-line border checks must be based on reasonable and objective grounds for suspicion. "Gut feeling" is not a reasonable or objective ground'.<sup>412</sup> A clear definition of what is considered lawful profiling (thereby setting out unlawful profiling) would be beneficial.

Fair Trials, an NGO promoting the right to fair trials, has also highlighted the need to consider the **criminal justice system as a whole**. The organisation emphasises that, while profiling is a problem, 'people who are racially profiled then face criminal prosecution, punishment, and a range of other consequences that impact their lives for years to come'.<sup>413</sup>

While the action plan's support for the development of **equality data** has been welcomed, there is no binding element to this measure. Given the importance of this issue, there are some concerns that Member States may continue in their practice of not collecting this data disaggregated by racial or ethnic origin.<sup>414</sup>

In terms of **mainstreaming**, there are concerns that despite the pledges under the action plan, there has not been significant progress. The proposal on the Artificial Intelligence Act has been criticised by EDRI, in particular for its lack of consideration to bias and discrimination.<sup>415</sup> In the field of migration, there is a lack of coherence and different approaches when dealing with foreigners and irregular

<sup>410</sup> Interview with a civil society organisation, 28 September 2021.

<sup>411</sup> Interview with a civil society organisation, 7 September 2021.

<sup>412</sup> FRA, *Preventing unlawful profiling today and in the future – a guide*, 2018, p. 59, available at: <https://fra.europa.eu/en/publication/2018/preventing-unlawful-profiling-today-and-future-guide>.

<sup>413</sup> Fair Trials, 'Our response to the EU Action Plan on Racism', 18 September 2020, available at: <https://www.fairtrials.org/news/press-release-our-response-eu-action-plan-racism>.

<sup>414</sup> Interview with a civil society organisation, 31 August 2021.

<sup>415</sup> See the discussion in Section 3.3.

migrants. The interplay between security, policing and digital technology has a disproportionate impact on undocumented and irregular migrants. The criminalisation approach taken by the EU in dealing with migration creates additional problems.<sup>416</sup>

The European Green Deal is another policy area where 'racialised communities are overly exposed to and situated in polluted environments that significantly impact their health and wellbeing'.<sup>417</sup> In a recent report, Equinox notes that the European Green Deal provides an apolitical narrative of 'humans having already changed the climate, while climate justice would require an understanding of "which humans, and which systems". It's about shifting gears from "humans need to act" to "who needs to do what, and why?"'<sup>418</sup> The report further provides recommendations to deliver the European Green Deal within the remit of the action plan.<sup>419</sup>

Finally, other areas of criticism include the following:

- There are still numerous measures focusing on individual racism as opposed to structural racism, demonstrating that the traditional way of addressing racism may not be completely overcome yet.
- Some organisations are critical of further punishment of hate crimes as a solution, preferring instead more holistic and less punitive approaches addressing deeper rooted problems, such as institutional racism.<sup>420</sup>
- Some organisations argue that the language used in the action plan and in policymaking more generally could be more positive. Suggestions of such language include speaking of 'racial justice' rather than 'racism', or 'broadening the curriculum', instead of 'decolonising the curriculum'.<sup>421</sup>

More than a year after introduction of the EU Anti-racism Action Plan, one of the biggest criticisms is the follow-up to the plan. While several actions have been finalised or are on course to be finalised, anti-racism appears to be falling down the political priorities of the European Commission. For example, one year on from the launch of the action plan, the State of the Union Address in 2021 did not even once include the words 'racism' or 'discrimination'.<sup>422</sup>

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<sup>416</sup> Interview with a civil society organisation, 14 September 2021.

<sup>417</sup> Equinox, *Towards Climate Justice – Rethinking the European Green Deal from a racial justice perspective*, May 2021, available at: <https://www.equinox-eu.com/wp-content/uploads/2021/06/Towards-Climate-Justice-Equinox.pdf>

<sup>418</sup> Ibid. p. 10.

<sup>419</sup> Ibid. p. 32.

<sup>420</sup> Fair Trials, Press release, op. cit.

<sup>421</sup> Interview with an EU-level civil society organisation, September 2021.

<sup>422</sup> European Commission, 2021 State of the Union address by President von der Leyen, Strasbourg, 15 September 2021, available at: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_21\\_4701](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701).

## 5. EXISTING FRAMEWORK AND IMPLEMENTATION IN SELECTED MEMBER STATES

### KEY FINDINGS

- **Provisions on non-discrimination** are included in the **constitutions** of all the selected Member States. Some of them keep the grounds of non-discrimination fairly general, whereas others outline at least some grounds of discrimination more specifically.
- The EU equality directives are implemented through anti-discrimination laws in all the selected Member States. This has significantly enhanced legal protection against racism, xenophobia and racial discrimination. In some countries, this takes the form of **single equality laws**, whereas in others anti-discrimination laws are enacted in **various legal codes** covering different grounds and elements of discrimination.
- **Differences in the provisions of national Criminal Codes** still exist when it comes to criminalising certain aspects of racism and xenophobia, in particular hate crime and hate speech.
- **Not all Member States have implemented the Framework Decision**; the European Commission sent a letter of formal notice to Greece, Lithuania and Poland in 2021.
- The **effectiveness of equality bodies varies** in the Member States according to their independence, role and budgets. In Hungary and Poland, there have been worrying developments relating to the independence or budget of the bodies.
- While **some Member States adopted a NAPAR** in 2020 and 2021, a number of countries are still lacking them. Where NAPARs are in place, they are unequal in their complexity, scope and the actions proposed.

This chapter provides an overview of existing national legislation, strategies and other programmes related to racism, xenophobia and racial discrimination, and their implementation in the Member States selected as focus countries for this study. First the chapter discusses existing legislation at the national level. Then it provides an overview of implementation of legislation and strategies against racism, xenophobia and racial discrimination across the 10 selected Member States. Finally, the chapter examines existing gaps and constraints either in the legislation, or due to lack of correct implementation or application of such legislation.

### 5.1. Existing legislation at the national level

This section provides an overview of existing legislation and strategies to tackle racism, xenophobia and racial discrimination at the national level in the 10 selected countries. It focuses in particular on elements such as constitutional provisions, the law on equal treatment (usually implementing the EU equality directives),<sup>423</sup> as well as provisions in the Criminal Code (including measures foreseen in the Framework Decision) and any other legislation aimed at tackling racism, xenophobia and racial discrimination.

<sup>423</sup> Namely the Racial Equality Directive and Employment Equality Directive.

### 5.1.1. Constitutional provisions

All selected countries include provisions on non-discrimination in their constitutions. These vary, however, in terms of the grounds of non-discrimination covered. In some countries, the grounds are kept very general. For example, the **Greek Constitution** sets out general principles regarding equality and non-discrimination,<sup>424</sup> and the **Fundamental Law of Hungary** (2011)<sup>425</sup> contains a general prohibition of discrimination on the basis of an open-ended list of protected grounds, including race, colour and national origin. The **Polish Constitution** also contains a general prohibition on discrimination.<sup>426</sup> It states that 'All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever.'<sup>427</sup> However, this principle does not specify criteria for prohibited forms of discrimination.

Other countries outline certain grounds of non-discrimination more specifically. For example, the **Bulgarian Constitution** proclaims equal treatment of citizens and the principle of non-discrimination on any grounds. Article 6 provides for equality before the law of all citizens with 'no privileges or restrictions of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status'. In **Germany**, the principle of equality and the prohibition of discrimination play an important role in the Basic Law,<sup>428</sup> and the most important fundamental rights are listed in the first articles. Any discrimination based on grounds such as sex, parentage, race, language, homeland and origin, faith, or religious or political opinions shall be prohibited.<sup>429</sup> The **Danish Constitution** prohibits discrimination on the grounds of religion or race.<sup>430</sup> The first article of the **French Constitution** proclaims the equality of all citizens, regardless of origin, race or religion.<sup>431</sup> This is an evolution of the principle of equality set out in the 1789 constitution, which stated that human beings 'are born and remain free and equal in rights'.<sup>432</sup> The **Italian Constitution** states that 'all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions'. Beyond this, the constitution also places the onus on the state to 'remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country'.<sup>433</sup> In addition, several provisions in the **Constitution of the Republic of Lithuania** address protection against discrimination and the promotion of equality. The constitution prohibits discrimination on the grounds of 'gender, race, nationality, language, origin,

<sup>424</sup> Article 5 of the Greek Constitution, available at: <https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>.

<sup>425</sup> Fundamental Law of Hungary (2011), English translation of the consolidated version of the Fundamental Law of Hungary as in force on 29 of June 2018, available at: <https://www.refworld.org/pdfid/53df98964.pdf>.

<sup>426</sup> Articles 32 and 33 of the Polish Constitution, available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>427</sup> Constitution of the Republic of Poland, 2 April 1997, available at: <https://trybunal.gov.pl/en/about-the-tribunal/legal-basis/the-constitution-of-the-republic-of-poland/>.

<sup>428</sup> The Fundamental Law of Germany, serving as the country's constitution.

<sup>429</sup> Article 3(3) of the German Basic Law. This prohibition was augmented in 1994 with the inclusion of discrimination against disabled persons.

<sup>430</sup> Constitutional Act of Denmark (1849), as amended: Articles 70 and 71.

<sup>431</sup> Article 1 of the French Constitution, available at: <https://www.elysee.fr/en/french-presidency/constitution-of-4-october-1958>.

<sup>432</sup> Article 1 of the Declaration of the Rights of Man and of the Citizen, available at: <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen>.

<sup>433</sup> Constitution of the Italian Republic, translated for the *Senato della Repubblica*, available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf).

social status, belief, convictions, or views'.<sup>434</sup> The constitution also provides an equality clause with regard to religious and other beliefs, such as political and economic convictions or cultural disposition. Finally, the **Constitution of Romania**,<sup>435</sup> amended in 2003, proclaims non-discrimination according to 'race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin'. It guarantees the right to national minority identity in equal and non-discriminatory ways and proclaims equality of all citizens before the law and public authorities without discrimination. However, the provisions are not directly applicable as they cannot be enforced against private individuals. The Romanian Constitution also recognises that international human rights law is primary unless national human rights law gives more favour to human rights.

### 5.1.2. Legislation on equal treatment

All the selected countries have national laws in force that implement the EU equality directives. In some cases, these anti-discrimination laws are single equality laws, whereas in other countries legal packages have been enacted in various legal codes to cover different grounds and elements of discrimination, i.e. in different areas of life, such as employment and education.

The main anti-discrimination law in **Bulgaria** is the Protection Against Discrimination Act (PADA)<sup>436</sup> of 2004, which was enacted to transpose the EU equality directives. It is a single equality law that universally bans discrimination on a range of grounds, including race/ethnicity, sex, religion/belief, sexual orientation, disability and age. The law provides uniform standards of protection and remedies. PADA goes beyond the equality directives by including an open-ended list of grounds, additional forms of discrimination, extended equality body powers and special judicial redress.

PADA does not restrict the legitimate grounds for discrimination against which all citizens should be protected, but names some of the most prominent potential examples. Article 4 (1) states that:

*'Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden.'*<sup>437</sup>

In **Germany**, the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG) of 14 August 2006 (which was last amended on 3 April 2013) is the main instrument incorporating the EU equality directives. It covers all grounds set out in the directives (race, ethnic origin, religion, belief, disability, age or sexual orientation). In addition, discrimination on the grounds of nationality is generally regarded as possible indirect discrimination on the basis of race or ethnic origin and is therefore prohibited.<sup>438</sup> The AGG is part of a legal package that amended other existing legal regulations. On 18 August 2006, the Act implementing European Directives putting into effect the

<sup>434</sup> Constitution of the Republic of Lithuania, available at: [https://www.constituteproject.org/constitution/Lithuania\\_2019?lang=en](https://www.constituteproject.org/constitution/Lithuania_2019?lang=en).

<sup>435</sup> Constitution of Romania, Article 4, available at: <https://www.presidency.ro/en/the-constitution-of-romania>.

<sup>436</sup> Protection Against Discrimination Act, (PADA) (*Закон за защита от дискриминацията*), adopted September 2003, entered into force January 2004, last amended January 2018, available online at: <https://www.lex.bg/laws/ldoc/2135472223>.

<sup>437</sup> More information can be found in Appendix A. Country report – Bulgaria.

<sup>438</sup> European network of legal experts in gender equality and non-discrimination, *Country report non-discrimination, Germany 2021*, p. 65, available at: <https://www.equalitylaw.eu/downloads/5476-germany-country-report-non-discrimination-2021-2-67-mb>.

principle of equal treatment was enacted.<sup>439</sup> This Act encompasses the General Equal Treatment Act,<sup>440</sup> the Equal Treatment of Soldiers Act<sup>441</sup> and amendments to various legal regulations. The general aim of the laws is to combat discrimination on the grounds of race, ethnic origin, sex, religion or philosophical belief, disability, age or sexual identity. It includes labour law, civil law and parts of public law, and therefore goes beyond what is demanded by European law. In its rationale for the Act, the German Federal Parliament (Bundestag) noted that not everyone in Germany has the same opportunities. Therefore, the General Equal Treatment Act's objective is to prevent and eliminate discrimination.<sup>442</sup> Multiple discrimination is also prohibited by law. Section 4 of the AGG provides that any unequal treatment on the basis of multiple prohibited grounds must be justified for each of these grounds. However, it has not been clarified how the norm applies to cases of intersectionality.<sup>443</sup> There are also other German legal regulations relevant to anti-discrimination law. In labour law, there is a general anti-discrimination clause in the Works Constitution Act<sup>444</sup> and the fundamental principle of equal treatment of employees has been consistently established by case-law.<sup>445</sup>

In **Denmark**, various pieces of legislation transpose and implement Directive 2000/43/EC and Directive 2000/78/EC. The relevant Acts aimed at combating racism and racial discrimination include the Act on the Prohibition of Discrimination due to Race etc., which makes it a criminal offence to refuse, in connection with a commercial or non-profit business, to serve or allow entrance to a person on the basis of race, colour, national or ethnic origin, religious belief or sexual orientation.<sup>446</sup> The Act on Ethnic Equal Treatment defines and prohibits direct and indirect discrimination on the grounds of racial or ethnic origin. Colour, language, religion, and citizenship, however, are not included among the enumerated grounds. Furthermore, the Act on Ethnic Equal Treatment does not contain a provision to prohibit segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate. In its 2017 report, ECRI recommends that the authorities amend the Act on Ethnic Equal Treatment to include (i) colour, language, religion and citizenship as enumerated grounds; and (ii) a prohibition of acts of segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate.<sup>447</sup> The Act on the Prohibition of Discrimination in the Labour Market prohibits direct and indirect discrimination in the labour market based on race, skin colour, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin.<sup>448</sup>

The **Greek** Equal Treatment Law 4443/2016 transposes Directives 2000/43/EC and 2000/78/EC. The legislation transposing the directives repeals any discriminatory laws. Some of the most important features of the new legislation are that it extends the list of protected grounds to include chronic illness,

<sup>439</sup> Act implementing European Directives Putting into Effect the Principle of Equal Treatment (Gesetz zur Umsetzung Europäischer Richtlinien zur Verwirklichung des Grundsatzes der Gleichbehandlung), 14 August 2006.

<sup>440</sup> General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz – AGG), 14 August 2006.

<sup>441</sup> Equal Treatment of Soldiers Act (Soldatinnen- und Soldaten- Gleichbehandlungsgesetz – SoldGG), 14 August 2006.

<sup>442</sup> Federal Anti-Discrimination Agency (2019), Guide to the General Equal Treatment Act, Explanations and Examples, November 2019, p. 9.

<sup>443</sup> European network of legal experts in gender equality and non-discrimination, Germany op. cit., p. 26.

<sup>444</sup> Works Constitution Act (Betriebsverfassungsgesetz – BetrVG), Section 75(1) BetrVG, 25 September 2001.

<sup>445</sup> European network of legal experts in gender equality and non-discrimination, Germany op. cit., p. 16.

<sup>446</sup> Act on the Prohibition of Discrimination due to Race etc. (Lov om forbud mod forskelsbehandling på grund af race etc.), Consolidated Act No. 626 of 29 September 1987 with later amendments.

<sup>447</sup> ECRI, *Report on Denmark*, op. cit., p. 12.

<sup>448</sup> Act on the Prohibition of Discrimination in the Labour Market etc. (Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.), Consolidated Act No. 1001 of 24 August 2017.

descent, family or social status and gender identity or characteristics and extends the mandate of the equality body to include the private sector in addition to the public one.

A comprehensive body of legislation exists in **France** to protect people against racism, xenophobia and racial discrimination (more information can be found in the country report on France in Appendix E). Directive 2000/43/EC was transposed by the Law of 16 November 2001, the Law of 30 December 2004 creating the equality body and Law No. 2008-496 of 27 May 2008 (Law No. 2008-496 of 27 May 2008 on various adaptation provisions to community law in the field of the fight against discrimination).

The **Hungarian** Law on Equal Treatment and Promotion of Equal Opportunities (2003) transposes Directives 2000/43/EC and 2000/78/EC.<sup>449</sup> It stipulates that direct and indirect discrimination, harassment, segregation and retribution constitute violations of equal treatment. The protected characteristics include racial origin, colour, nationality, and national or ethnic minority origin. Specific provisions regulate the enforcement of equal treatment in the fields of employment, social security, healthcare, housing, education, and sale of goods and services (Chapter III of the law). In addition, the Hungarian Civil Code (2013) also prohibits discrimination and specifies respective sanctions.<sup>450</sup> With respect to enforcement of the principle of equal treatment in education, unlawful educational segregation is prohibited by the Law on Equal Treatment and Promotion of Equal Opportunities (2003) and the Law on National Public Education (2011). Other key legislative and policy instruments for countering segregation include the National Social Inclusion Strategy (2011 and 2014), the National Strategy on Public Education (2014), the Anti-Segregation Roundtable (2013) and processes such as the national centralisation of school management (2013), anti-segregation working groups (2019). The Law on Equal Treatment and Promotion of Equal Opportunities and other laws have been amended several times to meet the standards of the non-discrimination *acquis*. National jurisprudence strongly suggests, however, that the State has not successfully tackled educational segregation of Roma children.<sup>451</sup> Regarding equal treatment in employment, the provisions of the Law on Equal Treatment and Promotion of Equal Opportunities are supplemented by sectoral acts, including the Labour Code (2012). More information can be found in the country report on Hungary in Annex F.

The **Lithuanian** Law on Equal Treatment (LET)<sup>452</sup> is the main national law implementing Directive 2000/43/EC and Directive 2000/78/EC. The law prohibits direct and indirect discrimination, harassment and instruction to discriminate. LET covers the following grounds: gender, race, nationality (in terms of belonging to a national minority), citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. In terms of material scope, the law applies to private and public employment, access to goods or services (including housing) and education. With respect to anti-discrimination issues, the Lithuanian Labour Code contains a general prohibition on discrimination in employment and sets out provisions regulating the duties of employers<sup>453</sup>. It covers the following grounds: gender, race, nationality, citizenship, language, origin,

<sup>449</sup> Halmos, S., 'The Impact of EU Law on Hungarian Anti-discrimination Law in Employment', *ELTE Law Journal*, Issue 2, 2018, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3540186](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3540186).

<sup>450</sup> EELN (European Equality Law Network), Flash report: 'Second Instance Court Decision on Education Ministry's Responsibility for Failing to Take Effective Action Against Segregation in 28 Elementary Schools', 2019a.; See also European Commission, Infringement number 20152206 (Hungary), EELN (2020), available at: <https://ec.europa.eu/newsroom/just/redirection/document/47560>.

<sup>451</sup> Ibid., p. 130.

<sup>452</sup> Law on Equal Treatment, 18 November 2003. No IX-1826, available in English at: [https://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--ilo\\_aids/documents/legaldocument/wcms\\_127927.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_127927.pdf)

<sup>453</sup> Article 2(4) of the Lithuanian Labour code, translation available at: <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.391384/>

social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, family and marital status, and membership of political parties or other organisations.

The **Polish** Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (Equal Treatment Act – ETA)<sup>454</sup> contains an exhaustive list of grounds of discrimination in the field of employment, including gender, race, ethnic origin, nationality (citizenship was added in 2016), religion, belief, political opinion, disability, age and sexual orientation. ETA introduced several legal definitions which were previously only included in the Labour Code and related only to the employment field. In all fields outside employment, the Act provides protection against discrimination in relation to race, ethnic origin and nationality. Gender is only covered in terms of access to social protection, goods and services, including housing, but not healthcare and education.<sup>455</sup> The Act also designated the Ombudsperson's Office as the equality body. Poland had transposed the equality directives, mainly in the employment field, by 2010. However, gaps existed, which had resulted in referrals to the Court of Justice of the European Union (CJEU), resulting in the Polish Government adopting the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment<sup>456</sup>.

The **Romanian** Anti-Discrimination Law, Governmental Ordinance 137/2000,<sup>457</sup> was adopted in 2000, but was amended several times. The amendments of 2013 were made in the framework of the CJEU proceedings in the case C-81/12 *ACCEPT v NCCD*,<sup>458</sup> the so-called Becali case, which concerned discrimination on the grounds of sexual orientation. The material scope of the legislation also goes beyond the EU directives in that it provides protection in terms of freedom of movement and right to dignity. In January 2021, the Romanian President promulgated a law adopted by the Parliament in December 2020 aimed at punishing anti-Roma verbal and physical hatred and actions, including hate crimes against Roma places of worship, traditions and the Roma language.<sup>459</sup> Under the new legislation, offenders can be imprisoned for hate crimes against Roma.<sup>460</sup> Some experts claim that the bill is intended to educate the Romanian public about the issue of racism in the country. They also argue that its impact may be limited given the unsuccessful investigation and sanctioning of crimes in this area more generally.<sup>461</sup>

<sup>454</sup> Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (referred to as the Equal Treatment Act – ETA) (Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania), 3 December 2010.

<sup>455</sup> European network of legal experts in gender equality and non-discrimination (2021). *Country Report. Non-discrimination, Poland*, p. 6, available at: <https://www.equalitylaw.eu/downloads/5519-poland-country-report-non-discrimination-2021-1-91-mb>.

<sup>456</sup> Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (referred to as the Equal Treatment Act – ETA) (Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania), 3 December 2010.

<sup>457</sup> Romanian Government, Ordinance on preventing and punishing all forms of discrimination (2000), <https://www.legislationline.org/documents/id/16606>.

<sup>458</sup> Judgment of the Court (Third Chamber), 25 April 2013, *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*, Request for a preliminary ruling from the Curtea de Apel București, Case C-81/12, available at: <https://curia.europa.eu/juris/liste.jsf?num=C-81/12&language=EN>.

<sup>459</sup> Barbera, M. (2020), 'Romania to punish anti-Roma acts with up to 10 years in jail', *BalkanInsight*, <https://balkaninsight.com/2020/12/16/romania-to-punish-anti-roma-acts-with-up-to-10-years-in-jail/>; Euronews, Romania to introduce law against anti-Roma hate speech, 2021, <https://www.euronews.com/2021/01/06/romania-to-introduce-law-against-anti-roma-hate-speech>.

<sup>460</sup> Ibid.

<sup>461</sup> Iordache, R. (2021), Flash report: 'Antigypsyism law adopted by Romanian Parliament', <https://www.equalitylaw.eu/downloads/5328-romania-anti-gypsyism-law-adopted-by-romanian-parliament-81-kb>.

This overview of anti-discrimination legislation in the 10 selected countries illustrates that the EU equality directives and their transposition and implementation at the national level have enhanced legal protection against racism, xenophobia and racial discrimination. In addition, some Member States went beyond the legal obligations set by the equality directives, namely by increasing the number of grounds of protection. Despite these positive developments, there are nevertheless some areas of concern due to legislation not being applied correctly and the fact that some gaps remain. An exhaustive discussion is available for each selected Member State in the country reports located in the Appendices.

### 5.1.3. Provisions in the national Criminal Codes

In order to combat racism, xenophobia and racial discrimination effectively, it is essential not only to take preventive measures, but also to prosecute racist criminal offences effectively. Framework Decision 2008/913/JHA defines a Union-wide criminal-law approach to tackling racism and xenophobia in order to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons that have committed or are liable for such offences.

The issues of discrimination and hate crime are governed by the **Bulgarian** Criminal Code, which establishes a punishment for 'anyone who, by speech, press or other media, by electronic information systems or in another manner, propagates or incites discrimination, violence or hatred on the grounds of race, nationality or ethnic origin',<sup>462</sup> and includes a provision that makes racist motivation an aggravating circumstance for all offences.

**German** criminal law did not contain any specific provisions pertaining to discrimination. An act of discrimination could therefore be prosecuted in the same way as a criminal act, but only if it fulfilled the requirements of an existing crime such as defamation or personal injury. For example, racist statements may be punishable as 'insults' under Section 185 of the Criminal Code. In terms of hate crime, Section 46 of the German Criminal Code states explicitly that when weighing the seriousness of the offence, courts shall give particular consideration to the motives and aims of the offender, particularly where they are of a racist or xenophobic nature or where they otherwise show contempt for human dignity.<sup>463</sup> In addition, Section 130 of the Criminal Code prohibits incitement to hatred, incitement to violence and incitement to arbitrary measures 'against a national, racial, religious group or a group defined by their ethnic origins'.<sup>464</sup> Section 86 of the Criminal Code prohibits the dissemination of propaganda material of unconstitutional organisations. In terms of the use of symbols of unconstitutional organisations, Section 86a outlaws the 'use of symbols of unconstitutional organisations' outside the contexts of 'art or science, research or teaching'.<sup>465</sup> In the wake of the right-wing extremist terrorist attack on the synagogue in Halle in October 2019, the German Federal Ministry of Justice developed a new law to combat right-wing extremism and hate crime,<sup>466</sup> which came into force on 3 April 2021. It expands definitions of offences under the Criminal Code, such as protection

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<sup>462</sup> Bulgarian Criminal Code, Article 162.

<sup>463</sup> Germany, Criminal Code, Article 46 Strafgesetzbuch, Grundsätze der Strafzumessung.

<sup>464</sup> Germany, Criminal Code, Article 130 Strafgesetzbuch, Volksverhetzung.

<sup>465</sup> Germany, Criminal Code, Article 86a Strafgesetzbuch, Verwenden von Kennzeichen verfassungswidriger und terroristischer Organisationen.

<sup>466</sup> Federal Ministry of Justice and Consumer Protection, Legislative package to combat hate and hate speech has entered into force, 19 May 2021, available at: <https://www.bmjv.de/EN/FocusTopics/Legislative-package-combat-hate-hate-speech.html?nn=6427850> (accessed on 29.09.2021).

against defamation and malicious gossip, and increases the penalties. For example, antisemitic motives are now explicitly included as one of the motives that lead to an increase in the penalty imposed.

The relevant provisions to combat racism and racial discrimination are mainly contained in the **Danish** Criminal Code. It provides that any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation shall be liable to a fine or to imprisonment for a term not exceeding two years. The Criminal Code also establishes aggravating circumstances for crimes committed on account of 'race', colour, national or ethnic origin, religion, or sexual orientation.<sup>467</sup> However, according to the 2017 ECRI report, several gaps remain. For example, language and citizenship are not listed as enumerated grounds in these articles. In addition, race and colour are not included as enumerated grounds.<sup>468</sup> Furthermore, the Criminal Code does not contain a provision to criminalise the public denial, trivialisation, justification or condonation, with a racist aim, of crimes of genocide, crimes against humanity or war crimes. Furthermore, there is also no specific provision to criminalise the creation or the leadership of a group that promotes racism, support for such a group and participation in its activities.<sup>469</sup>

The **French** Criminal code includes provisions relating to discrimination, violence or racial hatred, as well as aggravating circumstances for offences committed because of a person's race, ethnicity, nationality or religion. This includes provocation to discrimination, racial discrimination or hatred (Article R 625-7 of the Criminal Code), contesting the existence of crimes against humanity (Articles 131-35 of the Criminal Code), violation of a grave characterised by a racist or anti-religious motive (Articles 225-18 of the Criminal Code). Criminal law also covers instances where a crime is aggravated by the intent of targeting someone or a group of people on the grounds of their race, ethnicity, nationality or religion. This includes the aggravating circumstance leading to enhanced penalties for criminal offences motivated by the real or presumed race, ethnicity, nationality or religion of another person or a group of persons (Articles 132-76 of the Criminal Code) sex, or actual or supposed sexual orientation or gender identity (Articles 132-77 of the Criminal Code).

As regards criminal law in **Greece**, Law 927/1979 on punishing acts or activities aiming at racial discrimination prohibits discrimination on the grounds of racial or ethnic origin. It was amended by Law 4285/2014, which incorporates Council Framework Decision 2008/913/JHA. Another element of the legislative framework under criminal law is Law 4356/2015 on civil partnership, exercise of rights, penal and other provisions, which expands the grounds for discrimination with regard to provision of goods and services.

The **Hungarian** Criminal Code (2012) implements Framework Decision 2008/913/JHA.<sup>470</sup> Hate crime is established as a separate type of offence under the provision of 'violence against a member of the community'. It comprises intimidating conduct as well as violent assault or compulsion; preparation, aiding and abetting are also criminalised. However, the most serious offences motivated by racism, such as murder, are generally classified not as hate crimes, but as crimes committed with malicious intent.<sup>471</sup> In addition, the Criminal Code contains no general provisions on racism-motivated property-

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<sup>467</sup> Article 266(b) of the Danish Criminal Code, available at: <https://www.legislationline.org/documents/action/popup/id/20037>.

<sup>468</sup> ECRI, *Fifth report on Denmark*, p. 11 f., available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/denmark>.

<sup>469</sup> ECRI, *Report on Denmark*, op. cit., p. 12.

<sup>470</sup> FRANET (2020), op. cit., p. 14.

<sup>471</sup> OCFRH (2019), op. cit., pp. 12-13.

related offences, nor on the consideration of racist motivation in other crimes.<sup>472</sup> A noteworthy development is the recent adoption of a protocol by the Police aiming at reinforcing the recognition of hate motives in criminal procedures.<sup>473</sup> Criminal provisions have been strengthened regarding disbanded organisations and illegal conduct of public security activities.<sup>474</sup> Membership of antisemitic groups and Holocaust denial are criminalised.<sup>475</sup> In addition, hate speech is prohibited in the Criminal Code under the provision of 'incitement against a community'.<sup>476</sup> However, only the most extreme manifestations are covered and no specific rules regarding perpetration by public figures are prescribed.<sup>477</sup> A 2016 amendment to the provision addressed the European Commission's finding that Hungary had not complied with the Framework Decision on Racism and Xenophobia. Amendment criminalised incitement to violence and included actions against individuals within a given group as hate crimes.<sup>478</sup> Hate speech against members of any national, ethnic or racial group is also prohibited in the Civil Code.<sup>479</sup> The media law does not allow publication of content that incites hatred.<sup>480</sup>

In **Italian** criminal law, hate crime and hate speech have not yet been defined by the Italian legislation. Also, ECRI has recommended the addition of the public dissemination, distribution, production or storage of material with a racist aim or inciting racial discrimination to the Criminal Code.<sup>481</sup> Despite these deficiencies, over recent years the Italian judiciary has affirmed the protection of minorities through landmark decisions. For instance, in 2018 the Court of Milan sanctioned the mayor of Albettono, a municipality in the Veneto region, for incitement to racial hatred following xenophobic statements against migrants, Roma and Muslims.<sup>482</sup>

The **Lithuanian** Criminal Code transposed Framework Decision 2008/913/JHA in 2009. It criminalises incitement of hatred and is applied in cases of hate speech. It makes the motive of hatred an aggravating factor in the perpetration of other crimes, while several other articles include qualifying characteristics of criminal acts such as murder and serious and non-serious bodily harm.<sup>483</sup>

The **Polish** Criminal Code<sup>484</sup> penalises crimes motivated by nationality, ethnicity, racism, politics, religion or worldview. Article 118 criminalises homicide, serious injury, creation of threatening living

<sup>472</sup> Ibid., p. 12.

<sup>473</sup> FRANET (2020), op. cit., p. 15, Perry, J., Dombas, T., and Kozáry, A. (2019), 'Connecting on Hate Crime Data in Hungary', CEJI, Brussels, p. 10.

<sup>474</sup> Government of Hungary, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, National report submitted to the Human Rights Council Working Group on the Universal Periodic Review, twenty-fifth session (2-13 May 2016)*, 2016, pp. 15-16.

<sup>475</sup> ECDD (European Centre for Democracy Development), *Anti-discrimination Legislation*, Civic Nation Internet project, 2021a, available online at: [https://civic-nation.org/hungary/government/legislation/anti-discrimination\\_legislation/](https://civic-nation.org/hungary/government/legislation/anti-discrimination_legislation/).

<sup>476</sup> OCFRH (2019), op. cit., p. 13.

<sup>477</sup> OCFRH (2019), op. cit., p. 6, CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019.

<sup>478</sup> Government of Hungary (2019), op. cit., p. 11.

<sup>479</sup> CERD (2019), op. cit., p. 15.

<sup>480</sup> ECRI (2015), *Report on Hungary* (fifth monitoring cycle).

<sup>481</sup> ECRI (2015), *Report on Italy* (fifth monitoring cycle).

<sup>482</sup> Alietti, A. and Padovan, D. (2020), 'Islamophobia in Italia: Rapporto Nazionale 2018'. SETA. <https://seta.org/en/assets/uploads/2020/04/R156lt.pdf>.

<sup>483</sup> Article 170 of the criminal code criminalises incitement of hatred and is applied in cases of hate speech. Article 60 makes the motive of hatred an aggravating factor in the perpetration of other crimes whereas several other articles include qualifying characteristics of criminal acts such as murder and serious and non-serious bodily harm. The full text of the Criminal Code (law on the approval and entry into force of the criminal code) of the Republic of Lithuania is available at: [https://sherloc.unodc.org/cld/document/ltu/2000/criminal\\_code\\_of\\_lithuania.html](https://sherloc.unodc.org/cld/document/ltu/2000/criminal_code_of_lithuania.html)

<sup>484</sup> Sejm of the Republic of Poland (1997). *Kodeks Karny*. available at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>.

conditions and attacks against a national, ethnical, racial, political or religious group or a group with a different perspective of life. Article 119 criminalises violence or unlawful threats towards a person or group of persons on grounds of their national, ethnic, political or religious affiliation, or lack of religious beliefs. The incitement of others to commit the above-mentioned crimes or to hatred on the grounds of national, ethnic, race or religious affiliation, or lack of religious belief is also criminalised.<sup>485</sup> In addition, Article 256 makes anyone found guilty of inciting hatred based on national, ethnic, racial, or religious differences, or for reason of the lack of any religious denomination, liable to a fine, restriction of liberty, or to imprisonment for a maximum of two years.<sup>486</sup> Finally, Article 257 sets out the offence of publicly insulting a group of the population or a particular person on the same grounds or breaching the personal inviolability of a person on these grounds.<sup>487</sup> However, 'colour' and 'descent' as grounds for inciting hatred are missing from the definition in the Criminal Code and the Criminal Code does not contain a provision that specifically establishes racist motives of a crime as an aggravating circumstance.<sup>488</sup>

In **Romania**, Government Emergency Ordinance No. 31/2002 (GEO No. 31/2002) aims to prohibit fascist, racist and xenophobic organisations. GEO No. 31/2002 was amended in 2015 and its scope was extended to the prohibition of legionary symbols and acts related to the Holocaust in Romania.<sup>489</sup> In the Romanian Criminal Code, Article 369 criminalises the instigation of hatred or discrimination and makes it punishable by fines and imprisonment. Article 77 of the Criminal Code specifies grounds for aggravating circumstances with respect to the punishment, including race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion, social origin or similar. However, the 2019 ECRI report indicated that the Criminal Code does not include important grounds such as national origin, colour, and citizenship. No reference is contained within the Criminal Code regarding threats on the grounds of race, colour, language, religion, citizenship or national/ethnic origin.<sup>490</sup>

The assessment of provisions in the national Criminal Codes regarding aspects of racism, xenophobia and racial discrimination shows that differences still exist across countries. While provisions on incitement to hate crime and hate speech seem to be in place in the Criminal Codes of most of the selected Member States, some gaps can be discerned in terms of practical application. For example, the Criminal Codes in some countries do not fully cover the list of enumerated grounds outlined by the Framework Decision, or the definition of certain concepts or criminalisation of certain acts.

## 5.2. Implementation and existing gaps and constraints

This section provides an overview of the implementation of legislation and strategies against racism, xenophobia and racial discrimination across the 10 selected Member States. In addition, it discusses existing gaps and constraints either in the legislation, or as a result of the lack of correct

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<sup>485</sup> Ibid.

<sup>486</sup> Ibid.

<sup>487</sup> Ibid.

<sup>488</sup> United Nations Office of the High Commissioner for Human Rights (2019). 'Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland', p. 4, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/POL/CERD\\_C\\_POL\\_CO\\_22-24\\_36935\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/POL/CERD_C_POL_CO_22-24_36935_E.pdf).

<sup>489</sup> ECRI (2019), *Report on Romania (fifth monitoring cycle)*, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

<sup>490</sup> ECRI, *Report on Romania*, op. cit.

implementation or application. The identified gaps and challenges can be grouped into the following categories:

- The **transposition and implementation of EU legislation**
- The role, funding and independence of **equality bodies**
- **Underreporting and non-reporting** of hate speech and hate crime and
- **National action plans against racism.**

### 5.2.1. Implementation of EU legislation

As highlighted in Chapter 3, some Member States have not fully or correctly transposed or implemented the Framework Decision on Racism and Xenophobia by means of criminal law. That constitutes a significant barrier to protection against racism, xenophobia and racial discrimination.

In June 2021, the European Commission sent a letter of formal notice to **Greece** for not fully or accurately transposing EU rules on combating racism and xenophobia by means of criminal law (Council Framework Decision 2008/913/JHA). Issue was taken in particular with the fact that ‘the Greek legal system criminalises hate speech only when public incitement to violence or hatred endangers public order or poses a threat to life, freedom or physical integrity of persons.’<sup>491</sup>

In June 2021 the European Commission issued a letter of formal notice to **Lithuania** regarding incorrect transposition of Council Framework Decision 2008/913/JHA.<sup>492</sup> Specifically, the European Commission took issue with Lithuania’s failure to criminalise hate speech and hate crime when based on grounds of ethnic origin or colour. Another instance of deviation from the Council Framework Decision according to the Commission’s notice is criminalisation of condonation, denial and gross trivialisation of international crimes and the Holocaust only if public order is disrupted or if perpetrated in Lithuania against Lithuanian citizens. The Equal Opportunities Ombudsperson has also issued recommendations to amend the Criminal Code to include ‘the motive of bias and add skin colour, citizenship, and gender identity as grounds of hate crime and hate speech.’<sup>493</sup> As currently formulated in the law criminalising hate crime and hate speech, the threshold for alleging those crimes is high as they have to be perpetrated explicitly with the aim of expressing hate, whereas the Ombudsperson’s recommendation proposes including the lower threshold of hate-motivated actions.

In February 2021, the European Commission sent a letter of formal notice to **Poland** as its national laws do not fully or accurately transpose EU rules on combating racism and xenophobia by means of criminal law (Framework Decision 2008/913/JHA). The Framework Decision aims to ensure that serious manifestations of racism and xenophobia are punishable by effective, proportionate and dissuasive criminal penalties throughout the EU. The Polish criminal legal framework fails to transpose hate speech inciting racist and xenophobic violence correctly and restricts the scope of criminalisation of incitement to hatred. Additionally, the Commission argued that Poland has incorrectly transposed the criminalisation of specific forms of hate speech by omitting the conduct of gross trivialisation of

<sup>491</sup> European Commission (2021), ‘June infringement package: key decisions’, available at [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_21\\_2743](https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_2743), last accessed on 22 September 2021.

<sup>492</sup> Ibid.

<sup>493</sup> MesVisi (EU project 848353 (REC)) (2018), *Hate Crimes and Hate Speech: Overview of the Situation in Lithuania*, p. 19.

international crimes and the Holocaust and by restricting criminalisation of the denial and condonation of those crimes only to cases where such crimes were committed against Polish citizens.<sup>494</sup>

In **Hungary**, while the Criminal Code implements the Framework Decision, the most serious offences motivated by racism, such as murder, are generally classified not as hate crimes, but as crimes committed with malicious intent.<sup>495</sup> In addition, the Criminal Code contains no general provisions on racism-motivated property-related offences, nor on taking the element of racist motivation into consideration with respect to other crimes.<sup>496</sup>

### 5.2.2. Equality bodies

Equality bodies are public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and contributing to an awareness of rights and societal valuing of equality. In Europe, their role is defined in accordance with EU equal treatment legislation requiring Member States to set up equality bodies to combat discrimination based on race and ethnic origin.<sup>497</sup> Equality bodies play a fundamental role in the non-discrimination architecture of the EU. This subsection provides an overview of the existing equality bodies in the 10 selected countries, their legal standing, independence, assigned competences and roles. In addition, it highlights existing gaps and constraints in the implementation and work of these bodies.

In **Bulgaria**, the Protection Against Discrimination Commission is the main equality body. It was established as a multi-ground equality body (meaning that it is unbound by particular grounds of discrimination) in 2004.<sup>498</sup> It has its own legal personality with **functional independence**. However, it is accountable to the Parliament. It consists of nine members – five appointed by the Parliament and four appointed by the President. The Commission appoints regional representative offices.<sup>499</sup> As an equality body with decision-making powers, the Commission can **issue legally binding decisions and sanctions**. However, the latter have been deemed insufficient to serve as a deterrent.<sup>500</sup> The Commission operates according to an open list of grounds for discrimination and is divided into panels, each of which deals with a particular area of discrimination. The allocation of specific staff to deal with a given type of racism and discrimination has been assessed as positive, as it **enables the equality body to develop deep expertise and understanding** of the issues that occur most frequently within the country, while also retaining sensitivity and flexibility to other topics that might have otherwise remained overlooked.<sup>501</sup> Secondary equality bodies have also been established to address the diverse issues and multi-institutional frameworks of countering **racism and antigypsyism**, among which:

<sup>494</sup> European Commission, February infringements package: key decisions, 18 February 2021, available at: [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_21\\_441](https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_441). The Commission has not yet sent a reasoned opinion to Poland.

<sup>495</sup> OCFRH (2019), op. cit., pp. 12-13; Government of Hungary (2016), op. cit., p. 15.

<sup>496</sup> ECDD (European Centre for Democracy Development), 'Discriminatory Practices Against Minorities', Civic Nation Internet project, 2021c, available online at: [https://civic-nation.org/hungary/government/law\\_enforcement\\_practices/discriminatory\\_practices\\_against\\_minorities/](https://civic-nation.org/hungary/government/law_enforcement_practices/discriminatory_practices_against_minorities/); OCFRH, 2019, op. cit., p. 12.

<sup>497</sup> Racial Equality Directive, Article 13.

<sup>498</sup> Lajčáková, J., Hojsík, M. and Karoly, M. (2020), op. cit., p. 40.

<sup>499</sup> Obshtinite.BG, Protection Against Discrimination Commission, n.d., available online at: <https://obshtinite.bg/>.

<sup>500</sup> Crowley, N, *Equality Bodies Making a Difference*, European Commission, European Network of Legal Experts in Gender Equality and Non-Discrimination, 2018, available online at: [https://ec.europa.eu/info/sites/default/files/equality\\_bodies\\_making\\_a\\_difference.pdf](https://ec.europa.eu/info/sites/default/files/equality_bodies_making_a_difference.pdf), p. 106.

<sup>501</sup> Crowley (2018), op. cit., p. 80.

- the Bulgarian Ombudsperson has a mandate to investigate the acts of Bulgarian anti-discriminatory institutions and can require official information and analyses, but has no sanctioning power.
- The National Council of Ethnic and Integration Issues (NCEII) serves as an advisory and coordination body, chaired by the Minister and comprised of civil society organisations and high state officials.<sup>502</sup>

The gaps in relation to the equality bodies in Bulgaria mostly concern:

- the **ineffective practical implementation** of their powers and authority. The Protection Against Discrimination Commission is mandated to 1) promote equality and prevent discrimination; 2) support people exposed to discrimination and litigate on their behalf; and 3) take decisions on complaints received.<sup>503</sup> This multi-competence and diverse mandate of the Commission is not viewed by ECRI entirely positively, as it hinders the institutional separation of powers and eliminates impartiality, which would be an expected foundation for a decision-making function. This conflict of functions could lead to internal tensions and limit the intervening powers of the equality body.<sup>504</sup>
- the **questionable make-up of their staff**. Some issues have been identified in relation to the equality body's capacity and preparedness to support and accommodate the needs of victims. For example, its premises are considered inadequately positioned – far from the capital city's centre and difficult to reach and identify.<sup>505</sup> The European Equality Law Network (EELN) has found indications of political interference in the process of appointment and removal from office at the Bulgarian Protection Against Discrimination Commission.<sup>506</sup> This assessment hints at corrupt practices, hindering the legislative potential and institutional efforts to effectively counter racism and antigypsyism, as some appointments have been described as '*non-transparent and arbitrary rather than competence based*'.<sup>507</sup>

The effectiveness of the legislative powers of Protection Against Discrimination Commission has been challenged by the discovery of insufficient follow-up to decisions<sup>508</sup> and sparse reporting efforts (limited solely to annual reports).<sup>509</sup> The NCEII has been criticised for being ineffective and non-inclusive (not representing the Macedonian and Pomak minorities, which are not recognised by the state).<sup>510</sup>

In **Germany**, the German Federal Anti-Discrimination Agency (FADA) was established in 2006 as a stand-alone body with its own legal personality. FADA's mandate is limited and does not explicitly cover hate speech, the discrimination grounds of skin colour, language, citizenship and gender identity and intersectional discrimination.<sup>511</sup> According to ECRI, FADA also **lacks the competence to intervene in the legislative procedure** and **lacks substantial competences with regard to its support and litigation function**, i.e. FADA cannot provide persons exposed to racism and intolerance with legal

<sup>502</sup> Mijatovic (2020), op. cit., p. 12.

<sup>503</sup> Crowley (2018), op. cit., p. 47.

<sup>504</sup> Ibid.

<sup>505</sup> Ibid. p. 116.

<sup>506</sup> Ibid. p. 58.

<sup>507</sup> Ibid. p. 92.

<sup>508</sup> Ibid. p. 105.

<sup>509</sup> Ibid. p. 108.

<sup>510</sup> Commissioner for Human Rights of the Council of Europe, Report following her visit to Bulgaria from 25 to 29 November 2019, March 2020, p. 12, available at: <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-november-2019-by-dunia-m/16809cde16>.

<sup>511</sup> ECRI, *Report on Germany*, op. cit., p. 9.

assistance, represent them before institutions, adjudicatory bodies and the courts, bring cases in its own name or intervene as a third party or expert. Its competence in this area is restricted to providing these persons with information, redirecting them to other organisations and mediating.<sup>512</sup> FADA also lacks the power to question persons and to apply for an enforceable court order or impose administrative fines if an individual or institution does not comply with a decision related to its investigative powers.<sup>513</sup>

Furthermore, there are shortcomings concerning FADA's independence. For example, the head of FADA is appointed by the Federal Ministry for Family Affairs, based on a proposal of the Federal Government, meaning that **the executive has a decisive influence on the selection procedure**. In addition, the duration of the mandate of the head is tied to the legislative term of the Parliament.<sup>514</sup> According to feedback from civil society, the last vacancy was not publicised widely and in a transparent manner, which led to an unsuccessful applicant lodging a complaint with the administrative court.<sup>515</sup> Furthermore, FADA and other institutions only have the legal obligation to draft a common report every four years for debate in the Parliament. By contrast, ECRI advised that equality bodies should publish annual reports that are discussed by parliament and government but are not subject to their approval or the approval of any other external party.<sup>516</sup> Despite these shortcomings, ECRI is of the opinion that FADA has made – despite its restricted resources – a valuable contribution to preventing and combating discrimination and intolerance.<sup>517</sup>

In addition to FADA, the following organisations also play an important role:

- The German Institute for Human Rights (GIHR) also has an equality mandate that covers the public sector. According to the ECRI report, the Institute has no competence to receive complaints and lacks other basic support and litigation competences. It cannot, for example, bring cases of racial profiling before the courts. However, GIHR's annual reporting contributes substantially to better informing the public about the issue of discrimination.<sup>518</sup>
- Given Germany's federal structure, equality bodies can be set up at the federated level. In 2019, 11 of the 16 states (Länder) had established equality bodies. However, these entities have apparently been set up within the administrations of the Länder and are hence not independent. The Land Berlin, however, adopted its own anti-discrimination law and established an independent Ombud's office as an equality body with the mandate to mediate in cases of discrimination emanating from public authorities of the state and to request, in the case of unsuccessful mediation, that the relevant authority remedy the situation.<sup>519</sup>

In **Denmark**, there are three independent authorities that are entrusted with combating racism and racial discrimination:

- The **Parliamentary Ombudsman**, an independent institution, receives complaints made by victims of alleged discrimination by public institutions. The competences of the Ombudsman cover

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<sup>512</sup> Ibid. p. 9.

<sup>513</sup> Ibid.

<sup>514</sup> Ibid.

<sup>515</sup> Ibid.

<sup>516</sup> Ibid.

<sup>517</sup> Ibid. p. 10.

<sup>518</sup> Ibid. p. 9.

<sup>519</sup> Ibid. p. 10.

all parts of the public administration, although it lacks the right to initiate court cases (even when a specific victim is not referred to), and protection against retaliatory measures.

- The **Board of Equal Treatment** established in 2009 by law only deals with concrete complaints related to discrimination, and may award compensation. The Board has no mandate to take up cases on its own initiative, and it can only base its decisions on written information and evidence received from the complainant, the defendant (the person/event complained about) and the secretariat. Decisions made by the Board are final and binding for both parties. In certain situations, the Board can decide that the complainant is entitled to compensation.<sup>520</sup> According to the 2017 ECRI report, in the employment field the Board cannot deal with discrimination on the grounds of language, and outside the employment field, on the grounds of colour, religion, nationality and language. Nor does the Board provide advice to plaintiffs, conduct awareness-raising activities or monitor legislation.<sup>521</sup>
- The **Danish Institute for Human Rights** (DIHR) assists victims of discrimination by processing their complaints and investigating alleged cases of discrimination. It also conducts surveys concerning discrimination, publishes reports on differential treatment and makes recommendations on how to improve the fight against discrimination. The DIHR can conduct investigations. Victims can refer their case back to the DIHR if the Board of Equal Treatment has rejected it. Moreover, if the DIHR considers that the compensation awarded to a plaintiff by the Board of Equal Treatment is not high enough, it can take the case to court with the aim of obtaining a higher amount. The DIHR can also bring cases of general interest to the public before the Board of Equal Treatment.<sup>522</sup>

The **Greek Ombudsman** is the officially designated equality body for Greece. The Ombudsman was originally established in 1998 with the narrow mandate of mediating in cases of maladministration between citizens and administrative authorities<sup>523</sup>. In 2016, the competencies of the Greek Ombudsman were extended beyond the public sector to include the private sector in the field of employment, education and access to goods and services. The Ombudsman's office has a number of special remits, including the monitoring of forced returns of third-country nationals and investigation of arbitrary incidents by the security forces. The Greek Ombudsman is an independent institution that is formally not accountable to other state bodies. The Ombudsman is appointed for a five-year, non-renewable term by the Parliament. Six Deputy Ombudsmen are appointed by the Ministry of Interior on the proposal of the Ombudsman.

The activities of the Greek Ombudsman include review of complaints, responses to inquiries, issuing of recommendations and proposals to other national and municipal institutions, conducting independent surveys and publications of reports, awareness-raising and information campaigns. The decisions of the Greek Ombudsman are not legally binding and the office does not have the authority to impose sanctions or penalties or annul acts. The Ombudsman can forward cases to other state institutions (such as the public prosecutor) and urge other administrative bodies to act to address causes of discrimination.<sup>524</sup>

Currently, the Greek Ombudsman **does not have the competence to intervene actively in support of victims**. Amendment of the framework specifying the competences of the equality body to include

<sup>520</sup> Equinet, Board of Equal Treatment – Denmark, available at: [https://adsdatabase.ohchr.org/issuelibrary/board%20of%20equal%20treatment%20\(denmark\).pdf](https://adsdatabase.ohchr.org/issuelibrary/board%20of%20equal%20treatment%20(denmark).pdf).

<sup>521</sup> ECRI, *Report on Denmark*, op. cit., p. 13.

<sup>522</sup> Ibid. p. 13 f.

<sup>523</sup> Law 2477/1997 establishing the Ombudsman's office is available at: [https://www.synigoros.gr/?i=stp.en.law2477\\_97](https://www.synigoros.gr/?i=stp.en.law2477_97)

<sup>524</sup> See the website of the Greek Ombudsman, available at: <https://www.synigoros.gr/?i=stp.en.home>.

this capacity would be a positive development.<sup>525</sup> The **budget of the Greek Ombudsman**, like those of other public bodies, was drastically cut in 2009 in the wake of the Greek sovereign debt crisis. Despite increasing marginally over the past several years, it is **still well below its pre-crisis level**. At the same time, the expansion of the mandate of the equality body to also cover the private sector was supposed to be accompanied by a staff increase of 10 people. These positions are covered through secondments.<sup>526</sup> Adequate resources – especially in the light of expanding responsibilities – is one of the preconditions of independence and effectiveness of an equality body.<sup>527</sup>

In **France**, **Défenseur des droits** (Defender of Rights – DDD) is the French equality body. DDD was set up in 2008 as the legacy organisation of the Médiateur de la République. DDD is competent in the following areas:<sup>528</sup>

- the rights of the users of public services (as the national Ombudsperson)
- the defence of children's rights
- the non-discrimination and promotion of equality (as the national equality body) and
- the issue of ethics in security services (complaints commission regarding the police and other private security services).

DDD has powers of inquiry and powers of intervention, including resolving conflicts by mutual agreement by making recommendations or through mediation/conciliation, intervening in support of a civil or criminal action, requesting disciplinary action against a security officer, requesting observations before a court order, and recommending sanctions by the administration against a physical person or legal entity at the origin of discrimination. ECRI has noted how 'firmly in line' DDD was with the wording of its General Policy Recommendations and welcomed the fact that its role is enshrined in the Constitution. While DDD's status, independence and powers have been strengthened, the number of discrimination cases that are submitted has dropped.<sup>529</sup>

The Commission nationale consultative des droits de l'homme (National Consultative Commission on Human Rights, CNCDH) is the national human rights institution in France. Its main mission<sup>530</sup> is to advise and make proposals to the Government on matters related to human rights; control the effectiveness of the rights protected under the international human rights conventions; and contribute to the work of the United Nations human rights bodies. Since the Gayssot Act of 1990,<sup>531</sup> the CNCDH is also in charge of compiling an annual report on the state of racism and the fight against racism in the country.

In **Hungary**, the Office of the Commissioner for Fundamental Rights of Hungary (OCFRH) functions simultaneously as a national human rights institution, equality body and ombudsman.<sup>532</sup> It has quasi-judicial competence to consider individual complaints against public authorities and other entities

<sup>525</sup> European Commission (2020), *Country Report. Non-discrimination: Greece*, available at: <https://op.europa.eu/en/publication-detail/-/publication/55e94d40-152c-11ec-b4fe-01aa75ed71a1/language-en>.

<sup>526</sup> Ibid.

<sup>527</sup> European Commission, Recommendation of 22 June 2018 on standards for equality bodies, C(2018) 3850 final, p. 8, available at: [https://ec.europa.eu/info/sites/info/files/2\\_en\\_act\\_part1\\_v4.pdf](https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf).

<sup>528</sup> See the website of Défenseur des droits at: <https://www.defenseurdesdroits.fr/en>.

<sup>529</sup> ECRI, *Report on France*, op. cit., para 18-19 (p. 14) and para 88-90 (pp. 30-31).

<sup>530</sup> See CNCDH website at: <https://www.cncdh.fr/fr/presentation-french-nhri>.

<sup>531</sup> Article 2, full text of the current text of the law available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000532990/2022-02-01/>.

<sup>532</sup> EQUINET, European Network of Equality Bodies, 'Office of the Commissioner for Fundamental Rights', available online at: [https://equineteurope.org/author/hungary\\_commissioner/](https://equineteurope.org/author/hungary_commissioner/).

providing public services, carry out investigations and issue recommendations.<sup>533</sup> It also scrutinises laws and policies and makes proposals for amendment or repeal. The Ombudsman for the Rights of National Minorities, who is also Deputy Commissioner, contributes to the protection of the rights of ethnic and national minorities. His/her competences primarily encompass observation, evaluation and awareness-raising activities.<sup>534</sup> The Directorate of Police Complaints of OCFRH independently investigates complaints against the police and makes inquiries into all petitions on issues related to criminal proceedings and law enforcement.<sup>535</sup>

A gap in the practical application of the principle of equal treatment relates to the effectiveness and independence of OCFRH. In June 2021, the OHCHR's sub-committee on Accreditation recommended that OCFRH's status as a UN-accredited NHRI be downgraded from 'A – Fully compliant with the Paris Principles' to 'B – Partially compliant with the Paris Principles'.<sup>536</sup> It raised **serious concerns about OCFRH's mandate and exercise of powers**. Alarming, it contended that **OCFRH had not effectively engaged on all human rights issues**, including in relation to vulnerable groups, such as ethnic minorities, refugees and migrants.<sup>537</sup> Other independent observers have emphasised that the Commissioner for Fundamental Rights and the Minorities Ombudsman have been silent about the stigmatisation of migrants, asylum-seekers and refugees.<sup>538</sup>

The recent **abolition of the Equal Treatment Authority** in January 2021, regarded as one of the best functioning rights protection bodies in Hungary, and the transfer of its competences to OCFRH has also been called into question.<sup>539</sup> First, there was no consultation with the relevant stakeholders. Second, this change risks 'downgrading' the issue of non-discrimination as this topic was the single focus of the Authority, whereas OCFRH could not devote it as much attention and resources.<sup>540</sup> Third, OCFRH's decisions are not binding, unlike those of the former Authority, and the new rules for the consideration of complaints by OCFRH might compromise requirements regarding quasi-judicial procedures.<sup>541</sup>

In **Italy**, the Ufficio Nazionale Antidiscriminazioni Razziali (National Office against Racial Discrimination – UNAR) is the National Equality Body. Its role is to monitor the causes of and phenomena related to all types of discrimination, study possible solutions, promote a culture of respect for human rights and equal opportunities and provide concrete assistance to victims of discrimination. ECRI considers that UNAR does not comply with the principle of independence and that its powers provided for by law are incomplete.<sup>542</sup> This was confirmed by the OHCHR's regular report, which identified UNAR's lack of

<sup>533</sup> OCFRH (2019), op. cit., p. 2\*.

<sup>534</sup> OCFRH (2019), op. cit., pp. 13-14, 39.

<sup>535</sup> OCFRH, Office of the Commissioner for Fundamental Rights of Hungary, *Report on the Activities of the Commissioner for Fundamental Rights of Hungary and His Deputies – 2020, 2021*, p. 57.

<sup>536</sup> See GANHRI Sub-Committee on Accreditation (SCA), website, available at: <https://www.ohchr.org/EN/Countries/NHRI/Pages/GANHRISSubCommitteeAccreditation.aspx>.

<sup>537</sup> GANHRI, Global Alliance of National Human Rights Institutions, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) – 14-24 June 2021*, 2021, pp. 12-18.

<sup>538</sup> CERD (2019), op. cit., p. 2; HHK, Hungarian Helsinki Committee, *Submission by the Hungarian Helsinki Committee Regarding the Eighteenth to Twenty-fifth Periodic Reports of Hungary to the UN Committee on the Elimination of Racial Discrimination at Its 98th Session (April-May 2019)*, 2019, p. 4.

<sup>539</sup> EELN (European Equality Law Network), Flash report: 'Legislation Adopted Abolishing the Equal Treatment Authority and Transferring Its Tasks to the Ombudsman', 2021, p. 2.

<sup>540</sup> Civilizáció, *Abolishing the Equal Treatment Authority and Transferring Its Tasks to the Ombudsperson May further Weaken Human Rights Protection in Hungary*, Statement, 2020.

<sup>541</sup> EELN (2021), op. cit., p. 3.

<sup>542</sup> ECRI conclusions on the implementation of the recommendations in respect of Italy subject to interim follow-up Adopted on 3 April 2019, published on 6 June 2019, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-italy-5th-monitoring-cycle-168094ce16>.

independence as a factor that impedes its ability to adequately perform its role and could contribute to 'underreporting of human rights violations, discourage engagement with victims and civil society and endanger trust and cooperation'.<sup>543</sup> In addition, Osservatorio per la sicurezza contro gli atti discriminatori (Observatory for Security against Discriminatory Acts – OSCAD) is an agency set up within the Public Security Department of the Ministry of the Interior. The Observatory's objectives are to identify the emergence of hate speech by providing a point of contact for the reporting of such instances, monitoring the phenomenon, as well as training forces to identify hate crime.<sup>544</sup> While the existence of OSCAD is important for training purposes, its role in collecting and reporting data on discrimination is also impeded by its **lack of independence**. OSCAD is staffed with police officers and placed under the authority of the Ministry of Interior, raising fears of underreporting of discriminatory acts and concerns about the effectiveness of the follow-up to complaints against police officers.<sup>545</sup> To date, Italy lacks a National Human Right Institution. According to both FRA and the OHCHR, the country is in the process of passing legislation to establish or accredit an NHRI. This may explain why FRA found that only 14% of Muslims in the country were aware of at least one equality body in Italy (compared to an average of 35% across the EU).<sup>546</sup>

In **Lithuania**, the Office of the Equal Opportunities Ombudsperson (OEOO) is the main national equality body.<sup>547</sup> The Office succeeded its predecessor, the Ombudsperson for Equal Opportunities of Men and Women, with an expanded mandate to cover all grounds of discrimination mentioned in the Racial Equality Act. The Office is established as a **separate legal entity** with legal personality, which contributes to its formal independence. The Ombudsperson is appointed by and accountable to the Parliament. The OEOO functions as a quasi-judicial body which can investigate complaints and issue decisions.

The Equal Opportunities Ombudsperson considers the work of the Office to **establish direct links to minority groups** a good practice.<sup>548</sup> In understanding better the needs of minority groups and the challenges they face, the OEOO can be more effective in formulating recommendations to other state institutions. Direct links also build trust and encourage victims of discrimination to have recourse to the services offered by the Office. While prosecution of hate speech and hate crimes remains beyond the Office's mandate, it has been active in conducting information and education campaigns for the general public and targeted campaigns for police, as well as training for law enforcement officials. Some shortcomings of the OEOO have been pointed out. First, sanctions on complaints are ineffective or disproportionately small.<sup>549</sup> For example, fines are very rarely levied. In many cases, applying public pressure is more effective than the sanctions which are currently available to the Office. However, amending the law to expand the list of sanctions, e.g. by making offenders temporarily ineligible to receive public funds, could improve the effectiveness of the Office. Second, the Equal Opportunities Ombudsperson does not have the competence to intervene actively in support of victims. A legislative proposal to amend the competences of the OEOO has been held up in the Parliament since 2019 and

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<sup>543</sup> OHCHR, Report of mission to Italy on racial discrimination, with a focus on incitement to racial hatred and discrimination 28 January-1 February 2019, pp. 6-7.

<sup>544</sup> OSCAD presentation of activities, available at: <https://www.interno.gov.it/it/ministero/osservatori-commissioni-e-centri-coordinamento/osservatorio-sicurezza-contro-atti-discriminatori-oscad>.

<sup>545</sup> OHCHR, op. cit., p. 7.

<sup>546</sup> FRA, *Second European Union Minorities and Discrimination Survey: Muslims – Selected findings*, September 2017, p. 38.

<sup>547</sup> See website at: <https://www.lvygybe.lt/en/>.

<sup>548</sup> Interview with a member of the Ombudsperson's office, September 2021.

<sup>549</sup> European Commission (2020), Country Report. *Non-discrimination. Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Lithuania*.

it seems unlikely to be passed.<sup>550</sup> The Equal Opportunities Ombudsperson welcomed such a potential amendment to the competences of the Office, which would allow it to engage in strategic litigation on behalf of victims of discrimination. This is currently performed only sporadically by NGOs, which, however, do not have the financial and human resources to engage in lengthy and expensive litigation.

After years of an equality body lacking in **Poland**, the 2010 Equal Treatment Act designated the **Ombudsperson's Office** as the equality body, granting the Ombudsperson new competences.<sup>551</sup> The Ombudsperson is an independent body accountable to the Parliament.<sup>552</sup> No grounds of discrimination are listed in the Ombudsperson's mandate, which means that it can deal with any grounds, including (but not limited to) those listed in the Polish Equal Treatment Act.<sup>553</sup> Since 2011, the Ombudsperson has also engaged in research activities, as well as the compilation of existing data on some issues. It also formulates recommendations, both in the process of its daily work (usually within 'general statements') and in the annual reports.<sup>554</sup>

After the Polish parliamentary elections in October 2015 and shifts within the Government in the years 2016-2019, the Ombudsperson faced various political attacks. In addition, the general political environment in Poland around counteracting discrimination has become more difficult. In this context, every year, the proposed budget prepared by the Ombudsperson has been cut by the Polish Parliament. In September 2020, the term of office of the incumbent Ombudsman (Adam Bodnar) was supposed to expire, but the Polish Parliament (Sejm) and the Senate had not agreed on a successor. This meant that the incumbent Ombudsman remained in office, awaiting the appointment of a new one. However, despite several attempts, the two parliamentary chambers did not succeed in agreeing on a successor for five months. On 15 April 2021, the Polish Constitutional Tribunal decided that the extension was not compatible with the Constitution. This is a problem given the conflict of competence, as the Court is not considered independent by the EU.<sup>555</sup> Bodnar could stay in office as a temporary Ombudsman until a new one was elected but would be required to vacate the office after at most three further months.<sup>556</sup> On the same day, the Sejm appointed government candidate Bartłomiej Wróblewski as the new ombudsman. However, his appointment was rejected by the Senate in May 2021. The vote marked the fourth time the Parliament has failed to fill the position, leaving a question mark over what would happen if no replacement were found by the outgoing Ombudsman's deadline to leave.<sup>557</sup> In July 2021, Marcin Wiącek, lawyer and professor at the University of Warsaw, was elected by the Polish Senate to the post of Ombudsman, representing a compromise candidate for the Sejm and the Senate.<sup>558</sup>

<sup>550</sup> Interview with a member of the Ombudsperson's office, September 2021.

<sup>551</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Poland, p. 10.

<sup>552</sup> Act on the Commissioner for Human Rights, 15 July 1987, Articles 3, 5 and 7.

<sup>553</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Poland, p. 92.

<sup>554</sup> *Ibid.*, p. 95.

<sup>555</sup> See <https://www.europarl.europa.eu/news/en/press-room/20211015IPR15016/poland-constitutional-tribunal-is-illegitimate-unfit-to-interpret-constitution>.

<sup>556</sup> Zalan, E., 'Polish court pushes out critical ombudsman', *EUobserver*. Brussels, 16 April 2021, available at: <https://euobserver.com/democracy/151564> (accessed on 02 November 2021).

<sup>557</sup> *Euractiv*, 'Impasse deepens in Poland over new ombudsman', 14 May 2021, available at: <https://www.euractiv.com/section/justice-home-affairs/news/impasse-deepens-in-poland-over-new-ombudsman/> (accessed on 2 November 11 2021).

<sup>558</sup> *Euractiv*, 'Poland elects new ombudsman in rule of law standoff', 22 July 2021, available at: [https://www.euractiv.com/section/politics/short\\_news/poland-elects-new-ombudsman-in-rule-of-law-standoff/](https://www.euractiv.com/section/politics/short_news/poland-elects-new-ombudsman-in-rule-of-law-standoff/).

Created in 2008, the Government Plenipotentiary for Equal Treatment is the second institution in Poland with a mandate to promote the equal treatment of everyone without discrimination based on racial or ethnic origin (among other grounds).<sup>559</sup> However, in January 2016, the organisation underwent serious structural changes involving closure of the Office of the Plenipotentiary.<sup>560</sup> A new Plenipotentiary was appointed to combine two positions – the newly created position of Government Plenipotentiary for Civil Society, together with that of the Plenipotentiary for Equal Treatment. Since the merger of the two bodies, the role of the Plenipotentiary in discrimination issues has been minimised, the office has been reduced and the remaining staff have been directed to focus on civil society issues.<sup>561</sup> In February 2020, the office of the Plenipotentiary for Equal Treatment was again separated and moved to the Ministry of Family and Social Policy. On 5 March 2020, the deputy minister was appointed to the function of the Plenipotentiary for Equal Treatment. As a result, the position of the Plenipotentiary has been weakened still further.<sup>562</sup>

The National Council for Combating Discrimination (NCCD) is the national equality body of **Romania**; although it is under parliamentary oversight, the NCCD is autonomous, encompasses 14 discrimination criteria<sup>563</sup> and possesses sanctioning powers.<sup>564</sup> It is a quasi-judicial body similar to a tribunal with litigation powers including the capacity to decide on complaints through recommendations, monitor discrimination cases before the court, provide expert interventions before court cases relating to discrimination, mediate in discrimination cases and investigate and sanction discriminatory acts. It has the right to intervene before the court in legally binding formal decisions on complaints.<sup>565</sup> NCCD can also draft laws regarding combating discrimination, as well as draft other opinions to monitor harmonisation of legal provisions in the Romanian legislation with the non-discrimination principles established by the EU.<sup>566</sup> The NCCD is led by a president who can delegate authority to a vice-president. The president and vice-president are members of the Steering Board – the NCCD deliberative body which enforces the legal mandate of the NCCD.

A major legislative challenge outlined in the 2019 ECRI report is the undeveloped status of the National Strategy on Equality, Inclusion, Diversity (2018 – 2022) drafted by the NCCD, which has not been adopted.<sup>567</sup> This coincides with generally low levels of general public awareness of equality and non-discrimination, rights and access to justice. ECRI also recommended that the Romanian authorities allocate sufficient financial and human resources to the NCCD and the national Ombudsman, address overlapping jurisdictions of the two institutions, and enhance cooperation between them.

<sup>559</sup> European network of legal experts in gender equality and non-discrimination (2021), *Country Report. Non-discrimination, Poland*, p. 11.

<sup>560</sup> European Parliament (2016), Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, *The Policy on Gender Equality in Poland – Update*, p. 11.

<sup>561</sup> European network of legal experts in gender equality and non-discrimination (2021), *Poland*, op. cit., p. 114.

<sup>562</sup> Ibid. p. 11.

<sup>563</sup> The discrimination criteria include non-contagious chronic disease, sexual orientation, HIV infection, language, political orientation, religion, disadvantaged group, age, gender, nationality, disability, ethnicity, race, other.

<sup>564</sup> Consiliul National pentru Combaterea Discriminarii, *Activity report 2020, 2021a*, p. 6, <https://www.cncd.ro/wp-content/uploads/2021/06/Raport-de-activitate-CNCD-2020-EN.pdf>.

<sup>565</sup> Equinet (European Network of Equality Bodies) (2019), National Council for Combating Discrimination, [https://equineteurope.org/author/romania\\_nccd/](https://equineteurope.org/author/romania_nccd/).

<sup>566</sup> ECRI (2019), *Report on Romania*, op. cit.

<sup>567</sup> Ibid.

### 5.2.3. Underreporting and reporting of hate speech and hate crime

Leading on from issues related to the transposition and implementation of legislation, a number of gaps have been identified in national criminal codes, in particular regarding hate speech and hate crime.

For example, one of the biggest weaknesses of the **Bulgarian** Criminal Code in preventing racism is that it does not recognise hate speech or violence targeting sexual orientation/gender identity as an offence.<sup>568</sup> The Law does not require suppression of public funding to organisations or political parties that promote racism.<sup>569</sup> Nor does it include a provision for protection against discrimination 'in the exercise of one's public office or occupation or against the public expression'.<sup>570</sup> The Criminal Code still allows for perpetrators 'propagating fascist and other anti-democratic ideology' to be penalised with an administrative fine only, despite the fact that a bill was introduced to the Parliament to change this.<sup>571</sup> The legalisation of Roma dwellings is hindered by bureaucratic obstacles related to securing ownership of the land and sometimes by direct refusals of local authorities to sell the land to the people who were already occupying and maintaining it.<sup>572</sup>

In **Greece**, amendments to the Criminal Code made discriminatory motivation an aggravating circumstance of crimes, hence increasing the associated penalties. The amendment replaced the term 'hatred' with the lower-threshold concept of targeting the victim based on his or her characteristics.<sup>573</sup> Two court cases in 2020 were based on this amendment, although overall the use of the amendment has been limited. Moreover, convictions of perpetrators of hate crimes by national courts also remain low.<sup>574</sup>

There is a joint database of the Ministry of Justice and the Hellenic Police for data collection on hate crimes, which has already led to increased homogeneity in statistical reporting to some extent.<sup>575</sup> Another positive development is the introduction of the identifier code 'RV' (racist violence) to the classification system of case files. However, this has been implemented only in the Prosecutor's Office of Athens. Moreover, the system is not externally accessible. There is room for further improvements, such as better classification and more granular reporting of data at all stages of the investigative and judicial process, which will allow trends or certain parameters to be identified so that hate crimes can be addressed more effectively.<sup>576</sup> The introduction of a unified national system for monitoring a case from its recording by the police to the relevant procedures at the prosecutor level and the courts will produce more transparency and create trust.<sup>577</sup>

In **Hungary**, concerning hate speech, there has been very limited application of the criminal provision on 'incitement against a community', especially when it comes to racist speech by public figures.<sup>578</sup> The judiciary tends to interpret the provision in narrow terms and the police and the prosecution, in turn,

<sup>568</sup> ECRI (2017), *Report on Bulgaria*, op. cit.

<sup>569</sup> Ibid.

<sup>570</sup> Mijatovic (2020), op. cit., p. 12.

<sup>571</sup> Ibid.

<sup>572</sup> US Department of State (2021), op. cit., p. 30.

<sup>573</sup> Racist Violence Recording Network (RVRN), *Annual Report 2020*, available at: <https://www.unhcr.org/gr/en/19763-racist-violence-recording-network-annual-report-2020.html>.

<sup>574</sup> Ibid. p. 52.

<sup>575</sup> Hellenic Republic, National Action Plan against Racism and Intolerance 2020-2023, p. 14.

<sup>576</sup> RVRN. *Annual Report*, op. cit.

<sup>577</sup> Greek National Commission for Human Rights (2021), Submission to the Committee on LoIPR for the Third Periodic examination of Greece under the ICCPR, p. 9.

<sup>578</sup> CERD (2019), op. cit., p. 4; ECRI, 2015 op. cit.

have taken a very restrictive approach to implementation of the judicial interpretation, disregarding the case-law of the ECHR. As a result, most criminal proceedings are either terminated in the investigative phase, or no charges are pressed by the prosecution.<sup>579</sup> Thus, extremely hostile expressions remain unpunished, as illustrated by the case of *Király and Dömötör v Hungary*, which concerned incitement that had led to anti-Roma violence but had not been officially investigated.<sup>580</sup>

A significant development with respect to the investigation of hate crimes was the establishment of a special hate crime network at the National Police in Hungary. In 2019, there were 21 hate crime officers countrywide. Professionals from the network and civil society experts have jointly developed a toolkit to help police officers identify bias as an element of criminal motives. In order to enhance the network's effectiveness, however, several setbacks in its operation ought to be addressed, in particular membership fluctuation and irregularity of training sessions. There have been positive cooperative exchanges between the network and civil society; however, these have been unilaterally terminated by the police.<sup>581</sup>

There remain systemic gaps in law enforcement in Hungary.<sup>582</sup> First, under-classification persists: hate motivations are regularly disregarded in crime classification and, even when a criminal procedure is launched, incorrect and more lenient provisions are applied.<sup>583</sup> Second, the relevant authorities typically do not take all necessary investigative measures. Third, notwithstanding some recent positive examples, there have been failures by the police to undertake action at far-right assemblies directed against vulnerable groups.<sup>584</sup> These systemic problems, taken together with underreporting, explain the extremely low number of registered hate crimes.<sup>585</sup>

Inadequate law enforcement, amounting to a violation of the European Convention of Human Rights, has been established in several judgments by the ECHR. In *Balázs v Hungary*, the Court ruled that two Hungarian authorities had failed to investigate the hate motivation behind an act of violence against a Roma citizen.<sup>586</sup> In *R.B. v Hungary* and *Király and Dömötör v Hungary*, the Court concluded that the State had not correctly implemented criminal law mechanisms and thus had failed to protect the applicants from racism-motivated harassment.<sup>587</sup> In *M.F. v Hungary*, the Court found that the authorities had failed to examine possible racial motives behind a violent crime committed by police officers on duty against a Roma citizen.<sup>588</sup>

<sup>579</sup> The Equal Treatment Authority used to fill this gap in law enforcement by stepping up to pass decisions on cases where hate speech did not reach the level of a criminal offence (HHK (2019), p. 7).

<sup>580</sup> Case of *Király and Dömötör v Hungary* (Application no. 10851/13), judgment of 17 January 2017, available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5599395-7074074&filename=Judgment%20Kir%C3%A1ly%20and%20D%C3%B6m%C3%B6t%C3%B6r%20v.%20Hungary%20-%20racist%20abuse%20during%20anti-Roma%20demonstration.pdf>. See also GYEM, Working Group Against Hate Crimes, *Shadow report to the 98 Session to the Committee on the Elimination of Racial Discrimination (CERD)*, 2019, p. 6.

<sup>581</sup> *Ibid.*, pp. 4-14.

<sup>582</sup> CERD (2019), *op. cit.*, p. 3; GYEM (2019), *op. cit.*, pp. 4-5; FRA (2013), *Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary*.

<sup>583</sup> Pap, A (2017), 'Hate Crimes, Underpolicing, Institutional Discrimination: Hungarian Cases, ECHR Reflections', *MTA Law Working Papers*, p. 3.

<sup>584</sup> CERD (2019), *op. cit.*, p. 3.

<sup>585</sup> HHK (2019), *op. cit.* p. 12; Perry et al, 2019, *op. cit.*, p. 12.

<sup>586</sup> ECtHR, European Court of Human Rights, *Balázs v Hungary*, no. 15529/12, Judgment delivered by a Chamber, Strasbourg, 2015.

<sup>587</sup> ECtHR, European Court of Human Rights, *R.B. v Hungary*, no. 64602/12, Judgment delivered by a Chamber, Strasbourg, 2016, ECtHR, European Court of Human Rights, *Király and Dömötör v Hungary*, no. 10851/13, Judgment delivered by a Chamber, Strasbourg, 2017a.

<sup>588</sup> ECtHR, European Court of Human Rights, *M.F. v Hungary*, no. 45855/12, Judgment delivered by a Chamber, Strasbourg, 2017b.

The law enforcement authorities have also not taken all necessary action to counter extremist groups.<sup>589</sup> For instance, in 2015, the police failed to respond to anti-Roma activities by a radical far-right group, including patrolling and threats in a number of settlements.<sup>590</sup> In 2016, the authorities took measures against a vigilant paramilitary organisation, but only after a police officer was killed.<sup>591</sup> Furthermore, contrary to a decision by the Supreme Court, in some cases the hate crime provision has been applied to protect members of far-right organisations. The provisions criminalising unsanctioned pursuit of public security have also hardly been enforced. For example, only one investigation was launched in relation to the illegal patrolling by extremist groups of the southern border during the 2015 refugee crisis.<sup>592</sup>

**Romania** has taken a number of steps forward in the area of hate speech and hate crime. In 2015, the Office of the General Prosecutor implemented a strategy to strengthen the effectiveness of criminal investigations related to ill-treatment of minority groups by law enforcement.<sup>593</sup>

The latest ECRI report indicates that there are still issues of concern. First, ECRI argues that the Romanian Criminal Code is still not completely aligned with ECRI's General Policy Recommendation No. 7<sup>594</sup> on adequate national legislation to combat racism and racial discrimination. Inadequacies also remain with regard to civil and administrative laws. Racist and intolerant hate speech in public discourse and also on the Internet targeting Roma, the Hungarian minority and the Jewish community is symptomatic of this problem.<sup>595</sup>

Another challenge is the lack of an effort to ensure comprehensive and systematic data collection on hate crimes. There has been a failure to ensure that all court and NCCD decisions are published.<sup>596</sup> When it comes to racial motivation behind hate speech and other types of hate crimes, criminal prosecution action is rarely taken. This potentially further increases the extent of underreporting of crimes and racially motivated acts. ECRI reports that there is insufficient knowledge and expertise among law enforcement bodies and the judiciary with regard to recognising and addressing hate crimes on racist grounds.<sup>597</sup>

In **Lithuania**, one of the gaps identified is the provision of assistance to victims of hate crimes and hate speech. Currently, this is performed on an ad-hoc basis by civil society organisations, which are often underfunded and understaffed. It is recommended that the state establish structures which can systematically offer support services to victims.<sup>598</sup>

Beyond underreporting and under-recording, another major issue – especially with regard to hate crimes – is the collection and publication of relevant statistics. While some improvements have been made over time, it is still difficult to track down statistics on hate crimes, in part due to their complicated

<sup>589</sup> HHK (2019), op. cit., p. 11.

<sup>590</sup> Ibid.

<sup>591</sup> Ibid.

<sup>592</sup> GYEM (2019), op. cit., pp. 3-6.

<sup>593</sup> ECRI (2019), *Report on Romania (fifth monitoring cycle)*, available at: <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

<sup>594</sup> Council of Europe (2018), *ECRI general policy recommendation No. 7: On national legislation to combat racism and racial discrimination*, <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>.

<sup>595</sup> ECRI (2019), *Report on Romania* op. cit. p 9.

<sup>596</sup> European Commission, *Country report. Non-discrimination, Romania 2020*, available at: <https://op.europa.eu/en/publication-detail/-/publication/79cd1fe7-f7c7-11ea-991b-01aa75ed71a1>

<sup>597</sup> ECRI (2019), *Report on Romania (fifth monitoring cycle)*, op. cit.

<sup>598</sup> MesVisi (EU project 848353 (REC)), 2018, *Hate Crimes and Hate Speech: Overview of the Situation in Lithuania*, p. 5, available at: <http://hrmi.lt/wp-content/uploads/2021/02/hate-crimes-and-hate-speech-overview-of-the-situation-in-lithuania.pdf>.

classification in the Criminal Code.<sup>599</sup> For example, it is often the case that a single act is classified under disruption of public order rather than hate speech.

Furthermore, it has been argued that the criminalisation of hate speech and its handling by law enforcement is only one reactive response to the problem. Another aspect is to proactively combat the causes of hate speech and focus on prevention through education and public awareness. In that respect, the Equal Opportunities Ombudsperson has recommended mainstreaming the topic of human rights in the school curriculum in order to tackle bias formation which later can lead to discriminating attitudes or behaviour. However, the Ministry of Education has not reacted to this recommendation so far.<sup>600</sup>

The Lithuanian media also has an important role to play, especially with respect to online hate speech, through the formulation of clear policies and guidelines and moderation of comment sections. Furthermore, it is often the media that provides platforms and amplifies damaging negative stereotypes of minority groups. Civil society organisations can contribute to the prevention of hate speech, for example, through development of powerful counter-narratives and the media can assist in their dissemination.<sup>601</sup>

The launch of a working group by the Ministry of the Interior has been deemed a good practice.<sup>602</sup> The group is tasked with increasing the effectiveness of the response to hate speech and hate crimes by discussing relevant issues and preparing proposals, as well as monitoring the implementation of international commitments and publishing annual reports on the situation of hate speech and hate crimes in Lithuania. In 2020, the Ministry of Interior approved an Action Plan of the Working Group for Promoting an Effective Response to Hate Crimes and Hate Speech in Lithuania 2020-2022.<sup>603</sup>

#### 5.2.4. National action plans against racism

The 2001 Durban Declaration called upon each country to develop and elaborate national action plans against racism. The EU Anti-racism Action Plan further encourages Member States to develop NAPARs by the end of 2022 and offers support in developing guiding principles for these. According to FRA, 21 Member States had some form of action plan in 2020.<sup>604</sup> However, a closer look at the title and content of NAPARs shows discrepancies. Some Member States, such as Belgium and Austria, were developing their action plans. Spain and Hungary are examples of countries that have plans that span many years and were developed many years ago. There is also great diversity in the titles and aspects covered by the action plans. While some are clearly labelled as action plans against racism, others have a different reach or may not be considered a fully-fledged NAPARs (e.g. National Integration Plan for persons entitled to international protection – IT). FRA merely lists Member States' effort to develop NAPARs but refrains from addressing their content. ENAR has developed a set of indicators for effective NAPARs, both content-based and process-based (development, adoption, implementation and monitoring).<sup>605</sup>

<sup>599</sup> MesVisi, *Overview of the Situation in Lithuania*, op. cit., p. 13.

<sup>600</sup> Interview with a member of the Equal Opportunities Ombudsperson, September 2021.

<sup>601</sup> Office of the Equal Opportunity Ombudsperson (2021), *Independent Ombudsperson's Review on Institutional Response to Hate Speech*, pp. 17-18, available at: <https://www.lygybe.lt/data/public/uploads/2021/04/independent-review-on-hate-speech2021.pdf>

<sup>602</sup> MesVisi, *Overview of the Situation in Lithuania*, op. cit., p. 18.

<sup>603</sup> Office of the Equal Opportunity Ombudsperson (2021), op. cit. pp. 7-8.

<sup>604</sup> FRA (2021), *Fundamental Rights Report*. Op. cit.

<sup>605</sup> ENAR, *Lessons for NAPAR*, op. cit., p. 9.

Table 7 summarises the NAPARs in place in the selected Member States, as well as a short assessment of what they include.

**Table 7: NAPARs in the selected Member States**

Member State	Action plan identified	Notes
BG	No NAPAR	N/A
DE	National Action Plan Against Racism – Positions and Measures to Address Ideologies of Inequality and Related Discrimination (2017)	Fully-fledged action plan including a local action plan in all of the federated states
DK	No NAPAR	N/A
EL	National action plan against racism and intolerance (2021)	First NAPAR adopted in the country
FR	National plan against racism and antisemitism 2018–2020	The action plan expired in 2020; no NAPAR has yet been adopted despite being announced
HU	National social inclusion strategy 2011–2020	Document focusing on the social inclusion of Roma
IT	National integration plan for persons entitled to international protection (2017)	Focusing on immigrants entitled to international protection
LT	Action plan for the Promotion of Non-Discrimination 2021–2023	The action plan lists clear indicators.
PL	National equality plan for 2021–2030	Under development
RO	National strategy on preventing and combating antisemitism, xenophobia, radicalisation and incitement to hate speech	Under development

Source: Asterisk Research and Analysis and CSD research.

The **German** NAPAR includes a long discussion on racism and, while it mentions the concept of institutional racism in the context of one case, it shies away from using it operationally. The NAPAR acknowledges that racism ‘can occur in all structures of society and government’ and it uses the concept of ‘racism in institutions’ or ‘institutional discrimination’.<sup>606</sup> Furthermore, the document lists antisemitism, antigypsyism, islamophobia and afrophobia. The Federal NAPAR also includes the concept of intersectionality. In terms of data collection, it proposes the recording, analysis and study of incidents of racist violence, so that the competent authorities –based on the resulting conclusions –

<sup>606</sup> German Federal Government, National Action Plan Against Racism – Positions and Measures to Address Ideologies of Inequality and Related Discrimination, p. 90, available at: [https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2018/nap-en.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2018/nap-en.pdf?__blob=publicationFile&v=4)

can take more appropriate precautionary measures to prevent their recurrence, as well as the creation of a database of such crimes. Among other mechanisms proposed by the NAPAR are surveys with a sample of victims of racist crime, in order to identify the causes of their victimisation and to examine any other parameters that prompted the perpetrator to act. The document includes an annex summarising the main issues, organisations and measures in each of Germany's 16 federated states. However, ECRI laments that the German NAPAR 'does not contain concrete objectives, measures, timelines, budgets, indicators with starting and target values, and the authority and member of staff responsible for achieving each objective and implementing each measure'.<sup>607</sup>

In 2020, **Greece** adopted its first National Action Plan against Racism and Intolerance covering the period 2020-2023.<sup>608</sup> The NAPAR was drafted by the National Council against Racism and Intolerance, which is a collective advisory body established in 2015 under the General Secretariat for Transparency and Human Rights of the Ministry of Justice. The action plan is structured along five priority axes: (i) discrimination, stereotypes, prejudices (bias), (ii) fight against racist crime, (iii) awareness – information, (iv) integration/empowerment, and (v) horizontal/cross-sectoral policies. For each of the priority axes, operational objectives, actions, target groups and evaluation indicators are defined. The target groups are divided into two categories: a) target groups who are potential victims of racism and intolerance and b) target groups whose role is crucial to combating these phenomena. Among its positive features is the evaluation system, which allows annual monitoring of progress on various actions. However, some issues remain to be addressed. A major shortcoming of the NAPAR is that it does not offer a comprehensive set of interventions but instead to a large extent groups already ongoing or planned individual actions (which are often financed through EU instruments). The issue of underreporting of hate crimes is acknowledged and partially addressed but more concrete actions on structural issues are not considered, such as the lack of interpretation services on the special reporting telephone line, which significantly restricts the effectiveness of this reporting and complaint mechanism. Other omissions include the absence of actions assigned to some Ministries, such as the Ministry of Health, which are directly or indirectly involved in creating policies to support victims of hate crimes.<sup>609</sup>

The definition of racism provides some understanding of the power relationship: '*Power and its use and misuse are heavily bound up with racism. Racism is at one and the same time defined by those who have power and it defines power relations between perpetrators and victims.*'<sup>610</sup> However, the action plan does provide some examples of specific forms of racism, namely antisemitism, antigypsyism, afrophobia and islamophobia. While some actions in the NAPAR have been allocated budgets, this is not the case for all of them. Finally, the action plan includes details on the implementation of the plan, those responsible for it, timeframes and the target groups. This should allow for easier monitoring and evaluation of the NAPAR.

The **French** NAPAR expired in 2020 and has still not been renewed despite the minister in charge stating in the Parliament that it would be published before summer 2021.<sup>611</sup> Assessed through the checklist developed by ENAR of what constitutes a good NAPAR, the 2018-2020 plan<sup>612</sup> fails in a number

<sup>607</sup> ECRI (2019), *Report on Germany (sixth monitoring cycle)*, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/germany>

<sup>608</sup> Hellenic Republic. National Action Plan Against Racism and Intolerance (NAPRI) 2020-2023. Available at: <https://moj.gov.gr/wp-content/uploads/2021/03/NAPRI-en.pdf>.

<sup>609</sup> Ibid., p. 21-22.

<sup>610</sup> Ibid., p. 51.

<sup>611</sup> See 'Le gouvernement va mettre en place un plan national de lutte contre le racisme, in La 1ere le portail des outre-mer', available at <https://la1ere.francetvinfo.fr/le-gouvernement-va-mettre-en-place-un-plan-national-de-lutte-contre-le-racisme-966118.html>, last accessed on 22 October 2021.

<sup>612</sup> Available at: <https://www.dilcrah.fr/le-plan-national-de-lutte-contre-le-racisme-et-lantisemitisme/>.

of areas.<sup>613</sup> First of all, the Plan only contains a list of actions and does not provide any discussion, definition of racism or specific forms of racism. Second, while the plan calls for the effective collection of data (especially on hate crimes), it does not provide of the collection of data and statistics based on racial or ethnic origin. Finally, while the plan was supposed to be evaluated 18 months after its introduction, no evaluation seems to have taken place to date.

**Lithuania** adopted its first NAPAR in December 2020.<sup>614</sup> Focusing on non-discrimination, the Lithuanian NAPAR does not include a definition of racism. Nor does it mention specific forms of racism or the concept of intersectionality. Most of the measures listed in the action plan focus on training activities, educational events (including conferences) and strengthening cooperation within the country and with international partners. Despite these shortfalls, the document is particularly clear in terms of setting indicators and ministries or departments responsible for achieving these.<sup>615</sup>

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<sup>613</sup> ENAR, Lessons for effective national anti-racism policies, National Action Plans Against Racism, available at: <https://www.enar-eu.org/National-Action-Plans-Against-Racism-Lessons-for-effective-national-anti-racism>

<sup>614</sup> Republic of Lithuania, Action Plan to Promote Non-Discrimination, December 2020.

<sup>615</sup> Lithuania, Action Plan to Promote Non-Discrimination op. cit., Chapter V.

## 6. CONCLUSIONS AND RECOMMENDATIONS

### 6.1. Conclusions

There is an identifiable and irrefutable problem with racism in the EU and its Member States. FRA states that racism remains a persistent issue within the EU, seriously affects lives of individuals, and that over half of Europeans believe that racism is widespread in their country.<sup>616</sup> While there are distinctive aspects of racism, xenophobia and discrimination in the Member States targeting specific groups, they all have common features. Racism is rooted in self-perpetuating structural, institutional and historical contexts, which goes beyond the traditional view that racism is simply **inter-personal**.

#### 6.1.1. Specific forms of racism

Racism, xenophobia and discrimination are phenomena that can occur either between individuals (**individual racism**) or be embedded in organisations and institutions (**institutional racism**). While individual racism is easily recognisable (for example, through racial slurs, individual discrimination or acts of violence), it does not arise in a vacuum. Various groups, communities and individuals are subject to racism, xenophobia and discrimination. The European Network Against Racism (ENAR)<sup>617</sup> identifies five main groups particularly affected by racism and discrimination (i) Roma and travellers, (ii) People of African descent and black Europeans, (iii) Muslims, (iv) Jews, (v) Migrants. In addition to these groups, racism and discrimination of Asians and people of Asian descent and indigenous people are examined in this study.

These forms of racism refer to the way in which these groups are perceived by the majority and are therefore a mental construct of the majority.<sup>618</sup> The functioning of society and its institutions is considered to produce racism through its structures, which automatically dominate certain communities and groups. One important characteristic of **institutional racism is that the mechanism can exist without those exercising power being racist themselves**. Looking at institutional racism allows for a more holistic approach to the way in which people who are subject to racism are affected. Institutional practices, policies, cultural representations and norms, and the legacy of historical oppression are all forms of structural racism leading to deeply embedded racial inequalities.<sup>619</sup>

**Discrimination by law enforcement authorities** is a key element of institutional racism and occurs in all selected Member States. The groups and communities subject to this form of racism vary between Member States, often mirroring some of the distinctive features of racism and discrimination in these countries.

<sup>616</sup> FRA, *Fundamental Rights Report 2021*, op. cit.

<sup>617</sup> ENAR, available at: <https://www.enar-eu.org/Specific-forms-of-racism>.

<sup>618</sup> Carmichael, S. and Hamilton, C. V. (1967), *Black Power: the Politics of Liberation in America*, Grove.

<sup>619</sup> ENAR, 'A roadmap for EU institutions to address structural racism', June 2020, available at: <https://www.enar-eu.org/A-roadmap-for-EU-institutions-to-address-structural-racism>.

### 6.1.2. International and European legal framework

At the **international level**, a legal framework has been developed through the work of the United Nations. That framework requires countries to work towards the elimination of all forms of racism, xenophobia and racial discrimination. Main instruments include the Universal Declaration of Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. As an international organisation, the Council of Europe (CoE) promotes the rule of law, democracy, human rights and social development, in particular through the **European Convention on Human Rights** (ECHR)<sup>620</sup>. The ECHR sets out the legally binding obligation for its members to guarantee a list of human rights to everyone within their jurisdiction (not just citizens) and the **European Commission against Racism and Intolerance** (ECRI), which plays a particular role as it monitors problems of racism, xenophobia, antisemitism, intolerance and racial discrimination. Other instruments include the Universal Declaration of Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

A broad set of rules exist at the EU level aimed at tackling racism, xenophobia and racial discrimination. Some of the policies have a horizontal approach, while others focus on specific groups experiencing racism and xenophobia. Key pieces of legislation include:

- **Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law** which obliges all Member States to provide for criminal sanctions in relation to incitement to violence or hatred based on race, colour, descent, religion or belief, national or ethnic origin;<sup>621</sup>
- **Racial Equality Directive**, which establishes minimum requirements for the implementation of the equal treatment principle with regard to racial and ethnic origin and protection against discrimination in access to employment and training, working conditions, social protection and other areas;
- **Employment Equality Directive**, which establishes a general framework for equal treatment irrespective of religion and belief, as well as other grounds. Its scope is limited to employment and occupation.

### 6.1.3. EU Anti-racism Action Plan

The publication of the EU Anti-racism Action Plan marked an important threshold in the EU's approach to combating racism. It introduced concepts and an understanding of the root causes of racism which previous policy documents shied away from. It marks the first time that an EU policy has acknowledged racism as a system that stems from the continent's history of slavery and colonialism, whose legacies still create inequalities today.<sup>622</sup>

<sup>620</sup> Full text of the Convention, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>621</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32008F0913>.

<sup>622</sup> Prof. Ilke Adam, in *Politico*, 'Opinion: EU's fight against racism isn't working', 19 March 2021, available at: <https://www.politico.eu/article/eus-fight-against-racism-isnt-working/>, last accessed on 1 November 2021.

The action plan was welcomed by civil society organisations as a step forward in anti-racism and anti-discrimination. First, the mere **existence of an action plan was viewed positively** as it sets a political priority and provides a framework against which the actions taken can be assessed. Second, it is the first EU policy document to recognise the **structural dimension of racism**. The action plan's focus is on encouraging and supporting Member States to **develop and adopt national action plans against racism**. NAPARs are an important tool for questioning the reasons behind the lack of implementation of existing legislation in force in Member States and can complement the tackling of more elaborate forms of racism. The action plan proposes actions to develop methods that would allow for the collection of robust, consistent and comparable data **disaggregated by racial or ethnic origin** while ensuring respect for privacy and Member States' national contexts.<sup>623</sup> Other elements of the action plan include the acknowledgement of the need to address **racism in law enforcement**; the need to ensure **mainstreaming**; the emphasis **on engaging civil society and grassroots organisations** and the steps announced by the European Commission to **improve racial diversity and representation within its ranks**.

Some criticism was also voiced of the action plan and its implementation, which revolved around:

- the action plan's **implementation**; first, several of the actions listed relate to the effective implementation of already existing legislation; second, the Action plan lacks mechanisms to ensure its effective implementation.
- specific **thematic areas** (such as policing, criminal justice and data collection). As an example, the action plan mentions the use of profiling as a legitimate police tactic. Given that profiling by law enforcement is almost exclusively based on racial or ethnic criteria, the legitimisation of this technique is of concern.
- **mainstreaming**; there are concerns that despite the pledges under the action plan, there has not been significant progress. One example is the proposal on the Artificial Intelligence Act where civil society organisation have criticised the lack of consideration to bias and discrimination.<sup>624</sup>
- and **other areas**, such as the measures' focus on tackling individual racism rather than institutional or structural racism.

Despite the plethora of legislative acts and policies to combat racism, xenophobia and racial discrimination, some gaps and constraints related to their effective implementation exist.

At present, the **existing legislative framework only covers protection against discrimination on the grounds of employment**, but not social security and healthcare, education, or access to goods and services on the grounds of religion or belief, disability, age or sexual orientation. In addition, **there are barriers to access to justice for victims of discrimination, as well as to the effective national implementation of the Racial Equality Directive** and the functioning of the equality bodies.<sup>625</sup>

In 2021, the Commission identified<sup>626</sup> possible gaps and constraints related to the effective implementation of the directives, as well as avenues for follow-up. These included (1) strengthening the role of equality bodies; (2) supporting Member States in monitoring the application of the

<sup>623</sup> ENAR, *Overdue action against racism by the European Union*, 23 September 2020, available at: <https://www.enar-eu.org/Overdue-action-against-racism-by-the-European-Union>

<sup>624</sup> See the discussion in Section 3.3.

<sup>625</sup> EPRS, *Equality and the Fight against Racism and Xenophobia – Cost of Non-Europe* report, March 2018, p. 7, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/615660/EPRS\\_STU\(2018\)615660\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/615660/EPRS_STU(2018)615660_EN.pdf).

<sup>626</sup> European Commission, COM(2021) 139 final, op. cit., available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2021:139:FIN>.

directives; (3) encouraging equality data collection; (4) tackling the underreporting of hate speech and hate crime; (5) encouraging full and/or correct transposition and implementation of the Framework Decision on Racism and Xenophobia; (6) overcoming barriers to justice for victims of discrimination, including problems with the existence and compliance of sanctions and remedies applied to instances of discrimination at the national level.<sup>627</sup>

Beyond the issues identified in the study, areas where there are gaps in the legislative framework include:

- **Racism in policing and law enforcement.** An area which is very problematic but which has not been high on the European Commission's political agenda since the Equality Directives was passed. However, research findings confirm that racism and discrimination by police and law enforcement are widespread across the EU.<sup>628</sup> Such behaviour is not only unlawful but can also undermine trust in authorities and result in underreporting of racially motivated crimes, including hate speech and hate crimes.
- The **European response to irregular migration** which has focused on criminalisation. The most recent example is the EU action plan against migrant smuggling (2021-2025).<sup>629</sup> The action plan perpetuates the image of smuggling operations operated by powerful criminal networks, whereas the reality is that the majority of those considered smugglers are friends and families of migrants.<sup>630</sup> Another problematic aspect of the criminalisation of migration is the increasing interoperability between migration and law enforcement databases. Among the risks identified in the development of this interoperability framework is the increased risk of 'discrimination on grounds of nationality [and] **discrimination on the basis of racial or ethnic origin**'<sup>631</sup> due to the risk of data on different databases being used for purposes other than those originally intended.

#### 6.1.4. National legal frameworks

All countries included in this study have **provisions on non-discrimination in their constitutions**. These vary, however, in terms of the grounds of non-discrimination covered. In some countries, the grounds are kept very general, whereas others outline at least some grounds of discrimination more specifically.

The EU equality directives are implemented through **anti-discrimination laws** in all the Member States studied. This has significantly enhanced legal protection against racism, xenophobia and racial discrimination. In some countries, this takes the form of **single equality laws**, whereas in others anti-discrimination laws are enacted in **various legal codes** covering different grounds and elements of discrimination. In addition, some Member States went beyond the legal obligations set by the equality directives, namely by increasing the number of grounds of protection. Despite these positive

<sup>627</sup> Ibid.

<sup>628</sup> For example: FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, p. 68 ff.

<sup>629</sup> European Commission, A renewed EU action plan against migrant smuggling (2021-2025) – COM(2021) 591, available at: [https://ec.europa.eu/home-affairs/renewed-eu-action-plan-against-migrant-smuggling-2021-2025-com-2021-591\\_en](https://ec.europa.eu/home-affairs/renewed-eu-action-plan-against-migrant-smuggling-2021-2025-com-2021-591_en).

<sup>630</sup> European University Institute, 'Five Misconceptions about migrant smuggling', Policy Brief Issue 2018/07, May 2018, available at: <https://globalinitiative.net/wp-content/uploads/2018/05/Five-Misconceptions-About-Migrant-Smuggling-European-University-Institute-2018.pdf>.

<sup>631</sup> Cristina Blasi Casagran, 'Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU', *Human Rights Law Review*, Volume 21, Issue 2, June 2021, pp. 433–457, p. 454, <https://doi.org/10.1093/hrlr/ngaa057>.

developments, there are nevertheless some areas of concern due to legislation not being applied correctly and the fact that some gaps remain.

While provisions on incitement to hate crime and hate speech seem to be in place in the Criminal Codes of most of the selected Member States, some gaps can be discerned in terms of practical application, transposition and implementation of legislation. For example, the Criminal Codes in some countries do not fully cover the list of enumerated grounds outlined by the Framework Decision, or the definition of certain concepts or criminalisation of certain acts. That constitutes a significant barrier to protection against racism, xenophobia and racial discrimination.

The 2001 Durban Declaration<sup>632</sup> called upon each country to develop and elaborate **national action plans against racism**. The EU Anti-racism Action Plan further encourages Member States to develop NAPARs by the end of 2022 and offers support in developing guiding principles for these. According to FRA, 21 Member States had some form of action plan in 2020.<sup>633</sup> However, a closer look at the title and content of NAPARs shows discrepancies. Some Member States, such as Belgium and Austria, are in the process of developing their action plans. Spain and Hungary are examples of countries that have plans that span many years and were developed many years ago. There is also great diversity in the titles and aspects covered by the action plans. While some are clearly labelled as action plans against racism, others have a different reach or may not be considered a fully-fledged NAPARs (e.g. National Integration Plan for persons entitled to international protection – IT). ENAR has developed a set of indicators for effective NAPARs, both content-based and process-based (development, adoption, implementation and monitoring).<sup>634</sup>

## 6.2. Recommendations

The recommendations for this study are structured around three themes.

### a. Implementation of the legislative framework

There is a fairly comprehensive body of legislation and policies at the EU level for addressing many of the forms of racism and discrimination existing in the EU. However, its full and effective implementation is still far from complete. Some of the gaps of the current legislative framework of the EU have been identified in this report, as well as in numerous other publications.

**Recommendation a.1** – The European Commission should continue to monitor effectively the transposition and implementation of EU anti-discrimination legislation in the Member States and to initiate infringement proceedings against Member States that are shown to be in breach.

**Recommendation a.2** - The European Commission could put in place implementation measures of the the EU Antiracism Action Plan with clear and measurable targets and progress monitoring. This could be done by introducing regular review of the EU Antiracism Action Plan in the same way as the

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<sup>632</sup> Durban Declaration and Programme of Action (DDPA), as adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 and reviewed in 2009, available at: [https://www.un.org/en/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](https://www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf).

<sup>633</sup> FRA (2021), *Fundamental Rights Report*. Op. cit.

<sup>634</sup> ENAR, *Lessons for NAPAR*, op. cit., p. 9.

'Rule of Law Review Cycle' proposed by the Commission<sup>635</sup>. The cycle would cover all Member States and culminate in the adoption of an annual anti-racism report that summarises the situation in Member States as regards the implementation of the EU Antiracism Action Plan.

**Recommendation a.3** – Member States should ensure equality bodies have the necessary competences, powers and resources to perform their tasks independently and effectively and be accessible to all in line with the 2018 recommendations of the European Commission on standards for equality bodies.<sup>636</sup>

**Recommendation a.4** – The lack of robust, consistent and comparable data disaggregated by racial or ethnic origin is a barrier to identifying and addressing existing structural inequalities. Member States should follow the High-Level Group on Non-discrimination, Equality and Diversity's subgroup on equality data's guidance note<sup>637</sup> to collect disaggregated data.

**Recommendation a.5** – Member States should be encouraged to develop effective and comprehensive National Anti-racism Action Plans and to ensure their regular review and implementation.

**Recommendation a.6** – There is no agreement yet on the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, the Commission's proposal from July 2008 (the so called 'Equal Treatment Directive or Horizontal Directive'). Efforts should be made to finally agree to adopt this Directive.

## b. Tackling the root causes of racism

Racism has deep historical and structural roots. In order to encourage the process of addressing these, the first step is to foster understanding and acknowledgment of these causes. Acknowledging the legacy of Europe's role in colonialism and imperialism, followed by its need to welcome a workforce after the Second World War, and the perpetuating structural inequalities that it created, is an important step. The increasing lack of knowledge about certain facts concerning the Holocaust, genocides and other acts of mass brutality needs to be addressed to ensure a wider understanding of the historical context in which racism and inequality have developed. Another issue relates to the acceptance of the multi-faceted reality of European identity. Education is a key factor in addressing this issue.

**Recommendation b.1** – Member States should encourage the development of initiatives to foster a greater understanding of the historical causes of racism. It could draw inspiration from the Black History Month in the UK, which seeks to create *an engaging space of mutual reflection, examination, evaluation, planning and action to free society of the vestiges of imperialism and colonialism in order to reorder society in our collective [...] interest.*<sup>638</sup>

<sup>635</sup> European Commission, Communication of 17 July 2019 on Strengthening the rule of law within the Union: A blueprint for action, COM(2019) 343 final, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2019\)343&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2019)343&lang=en).

<sup>636</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018, on standard for equality bodies, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018H0951>.

<sup>637</sup> High-Level Group on Non-discrimination, Equality and Diversity's subgroup, Guidance note on the collection and use of equality data based on racial or ethnic origin, 2001, available at: [https://ec.europa.eu/info/sites/default/files/guidance\\_note\\_on\\_the\\_collection\\_and\\_use\\_of\\_equality\\_data\\_based\\_on\\_racial\\_or\\_ethnic\\_origin.pdf](https://ec.europa.eu/info/sites/default/files/guidance_note_on_the_collection_and_use_of_equality_data_based_on_racial_or_ethnic_origin.pdf).

<sup>638</sup> See <https://www.blackhistorymonth.org.uk/article/section/bhm-intros/black-history-month-uk/>

**Recommendation b.2** – The European Union should fund research to collect information on education materials used in Member States to identify areas where disputed facts are presented as reality.

**Recommendation b.3** – The European Union should support effort to tackle institutional racism, in particular from law enforcement authorities. This could include: recommendation to introduce a reasonable suspicion standard for police search activities, ensure training and monitoring of instances of racially-motivated misconduct by the police.

### **c. Policymaking process**

One of the criticisms of the policymaking process concerning racial equality is the lack of involvement of racialised people or their representative organisations. This can lead to a policy approach focused on 'helping' racialised people, rather than removing barriers that prevent the equal access of certain people, communities or groups to services and opportunities. The development of a permanent forum of civil society organisations by the office of the Commission's anti-racism coordinator is a positive step.<sup>639</sup>

The language used in policymaking is also important. Some of the terminology used to further racial justice can have a negative connotation.

**Recommendation c.1** – European and Member State institutions should encourage the participation and/or consultation of civil society organisations representing racialised groups in the policymaking process. This can take the form of creation of a permanent forum of civil society organisations fighting against racism, xenophobia and racial discrimination. These organisations can ensure racialised people are properly consulted during the decision-making process and play the role of watchdogs when necessary.

**Recommendation c.2** – The European Institutions should set an example in the use of positive framing, such as speaking of 'racial justice' rather than 'racism', or 'broadening the curriculum' instead of 'decolonising the curriculum'.

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<sup>639</sup> See [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/consultation-process\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/consultation-process_en).

## ANNEXES

These annexes contain country reports for each of the countries for which research has been undertaken. The country report presented here are stand-alone, self-explaining texts which can be read independently from the main body of the study. As such, some of the information contained in the country reports is also included in the main chapters of the report.

### A. COUNTRY REPORT - BULGARIA

#### A.1 Causes of racism, xenophobia and racial discrimination

Antigypsyism is the main form of xenophobia and racism, which has dominated the Bulgarian reality since its emergence as a nation state in late 19<sup>th</sup> century and can currently be categorized as a system of institutionalized inequality. Roma people live in segregated communities, have a reduced access to education and economic development, are culturally excluded and subjected to hate speech, hate crimes, and everyday acts of discrimination. Public tensions between ethnic Bulgarians and Roma people have culminated in ethnic clashes – anti-Roma protests which have resulted in violence in the cases of Garmen (a village in southwestern Bulgaria) and Orlandovtzi (a neighbourhood in Sofia)<sup>640</sup>.

The root causes of antigypsyism are related to Roma people's perceived 'foreignness'. This innate 'otherness' was exacerbated by the phenomenon of ethnicising the Bulgarian identity in the nineteenth century, which centred around the unity of ethnicity and religion in defining the national ideal, in opposition to the religious, ethnic and racial difference of minority groups.<sup>641</sup> The ill-treatment of Roma in Bulgaria's recent history has been noted in the early post-Socialist times (as early as 1993<sup>642</sup>) and has remained a persistent tendency which has been difficult to tackle.

Due to the make-up of the Bulgarian society, Antisemitism, Afrophobia, and anti-Asian hatred are less visible phenomena in Bulgaria. Xenophobia in Bulgaria is manifested mainly against Muslim people, who experience hate speech in growing levels since the migration crisis<sup>643</sup>.

#### A.2 Dimensions of racism, xenophobia and racial discrimination

The most prominent examples of anti-Semitic acts in Bulgaria are mostly symbolic rather than violence against people – desecration of temples and holy places, graffiti on public and institutional buildings, vandalism on monuments, and dissemination of anti-Semitic messaging and written content<sup>644</sup>. There have been some more alarming occurrences related to hate speech and voiced threats against Jewish people<sup>645</sup>. However, these could be considered sporadic individual acts of hatred and discrimination and do not necessarily fit the requirements of structural racism and institutional intolerance. Similarly, the occurrences of anti-black racism have been peripheral and attributable to personal prejudice and

<sup>640</sup> Naydenova V, *Bulgaria Must Stop Its Anti-Roma Attacks*, Open Society Foundations, 2015, available at: <https://www.opensocietyfoundations.org/voices/bulgaria-must-stop-its-anti-roma-attacks> .

<sup>641</sup> Smith, A. D. (1983), 'Ethnic Identity and World Order', 12(2), *Millennium*, pp. 149-161, [doi:10.1177/03058298830120020601](https://doi.org/10.1177/03058298830120020601).

<sup>642</sup> Amnesty International, *Torture and Ill-Treatment of Roma. Bulgaria*, 1992. Available online at: <https://www.amnesty.org/fr/wp-content/uploads/2021/06/eur150031993en.pdf> Last visited on 02.09.2021.

<sup>643</sup> ECRI, 2014

<sup>644</sup> Organization of the Jews in Bulgaria "Shalom", *Anti-Semitic Acts in Bulgaria 2009-2010*, Bulletin 1, Sofia. Available online at: [http://shalompr.org/wp-content/uploads/2011/05/BULETIN\\_2011-BG\\_ALL.pdf](http://shalompr.org/wp-content/uploads/2011/05/BULETIN_2011-BG_ALL.pdf) Last visited on 02.09.2021.

<sup>645</sup> Ibid.

extreme manifestation of football hooliganism. In 2019 the Bulgarian Football Federation was fined by the Union of European Football Associations for racist chants and behaviours of football fans in Bulgaria<sup>646</sup>. There have been troubling levels of denial of the seriousness of the issues of anti-black racism, which some analyses have attributed to the low exposure of Bulgarians to other cultures and ignorance to the root causes and actual historical developments of racism in the West<sup>647</sup>.

The largest example of organised racism and xenophobia is the annual Lukov March – a nationalist torchlight procession (or march) held in remembrance of a Bulgarian general who was killed for his support for the Nazis in the Second World War<sup>648</sup>. The march was investigated by authorities in 2020 who had reservations about its legality. Furthermore, 'the spirit' of the march has in time evolved from pure anti-Semitism to a Bulgarian form of nationalism – one denouncing all other races, non-Christian religions, non-heterosexuals, and most importantly ethnic minorities, namely the Roma community.

Systemic processes and trends that define the exclusion and marginalisation of Roma people and Roma communities in Bulgaria are: 1) poverty and economic exclusion, 2) unequal access to quality education, 3) housing deprivation, 4) stigmatisation and hate speech, and 5) excessive policing. Poverty and economic exclusion are the most prominent economic obstacles to the practical integration of the Roma communities in the Bulgarian society. They account for the lived experiences and challenges which deprive Roma populations of life chances and social mobility opportunities. Educational segregation remains one of the biggest challenges, enforced by the systemic antigypsyism in Bulgaria – Roma children are most vulnerable to early school dropout, to studying in entirely segregated schools, and to achieving a lower than average level of education<sup>649</sup>.

Forceful removal on behalf of local authorities of illegal dwellings, which are usually the primary and only homes of the families inhabiting them is a problem, which in Bulgaria disproportionately (almost entirely) affects the Roma community<sup>650</sup>. The high rates of housing deprivation among Roma people have remained unaddressed by the state<sup>651</sup>. The demolition of 'illegal and hazardous' dwellings has been used by authorities as means to achieve political goals ahead of elections<sup>652</sup>. However, it is usually not followed by provision of support to the residents of the demolished homes, thus making the former inhabitants effectively homeless<sup>653</sup>. International calls to halt the unlawful evictions of Roma people by the Bulgarian state authorities have emerged as early as 2015, with Michael Georg Link, then Director of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-

<sup>646</sup> BBC, *Bulgaria fans' racism: Racist abuse of England players leads to stadium ban*, BBC Sport European Football, 2019. Available online at: <https://www.bbc.com/sport/football/50212951> Last visited on 02.09.2021.

<sup>647</sup> Ford M, *Fascists and football: Bulgaria's deep-rooted and interconnected racism problem*, Deutsche Welle, 2019. Available online at: <https://www.dw.com/en/fascists-and-football-bulgarias-deep-rooted-and-interconnected-racism-problem/a-50843110> Last visited on 02.09.2021.

<sup>648</sup> Todorov S, *Bulgarian Nationalists to March Despite Prosecution Probe*, BIRN, Sofia, 2020. Available online at: <https://balkaninsight.com/2020/01/21/bulgarian-nationalists-to-march-despite-prosecution-probe/> Last visited on 02.09.2021.

<sup>649</sup> FRA, *EU MIDIS II, Second European Union Minorities and Discrimination Survey Technical Report*, European Union Agency for Fundamental Rights, 2017. Available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-midis-ii-technical-report\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-technical-report_en.pdf) Last visited on 02.09.2021.

<sup>650</sup> Ombudsman of the Republic of Bulgaria, *Annual Report of the Ombudsman of the Republic of Bulgaria. Resume*, Sofia, 2021, Available online at: [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\\_SUMMARY\\_BG.pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020_SUMMARY_BG.pdf) Last visited on 02.09.2021., p.95.

<sup>651</sup> Ibid.

<sup>652</sup> US DOS, *2020 Country Reports on Human Rights Practices: Bulgaria*, Bureau of Democracy, Human Rights, and Labour, 2021. Available online at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/bulgaria/>

<sup>653</sup> Ibid.

operation in Europe, underlining that ‘such actions must comply with international standards and provide for adequate housing for those evicted’<sup>654</sup>.

The levels of perceived segregation in Bulgaria increased by 13 % between 2011 and 2016.<sup>655</sup> The Ombudsman of the Republic of Bulgaria<sup>656</sup> has noted not only that hate speech in general is persistently present in all spheres of public life (‘in the media, on the internet, in interpersonal communication, and most disturbingly in institutions’), but also ‘social sensitivity’ concerning this issue seems to have decreased. Hate speech and hate crimes in Bulgaria have remained overwhelmingly underreported<sup>657</sup> and under-sanctioned.<sup>658</sup>

Policing and police ill-treatment have been a prominent problem in Bulgaria<sup>659</sup>. Violent treatment by police and ‘crimes involving violence or threats of violence against Roma’<sup>660</sup> are cited examples of practices threatening human rights and freedoms in Bulgaria. Personal accounts of experienced police ill-treatment and brutality against Roma people have been staggering on records, kept by civil society organisations for decades<sup>661</sup>. The Bulgarian Helsinki Committee<sup>662</sup> also notes that physical abuse in the hands of the police in Bulgaria is widespread and disproportionately affects Roma people<sup>663</sup>. Independent research with police officers, judiciary representatives, and members of Roma communities and legal case studies in Bulgaria, Romania, Hungary and Spain has concluded that ‘Discriminatory and abusive police practices against Roma are widespread, often fuelled by negative stereotypes, and sometimes by outright hatred towards Roma’<sup>664</sup>. However, there is no institutional body, gathering data and statistics about police brutality and/or registered cases and complaints. The relationship between law enforcement authorities and Roma communities, although not systematically approached, analysed and regulated, has been illustrated by two very specific recent occurrences, which were brought to the public attention in 2020-2021. Both of these cases are perceived as symptomatic of a structurally racist system (a system of structural antigypsyism), rather than individual acts of discrimination and hatred – the enclosure of particular Roma communities in the dawn of the pandemic and the training programme of the Ministry of Interior to counter trends of radicalization among Roma communities. The latter led to MEPs calling for blocking of EU funding to Bulgaria<sup>665</sup> as a reaction to a letter signed by Bulgarian activists and sent to the European Commission

<sup>654</sup> OSCE Office for Democratic Institutions and Human Rights, *ODIHR Director Link calls for halting evictions of Roma and anti-Roma rhetoric in Bulgaria*, National Minority Issues, Roma and Sinti, 2015, available at: <https://www.osce.org/odihhr/171901>

<sup>655</sup> Lajčáková, J., Hojsík, M. and Karoly, M. (2020), *Combating Antigypsyism. Expert reports building on forward-looking aspects of the evaluation of the EU Framework for National Roma Integration Strategies*, European Commission, Brussels, p. 38 available at: [https://ec.europa.eu/info/sites/default/files/post2020\\_eu\\_roma\\_in\\_antigypsyism.pdf](https://ec.europa.eu/info/sites/default/files/post2020_eu_roma_in_antigypsyism.pdf).

<sup>656</sup> Ombudsman (Bulgaria), op. cit., p. 96.

<sup>657</sup> Lajčáková, J., Hojsík, M. and Karoly, M. (2020), op. cit., p. 25.

<sup>658</sup> Mijatović, N. (2020), Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Bulgaria from 25 to 29 November 2019*, Council of Europe, Strasbourg, p. 13 available at: <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-november-2019-by-dunja-m/16809cde16>.

<sup>659</sup> Fair Trials, *Uncovering Anti-Roma Discrimination in Criminal Justice Systems in Europe: Key Findings*, 2020. Available online at: [https://www.fairtrials.org/sites/default/files/publication\\_pdf/Uncovering-anti%20%80%91Roma-discrimination-in-criminal-justice-systems-in-Europe-Key-findings\\_0.pdf](https://www.fairtrials.org/sites/default/files/publication_pdf/Uncovering-anti%20%80%91Roma-discrimination-in-criminal-justice-systems-in-Europe-Key-findings_0.pdf).

<sup>660</sup> Op. Cit. US DOS, 2021, p. 2.

<sup>661</sup> European Roma Rights Centre, *Police Abuse of Roma in Bulgaria*, 2002. Available online at: <http://www.errc.org/cikk.php?cikk=1596>.

<sup>662</sup> Bulgarian Helsinki Committee, *Official Reports and Signals of Police Violence by Members of the Ministry of Interior*, 2021.

<sup>663</sup> Op. Cit. US DOS, 2021, p. 3

<sup>664</sup> Op. Cit. Fair Trials, 2021, p. 6

<sup>665</sup> European Roma Rights Centre, *Racism in Bulgaria: MEPs Call for Future EU Funding to Be Blocked Following Interior Ministry's 'Roma Radicalisation' Police Training*, 2020. Available online at: <http://www.errc.org/news/racism-in-bulgaria-meps-call-for-eu-funding-to-be-blocked-following-interior-ministry-roma-radicalization-police-training> Last visited on 02.09.2021.

by the Citizens for Democracy and the Rule of Law Coalition (2020)<sup>666</sup>. The mistrust and perceived as inherently oppositional relationship between police and Roma in Bulgaria is evidenced by voiced perceptions and beliefs of police officer willing to even go on record and express discriminatory opinions about Roma people's criminality<sup>667</sup>. Efforts have been made to tackle this hostile relationship by the organisation of trainings and educational programmes, aiming to better equip police officers to not only patrol but also serve multi-ethnic (and particularly Roma) areas.<sup>668</sup>

### A.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

Bulgaria ratified the International Convention on the Elimination of All Forms of Racial Discrimination, but has not signed Protocol No. 12 to the European Convention on Human Rights, or the Additional Protocol on Cybercrime. Equal treatment of citizens and the principle of non-discrimination on any grounds is dictated by the Constitution of Bulgaria. Art. 6 provides for the equality before the law of all citizens with 'no privileges or restrictions of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status'. As the main law of the land, principles included in the Constitution are considered to be 'applicable to horizontal relations'<sup>669</sup>.

The issues of discrimination and hate crimes are provisioned by the Bulgarian Criminal Code, art. 162. More particularly, by Article 162 which establishes the punishment for 'anyone who, by speech, press or other media, by electronic information systems or in another manner, propagates or incites discrimination, violence or hatred on the grounds of race, nationality or ethnic origin'. Article 162 of the Bulgarian Criminal Code also includes a provision, which makes racist motivation an aggravating circumstance for all offences.

The main legal document, which seeks to transpose the EU directives and recommendations for tackling antigypsyism is the National Strategy for Roma Inclusion and Participation. However, currently Bulgaria has no active strategy, as the adopted one expired in 2020. The New Strategy should have been adopted in 2021 with a predicted duration until 2030. However, the Draft National Strategy of the

<sup>666</sup> Citizens for Democracy and the Rule of Law Coalition, *Open Letter About the Use of Funding from the European Social Fund for the training of 480 Police Officers to Identify "Radicalisation" Among Roma People in the Republic of Bulgaria*, 2020. Available online: [https://www.mvr.bg/docs/librariesprovider63/default-document-library/%D0%BE%D1%82%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%BE-%D0%BF%D0%B8%D1%81%D0%BC%D0%BE-%D0%BD%D0%B0-%D1%81%D0%B4%D1%80%D1%83%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5-%D0%B3%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D0%B8-%D0%B7%D0%B0-%D0%B4%D0%B5%D0%BC%D0%BE%D0%BA%D1%80%D0%B0%D1%82%D0%B8%D1%87%D0%BD%D0%B0-%D0%B8-%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D0%B2%D0%B0-%D0%B4%D1%8A%D1%80%D0%B6%D0%B0%D0%B2%D0%B0.pdf?sfvrsn=504dfa3\\_0](https://www.mvr.bg/docs/librariesprovider63/default-document-library/%D0%BE%D1%82%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%BE-%D0%BF%D0%B8%D1%81%D0%BC%D0%BE-%D0%BD%D0%B0-%D1%81%D0%B4%D1%80%D1%83%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5-%D0%B3%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D0%B8-%D0%B7%D0%B0-%D0%B4%D0%B5%D0%BC%D0%BE%D0%BA%D1%80%D0%B0%D1%82%D0%B8%D1%87%D0%BD%D0%B0-%D0%B8-%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D0%B2%D0%B0-%D0%B4%D1%8A%D1%80%D0%B6%D0%B0%D0%B2%D0%B0.pdf?sfvrsn=504dfa3_0) Last visited on 21.12.2021.

<sup>667</sup> Op. Cit. Fair Trials, 2021, p. 6

<sup>668</sup> Iceland, Liechtenstein and Norway Grants, *The Police: Our Mind-Sets and Attitudes Towards the Roma has changed*, News, 2017. Available online at: <https://eeagrants.org/news/police-our-mind-set-and-attitudes-towards-roma-has-changed> Last visited on 02.09.2021.

<sup>669</sup> Chopin I and Catharina Germaine, *A comparative Analysis of Non-Discrimination Law in Europe 2019*, European Commission, European Network of Legal Experts in Gender Equality and Non-Discrimination, 2019. Available online at: <https://www.migpolgroup.com/wp-content/uploads/2020/05/A-comparative-analysis-of-non-discrimination-law-in-Europe-2019.pdf> Last visited on 02.09.2021. p.10.

republic of Bulgaria for Roma inclusion and participation proposed<sup>670</sup> by the Ministry was not accompanied by a relevant and updated Action plan and was not supported by the necessary public discussion of its content.

The Protection Against Discrimination Act (PADA)<sup>671</sup> is the main legislative document, dealing with the issues of racism, xenophobia, anti-Gypsyism, anti-Semitism and all other kinds of discrimination. PADA does not restrict the legitimate grounds for discrimination against which all citizens should be protected, but names some of the most prominent potential examples. Article 4 (1) states that:

*'Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden.'*

The Law does not provide a concrete definition of 'ethnicity and race', therefore cases of discrimination on such grounds are left to the interpretation of the judicial bodies. In this line of legal practice, case law has filled some gaps and illuminated others by defining 'ethnic discrimination', 'direct and indirect discrimination' and online hate speech. In the case of *'CHEZ Razpredelenie Bulgaria' AD v Komisia za zashtita ot diskriminatsia C-83/14* (a.k.a. the CHEZ case) the Supreme Administrative Court has defined indirect discrimination as discriminatory treatment, inspired by prejudicial perceptions, regardless of whether these are true or not<sup>672</sup>. Based upon this case, in 2018 the SAC also held the distinction between 'ethnic origin/belonging' and 'ethnic affiliation' defining the latter as 'linked to the idea of a social community distinct in terms of tribal affiliation, a common language and a cultural and traditional foundation'<sup>673</sup>. In Decision No 13542 of 12.12.2016 in case No 10756/ 2015 the SAC ruled that 'the media are liable for publications in their news forums that insult and incite to hatred' regardless of intent<sup>674</sup>. However, Bulgaria's legal system is not based on legal precedent<sup>675</sup> so no rulings can transpire into definitive law.

The provisions of the PADA guide the scope and competences of the Bulgarian equality body - The Protection Against Discrimination Commission (The Commission). It was established as a multi-ground equality body (meaning that it is unbound by particular grounds of discrimination) in Bulgaria in 2004<sup>676</sup>. The Commission was established after the introduction and perhaps in response to the EU equal treatment directives on the grounds of racial or ethnic origin (Council Directive 2000/43/EC), on

<sup>670</sup> *Draft National Strategy of the Republic of Bulgaria for Roma Inclusion and Participation (2021-2030)*, proposed by Council of Ministers for public consultation on October 12, 2020. Available online at: <https://strategy.bg/PublicConsultations/View.aspx?lang=bq-BG&id=5708> Last visited on 12.21.2021.

<sup>671</sup> Protection Against Discrimination Act, (PADA) (*Закон за защита от дискриминацията*), adopted September 2003, entered into force January 2004, last amended January 2018. Available online at: <https://www.lex.bg/laws/ldoc/2135472223> Last visited on 21.12.2021

<sup>672</sup> European Network of Legal Experts in Gender Equality and Non-Discrimination, *News Report. ADL Amendments of Definitions of 'Indirect Discrimination' and 'Unfavourable Treatment'*, 2017a. Available online at: <https://www.equalitylaw.eu/downloads/3998-bulgaria-adl-amendments-of-definitions-of-indirect-discrimination-and-unfavourable-treatment-pdf132-kb%20Last%20visited%20on%2002.09.2021> Last visited on 02.09.2021.

<sup>673</sup> Ilieva M, *Country report. Non-discrimination. Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Bulgaria*, European Commission, European Network of Legal Experts in Gender Equality and Non-Discrimination, 2020 p.16.

<sup>674</sup> European Network of Legal Experts in Gender Equality and Non-Discrimination, *News Report. Supreme Court Confirms Media Company Liability for Website Users' Hate Comments*, 2017b. Available online at: <https://www.equalitylaw.eu/downloads/4003-bulgaria-supreme-court-confirms-media-company-liability-for-website-users-hate-comments-pdf-139-kb> Last visited on 02.09.2021.

<sup>675</sup> Op. Cit. Ilieva, 2020, p.17.

<sup>676</sup> Op. Cit. Lajčáková, Hojsík and Karoly, 2020, p. 40.

the grounds of gender (Council Directive 2004/113/EC), and on the grounds of employment and occupation (Council Directive 2000/78/EC). The Commission has its own legal personality with functional independence. However, it is accountable to parliament. It consists of nine members – five appointed by Parliament and 4 appointed by the President. The Commission appoints 21 regional representative offices (outside of the capital with additional two in the capital) in order to secure a wider geographical scope<sup>677</sup>. As an equality body with decision-making powers, the Commission can issue legally binding decisions and sanctions. However, the latter have been deemed insufficient to serve as a deterrent<sup>678</sup>.

The Commission's competencies and authorities are outlined in Art. 47 of the PADA and include: 1) establishment of violations of the law, related to equal treatment, the perpetrators and the victims; 2) legislation of decisions and sanctions; 3) imposition of sanctions and enforcement of compulsory administrative measures; 4) issuance of obligatory prescriptions; 5) appeal administrative acts; 6) issue proposals and recommendations to state and local administrative governance; 7) maintain a public register of its enforced decision; 8) issue statements on the conformity of the legal act drafts with the legislation for prevention of discrimination; 9) provide victim support; 10) conduct independent researches related to discrimination; 11) publish independent reports and provide recommendations on all issues related to discrimination; 12) inform citizens about the current state of anti-discrimination acts and legislation; and 13) execute other competences in accordance with its internal code.

The Commission operates on an open list of grounds for discrimination. However, it is divided into panels, each of which deals with a particular area of discrimination (as dictated by Art. 48 of the PADA). Usually, the active panels of the Commission are five, each comprised of three members appointed by the Chair of the Commission. The specialization of a distinct panel on ethnic and racial grounds is provided by the PADA. It also provides for the establishment of a specialized panel on the grounds of multiple discrimination – it is comprised of five members (Art. 48). This allocation of specific staff to deal with the particular issue of racism and ethnic discrimination has been positively assessed, as it enables the equality body to develop deep expertise and understanding of the issues, which occur most frequently within the country, while also retaining sensitivity and flexibility to other topics, which might have otherwise remained overlooked<sup>679</sup>.

Secondary equality bodies have been established to address the diverse issues and multi-institutional frameworks of countering racism and anti-Gypsyism. The Bulgarian Ombudsperson has a mandate to investigate the acts of Bulgarian anti-discriminatory institutions, can require official information and analyses, but has no sanctioning power<sup>680</sup>. Bulgaria's 44th government included a National Council of Ethnic and Integration Issues (NCEII) to serve as an advisory and coordination body, chaired by the Minister and comprised of civil society organisations (CSOs) and high state officials<sup>681</sup>. In 2017 a National Coordinator for the Fights Against Antisemitism was appointed and was to be supported by a contact group, including state officials and the 'Shalom' organization<sup>682</sup>.

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<sup>677</sup> Obshtinite.BG, Protection Against Discrimination Commission, n.d. Available online at: <https://obshtinite.bg/> Last visited on 02.09.2021.

<sup>678</sup> Crowley N, *Equality Bodies Making a Difference*, European Commission, European Network of Legal Experts in Gender Equality and Non-Discrimination, 2018. Available online at: [https://ec.europa.eu/info/sites/default/files/equality\\_bodies\\_making\\_a\\_difference.pdf](https://ec.europa.eu/info/sites/default/files/equality_bodies_making_a_difference.pdf) Last visited on 02.09.2021. p.106.

<sup>679</sup> Op. Cit. Crowley, 2018, p.80.

<sup>680</sup> European Network of National Human Rights Institutions, Rule of Law report – Bulgaria, available at: <https://ennhri.org/rule-of-law-report-2021/bulgaria/>

<sup>681</sup> Op. Cit. Mijatovic, 2020, p.12.

<sup>682</sup> Op. Cit. Mijatovic, 2020, p.11.

## A.4 Statistics on racism, xenophobia and racial discrimination

The data collection rules, which are in place in Bulgaria prohibit involuntary data gathering related to ethnic and racial background. There are no official data gathering mechanisms, which collect and share information on the ethnic make-up of crimes, on the persecuted hate crimes and signals to authorities. The National Statistical Institute (NSI) collects data about ethnic self-identity for the purposes of the Census, but the disaggregation of citizens' ethnicity and race is not public information and access to it requires particular permission as it is considered sensitive data<sup>683</sup>. As far as statistics on racism in Bulgaria exist, they are related to ethnic and religious belonging. The Protection Against Discrimination Commission publishes generalized data in their yearly report. In 2019, the Commission received 921 signals for experienced discrimination<sup>684</sup>. However, it is not said how many of them were on the subject of racial or ethnic discrimination. In 2019, the first panel dealing particularly with racial and ethnic discrimination has established discrimination in 27% of the received signals, 9% were settled, another 9% were closed with no resolution of claims and 55% were rejected<sup>685</sup>. The yearly report of 2019 also points out that the proportion of signals for hate speech and discrimination in electronic media and public spaces had grown immensely in comparison to previous years<sup>686</sup>. Information from official sources is compiled, synthesized and publicized on particular topics by Bulgarian CSOs, mostly by the Bulgarian Helsinki Committee which investigates the practices of policing and antigypsyism on institutional and systemic levels. The inequity in legal sanctions and punishment against the Roma in Bulgaria is reflected by the numbers of incarcerated people. About 50% of prisoners in Bulgaria by 2020 were Roma<sup>687</sup> – this is not a proportionate number to the percentage of Roma population in Bulgaria, which according to the 2011 Census accounted to less than 4.5%<sup>688</sup>. Despite the growing number of reported police violence (228 new case reports in 2019 and 210 in 2020)<sup>689</sup> the conviction rates remain negligibly low with no convictions issued in 2019 and one issued in 2020.

The two main manifestations of antigypsyism in Bulgaria – systemic antigypsyism and personal prejudice and acts of discrimination – are illustrated by statistical data about the inequality of Roma people in Bulgaria, gathered by various sources. Economic deprivation, hindered access to quality education and disproportionate sanctioning by the national institutions are the main manifestations of systemic antigypsyism in Bulgaria. Poverty amongst Roma people in Bulgaria reaches higher levels than among other ethnic groups in the country and affects the reality of Roma people most severely, as 86% of Bulgarian Roma were at risk of poverty in 2014, compared to the 22% of all other ethnic groups in Bulgaria<sup>690</sup>. In terms of education, only 66% of Roma children of the appropriate age are enrolled in early childhood education. In comparison, the country average on this indicator is 89%<sup>691</sup>. The Roma minority also demonstrates the highest rates of early drop-out from school – 67%, compared to only 13% on a national scale. The schooling segregation appears to be persistent, as in 2016 almost

<sup>683</sup> Op. Cit. Ilieva, 2020, p.25.

<sup>684</sup> Commission for Protection Against Discrimination of the Republic of Bulgaria, *Annual Report of the Activities of the Commission for Protection Against Discrimination in 2019*, Sofia, 2020. Available online at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf> Last visited on 02.09.2021. p.14

<sup>685</sup> Op. Cit. Protection Against Discrimination Commission, 2020, p.14.

<sup>686</sup> Ibid., p.15.

<sup>687</sup> Op. Cit. Fair trials, 2021, p.4.

<sup>688</sup> Pamporov, 2016, p.5.

<sup>689</sup> Bulgarian Helsinki Committee, 2021.

<sup>690</sup> Op. Cit. EU MIDIS II, p.16.

<sup>691</sup> Ibid. p. 23.

a third (27%) of all Roma students attended schools, which were entirely attended by exclusively Roma pupils<sup>692</sup> and another 33% were enrolled in schools attended predominantly by Roma pupils.

Personal biases, tolerance to hate speech and overall permeability of discrimination and prejudice are the meso- and micro- level manifestations of antigypsyism in Bulgaria. While there has been a significant drop in the experience of discrimination in Bulgaria<sup>693</sup>, the ethnic majority in Bulgaria continues to exhibit mistrust and a negative outlook against Roma people. In 2019, Alpha research conducted a survey, probing for ethnic Bulgarians' attitudes toward 'the different' (2020). The results have demonstrated that the Roma minority is by far the most 'feared' population (15% of respondents claimed to fear Roma people, followed by the mere 3.5% respondents fearing Bulgarian Turks), most hated (21.6% hated Roma and Bulgarian Turks were again second with 4.9%) (Alpha Research, 2020, p.3), and perceived by the Bulgarian majority as the least trustworthy (80.2% of respondents believed that most of the Roma people cannot be trusted, followed by 25.8% mistrust in Muslims) (Alpha Research, 2020, p.7). The general intolerance toward Roma people is illustrated by the 47.5% of Bulgarians who would not agree to either live in the same country (51.2% would agree), the same neighbourhood (17.7% would agree), to work with (17.8% would agree), to be employed by (3% would agree), to befriend (9.4% would agree) or to marry (0.8% would agree) a Roma person. Only 10% of respondents believed, that special policies, targeting the support and preservation of minorities should be adopted by the state<sup>694</sup>.

## A.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

Bulgaria was included in the fifth monitoring cycle of the European Commission Against Racism and Intolerance's (ECRI), which concluded (ECRI(2017)22)<sup>695</sup> with a final assessment of the country's progress in 2017. The ECRI reports outlined some progress points which have been achieved in 2017<sup>696</sup>: 1) the amendments to the Criminal code, which allow for enhanced penalties for the offenses of murder and bodily injury when racially motivated, 2) the approval of the (now expired) National Roma Integration Strategy, 3) the amendments in the Public Education Act, which introduced an obligatory two-year pre-school education, 4) the continued funding of projects, supporting access to public education for minority children, and 5) the 2012 legal changes, allowing for the subsequent legalization of illegally built dwellings. However, some urgent issues remained to be taken into consideration. The issues, recognized by ECRI, made in 2014 and revised in 2017 have also been followed by extensive policy analysis and academic work, outlining the remaining gaps in the Bulgarian legislation and its execution. They relate to necessary legislative changes, as well as to some practical improvement, required in the work of the equality bodies.

<sup>692</sup> Ibid. p. 27.

<sup>693</sup> Op. Cit. Lajčáková, Hojsík and Karoly, 2020, p.40.

<sup>694</sup> Alpha Research, *Majority and Minority. Attitudes towards the Different*, 2020. Available online at: [https://alpharesearch.bg/api/uploads/Articles%202020/March%20-%20Religions/final\\_analyse\\_results\\_graphics\\_31\\_03\\_2020.pdf](https://alpharesearch.bg/api/uploads/Articles%202020/March%20-%20Religions/final_analyse_results_graphics_31_03_2020.pdf) Last visited on 02.09.2021, p.9.

<sup>695</sup> European Commission Against Racism and Intolerance, *ECRI Conclusions on the Implementation of the Recommendations in Respect of Bulgaria Subject to Interim Follow-up*, 2017. Available online at: <https://rm.coe.int/interim-follow-up-conclusions-on-bulgaria-5<sup>th</sup>-monitoring-cycle/16808b55f2>

<sup>696</sup> Both the original 2014: ECRI Report on Bulgaria (fifth monitoring cycle), adopted on 19 June 2014 and the follow-up "ECRI conclusions on the implementation of the recommendations in respect of Bulgaria subject to interim follow-up, adopted on 23 March 2017", are available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/bulgaria>

**The gaps in relation to the Bulgarian antiracism and anti-discrimination legislation** relate to lacking necessary provisions. In terms of lacking and inefficient legislation, the main points of criticism relate to 1) the (still not adopted) Strategy, 2) the gaps in the Criminal Code, and 3) the lacking legal provisions to address housing deprivation.

Following the publication of the Draft Strategy online, representatives of academia and the civil society sector provided public written comments to the proposed legislation, which pointed out the document's shortcomings. Especially central were the noted weaknesses in the definition of 'Roma people' through the lens of self-identification (in the official response letters of Grekova and Stanchev<sup>697</sup>), in the lacking practical guidelines for implementation and monitoring<sup>698</sup>, in the lack of proposed measures to prevent housing deprivation (in the response letter of Habitat for humanity) and most frequently – in the lacking concrete texts, identifying actions, measures for implementation and practical guidelines for their execution. A common place in the civil society sector's criticism was taken up by the Draft Strategy's approach to the role of authority in protecting and policing Roma communities. The relationship between Roma people and law enforcement continued to be perceived in the terms of 'criminogenic', 'criminal', blocked by 'cultural barriers' (Bulgarian Institute for Legal Initiative). This led to the strong conviction among CSOs that Roma people were defined by the new Draft Strategy as the object of enforced discipline and punishment, whereas police were perceived as responsible for creating and maintaining the public order. The Criminal Code's biggest weakness in preventing racism lies within the fact that it does not recognise hate speech or violence targeting sexual orientation/ gender identity as an offence<sup>699</sup>. The Law does not oblige suppression of public funding to organisations or political parties that promote racism<sup>700</sup>, nor does it include a provision for protection against discrimination 'in the exercise of one's public office or occupation or against the public expression'<sup>701</sup>. The Criminal Code still allows for perpetrators 'propagating fascist and other anti-democratic ideology' to only be sanctioned with an administrative fine, despite the fact that a bill was introduced to Parliament to change this<sup>702</sup>. The legalization of Roma dwellings is hindered by bureaucratic obstacles related to securing ownership of the land and sometimes by direct refusals of local authorities to sell the land to the people, who were already occupying and maintaining it<sup>703</sup>. Housing deprivation, combined with the forced illegalization of Roma people's homes has also led to their deprivation of civil rights. The lack of a legal address prevents Roma people from obtaining ID cards<sup>704</sup> – the required legal document for each citizen, which allows them to participate in institutional life and execute fundamental rights, such as voting. The state has remained negligently inactive in addressing the housing crisis in Roma communities. Furthermore, the authorities have been exacerbating, rather than managing and resolving the problem by being 'influenced by the hostile attitude of one social group against another' and have acted in compliance with the demands of ethnic Bulgarians<sup>705</sup>.

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<sup>697</sup> Prof. Maya Grekova is a professor of Sociology at the University of Sofia, Krasen Stanchev is an Associate professor at the same university.

<sup>698</sup> AMALIPE, *Distance Learning in the Past School Year: What Happened*, 2021. available online at: <https://amalipe.bg/distancionno2021/>.

<sup>699</sup> Op. Cit. ECRI, 2017.

<sup>700</sup> Op. Cit. ECRI, 2017.

<sup>701</sup> Op. Cit. Mijatovic, 2020, p.12.

<sup>702</sup> Mijatovic, 2020, p.12.

<sup>703</sup> Op. Cit. US DOS, 2021, p. 30.

<sup>704</sup> Op. Cit. US DOS, 2021, p. 17.

<sup>705</sup> Op. Cit. Ombudsman of the Republic of Bulgaria, 2021, p. 95.

**The identified gaps in relation to the equality bodies** are mostly related 1) to the inefficient practical implementation of their powers and authority or 2) to the questionable make-up of their staff. According to the ECRI General Policy Recommendation Nr. 2 on framework for assessment of the diversity of functions of the equality bodies in each EU country, the Protection Against Discrimination Commission was identified as having competences under all three categories of function<sup>706</sup>. This categorization would entail, the Commission was mandated to 1) promote equality and prevent discrimination; 2) support people exposed to discrimination and litigate on their behalf; and 3) take decisions on received complaints. This multi-competence and diverse mandate of the Commission is perceived by the ECRI as not entirely positive, as it hinders the institutional separation of powers and eliminates the impartiality which would be an expected foundation to a decision-making function. This conflict of functions could lead to internal tensions and limit the intervening powers of the equality body<sup>707</sup>. There have been some issues pointed out in reference to the equality body's capacity and preparedness to support and accommodate the needs of victims. For example, its premises are considered inadequately positioned – far from the capital city's centre and difficult to reach and identify<sup>708</sup>. Furthermore, the Commission's provision of assistance with complaints is only limited to support in filing the complaint<sup>709</sup> and could, therefore, be considered of limited or formal capacity. The UN Paris Principles accord the Commission 'B' status. This entails, that the equality body is not entirely compliant with the standard, required by the Paris principles. This status could be due to difficulty of a single-mandate equality body to ever achieve the required 'as broad a mandate as possible' (General Assembly Resolution 48/134 Art. 2). The European Equality Law Network has found implications of political interference in the process of appointment and removal from office at the Bulgarian Commission.<sup>710</sup> This assessment hints to the manifestations of corrupt practices, hindering the legislative potentials and institutional efforts to effectively counter racism and antigypsyism, as some appointments have been described as 'non-transparent and arbitrary rather than competence based'<sup>711</sup>. The effectiveness of the Commission's legislative powers has been challenged by the discoveries of insufficient follow-up to decisions<sup>712</sup> and sparse reporting efforts (limited solely to annual reports)<sup>713</sup>. The NCEll has been criticized for being ineffective and non-inclusive (not representing the Macedonian and Pomak minorities, which are not recognized by the state)..<sup>714</sup>

Bulgaria has been sanctioned by the ECHR 1) for the lacking national legislation defining murder and bodily injury as separate criminal offenses when racially motivated (case of *Angelova and Iliev v BG*, 2007<sup>715</sup>), 2) for ineffective investigation and persecution of crimes of military police against Roma people (case of *Nachova and Others v Bulgaria*, 2004<sup>716</sup>) and of police against minorities (Abdu v

<sup>706</sup> Op. Cit. Crowley, 2018, p.47.

<sup>707</sup> *Ibid.* p.47.

<sup>708</sup> *Ibid.* p.116.

<sup>709</sup> *Ibid.* p.71.

<sup>710</sup> *Ibid.* p.58.

<sup>711</sup> *Ibid.* p.92.

<sup>712</sup> *Ibid.* p.105.

<sup>713</sup> *Ibid.* p.108.

<sup>714</sup> Mijatović N, Commissioner for Human Rights of the Council of Europe. Report Following Her Visit to Bulgaria from 25 to 29 November 2019, Council of Europe, Strasbourg, 2020, p 12, available at: <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-november-2019-by-dunja-m/16809cde16>

<sup>715</sup> ECHR, European Court of Human Rights, *Angelova and Iliev v. Bulgaria*, no. 55523/00, Judgement delivered by a Chamber, Strasbourg, 2007.

<sup>716</sup> ECHR, European Court of Human Rights, *Nachova and others v. Bulgaria*, nos. 43577/98 and 43579/98, Judgement delivered by a Chamber, Strasbourg, 2004.

Bulgaria, 2014<sup>717</sup>), 3) for ineffective investigation of private violence against minorities (case of *Yotova v Bulgaria*, 2012<sup>718</sup>) 3) for unequal treatment of persons not holding permanent address registrations (case of *Ponomaryovi v Bulgaria*, 2011<sup>719</sup>), 4) for failing to sanction discriminatory public statements of anti-Semitic (*Behar and Gutman v Bulgaria*, 2021<sup>720</sup>) and anti-Roma (cases of *Budinova and Chaprazov v Bulgaria*<sup>721</sup> and *Panayotova and others v Bulgaria*<sup>722</sup>) nature 5) for failing to protect the equal rights of all citizens to express freedom of speech and freedom of religion with disproportionate privilege for the minority group (case of *Karaahmed v Bulgaria*, 2015<sup>723</sup>).

**Recommendations were provided to Bulgaria** in support of the country's efforts to improve its legal infrastructure to prevent and counter discrimination by the ECRI:

- Provision should be added to the Criminal Code stating that racial motivation for an offense is an aggravating circumstance (ECRI, 2014).
- Anti-discrimination Act should include obligation to suppress funding of political parties or organisations that promote racism (ECRI, 2014).
- The Commission for Protection against Discrimination should publish information about discrimination, and procedures for discrimination complaints, and make available in several languages used in the country (ECRI, 2014).
- The Council for Electronic Media should raise fines for violation of provisions of the Radio and Television Act concerning hate speech (ECRI, 2014).
- Organise a public awareness campaign about promoting tolerance of asylum seekers and explaining the importance of international protection (ECRI, 2014).
- Coordinate with UNHCR to improve integration for refugees and remove barrier fences at Bulgarian borders to allow those seeking international protection into the country (ECRI, 2014).

## A.6 Impact of the COVID-19 pandemic on racism in the country

In the early stages of the emerging COVID-19 pandemic, the Roma minority was at the receiving end of some particularly strict measures, which could also be considered examples of extensive policing. The access to and from Roma neighbourhoods in seven Bulgarian towns was restricted at varying points between the months of March and May of 2020<sup>724</sup>. These restrictions were enforced by installed

<sup>717</sup> ECHR, European Court of Human Rights, *Abu v. Bulgaria*, no. 26827/08, Judgement delivered by a Chamber, Strasbourg, 2014.

<sup>718</sup> ECHR, European Court of Human Rights, *Yotova v. Bulgaria*, no. 43606/04, Judgement delivered by a Chamber, Strasbourg, 2012.

<sup>719</sup> ECHR, European Court of Human Rights, *Ponomaryovi v. Bulgaria*, no. 5335/05, Judgement delivered by a Chamber, Strasbourg, 2011.

<sup>720</sup> ECHR, European Court of Human Rights, *Behar and Gutman v. Bulgaria*, no. 29335/13, Judgement delivered by a Chamber, Strasbourg, 2021.

<sup>721</sup> ECHR, European Court of Human Rights, *Budinova and Champazov v. Bulgaria*, no. 12567/13, Judgement delivered by a Chamber, Strasbourg, 2021.

<sup>722</sup> ECHR, European Court of Human Rights, *Panayotova and others v. Bulgaria*, no. 27636/04, Judgement delivered by a Chamber, Strasbourg, 2009.

<sup>723</sup> ECHR, European Court of Human Rights, *Karaahmed v. Bulgaria*, no. 30587/13, Judgement delivered by a Chamber, Strasbourg, 2015.

<sup>724</sup> FRA, *Implications of COVID-19 Pandemic on Roma and Travellers Communities*, 2020. Available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/bg\\_report\\_-\\_covid-19\\_impact\\_on\\_roma\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/bg_report_-_covid-19_impact_on_roma_en.pdf) Last visited on 02.09.2021 PP 3-4.

police checkpoints at the entry points of the Roma neighbourhoods, which could only be passed for going to work, paying utility bills, visiting a doctor or purchasing food or medicine<sup>725</sup> with the requirement of filling out paperwork, which proved a challenge for some inhabitants<sup>726</sup>. These measures led to terminal socio-economic consequences for poor Roma people<sup>727</sup>, who were unable to retain their paying jobs and fell victims of their inherent position of austerity by either losing their job due to employers' fear of transmitting the infection<sup>728</sup> or not finding seasonal work, upon which some were dependent. This disparity in the economic consequences suffered by Roma people in contrast to the rest of the population of the country could be interpreted as an exacerbation of already existing social inequalities<sup>729</sup>.

These stricter measures imposed almost exclusively on predominantly Roma-populated areas have inspired a wave of condemnation from human rights protection institutions. Amnesty international denounced these actions as stigmatizing in a public statement (2020)<sup>730</sup>. The UN Special Rapporteurs on racism, E. Tendayi Achiume, and on minority issues, Fernand de Varennes called these police operations 'discriminatory limitations imposed on Roma on an ethnic basis that are overtly supported by Bulgarian State officials'<sup>731</sup>. According to them, these actions on behalf of the state are not only discriminatory, a violation to Roma people's right to free movement, but they also endanger the lives and health of Roma as they 'could further expose Roma residents to the virus, especially where access to sanitation is poor such as in the Nova Zagora neighbourhood'<sup>732</sup>. The national tendency of discriminatory practices against the Roma minorities were supported by local institutions' 'on the ground' actions to police and enforce the nation-wide restrictions. The police operation Respect allowed police officers to patrol Roma neighbourhoods and control the population's compliance with the COVID-19-related restrictions in Burgas and Sofia<sup>733</sup>. Furthermore, civil society organisations and local Roma community members have continuously testified to occasions when Roma neighbourhoods in Yambol, Kyustendil and elsewhere in the country 'were showered with thousands of gallons of disinfectant from helicopters or planes usually used to fertilize crops in March and April'<sup>734</sup>. These accounts were not denied by local authorities and have not been challenged or followed up in any way. These actions were combined with an increased anti-Roma rhetoric from elected officials,

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<sup>725</sup> *Ibid.* p.4.

<sup>726</sup> Cheng M and Maria Barzakova, *Some European Officials Use Virus as a Cover to Target Roma*, AP News, 2020. Available online at: <https://apnews.com/article/virus-outbreak-pandemics-police-discrimination-eastern-europe-2cbcd5ee070578b73b1bc35ebdb426e> Last visited on 02.09.2021.

<sup>727</sup> *Ibid.*

<sup>728</sup> Op. Cit. FRA, 2020, p.5.

<sup>729</sup> Op. Cit. Ombudsman of the Republic of Bulgaria, 2021, p. 96.

<sup>730</sup> Amnesty International, *Open Letter to the European Commission: Quarantines of Roma Settlements in Bulgaria and Slovakia Require Urgent Attention*, Index Number: IOR 60/2347/2020, 2020. Available online at: <https://www.amnesty.org/en/documents/ior60/2347/2020/en/> Last visited on 21.12.2021.

<sup>731</sup> United Nations Human Rights Office of the High Commissioner, *COVID-19 Response: 'Stop Hate Speech and Racial Discrimination Against the Roma Minority' – UN Experts*, Geneva, 2020. Available online at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25881> Last visited on 02.09.2021.

<sup>732</sup> *Ibid.*

<sup>733</sup> *Ibid.*

<sup>734</sup> Op. Cit. Cheng and Barzakova, 2020.

including the Minister of Defence, a representative of the nationalist Bulgarian National Movement who persistently portrayed Roma people as ‘a collective threat to the general population’<sup>735</sup>.

The indirect effects of the state’s inability to mobilise its institutions to tackle the pandemic and its consequences has been most severely experienced by minority children, who ‘are subjugated to a special vulnerability, frequent lack of food, bad housing and living conditions, overcrowding, as well as a limited access to digital devices and/or gaps in their parent’s education, who are unable to support them’<sup>736</sup>. This conclusion is particularly eloquently illustrated by the effects of the pandemic on Roma pupils’ access to remote education. According to data, published by the Bulgarian Ministry of education, Roma children were disproportionately excluded from schooling activities, due to the necessity of their online conduct. Students’ engagement in class and their ability to retain attention to the teaching and achieve comparative progress in their studies are two of the indicators, on which Roma students are particularly lagging behind in comparison to their peers<sup>737</sup>. Poor access to devices is the indicator which most evidently separates economically disadvantaged students in attending school remotely. This has disproportionately affected Bulgarian Roma and Bulgarian Turks. 46.3% of Roma students and 42.7% of ethnic Turkish students rely entirely on their smart phones to connect to online classes, as opposed to ethnic Bulgarians who overwhelmingly use laptops or computers<sup>738</sup>. However, there seemed to have been a crucial adaptation period which improved the students’ access to remote education. The Amalipe Center for Interethnic Dialogue and Tolerance conducted a survey with pedagogical representatives from 150 schools across the country, with varying representation of minority students in the classes. Their results show that the proportion of schools which had succeeded to include between 75 and 100 per cent of their students in online education had grown between March and June of 2020 from 36% to 55%. However, the study also concluded that the access to online education was disproportionately hindered for Roma students, who are more likely to not have access to digital devices and/or internet in their area<sup>739</sup>.

No occurrences of anti-Asian hate and actions have been reported in Bulgaria in relation to the COVID-19 pandemic.

## A.7 Conclusion

The issues of racism, intolerance, xenophobia and discrimination in Bulgaria are permeated by antigypsyism, which takes the form of an institutional system manifested in structural inequality and individual acts of ill-treatment. The processes of antigypsyism stem from the historical developments in the country - the formation of the nation-state on the grounds of ethno-religious identity and the general spirit of intolerance and ‘othering’ of Roma people in Europe. The most prominent dimensions of antigypsyism include poverty and economic exclusion, unequal access to quality education, housing deprivation, hate speech and hate crimes, excessive policing. All of these practices are evidenced by

<sup>735</sup> Amnesty International, *Stigmatizing Quarantines of Roma Settlements in Slovakia and Bulgaria*, 2020. Available online at: <https://www.amnesty.org/en/documents/eur01/2156/2020/en/#:~:text=Stigmatizing%20Quarantines%20of%20Roma%20Settlements%20in%20Slovakia%20and%20Bulgaria,-April%2016,%202020&text=Bulgaria%20and%20Slovakia%20have%20put,of%20public%20health%20and%20safety>. Last visited on 02.09.2021. p. 3.

<sup>736</sup> Ombudsman of the Republic of Bulgaria, 2021, op. cit. p. 96.

<sup>737</sup> Ministry of Education and Science, *Distance-Learning in an Electronic Environment 2020-2021: Consequences and a Look Forward*, Sofia, 2021.. p.21, Available online at: <https://bntnews.bg/f/news/o/1163/eccb666029b2707f4bf8fcb53e1189e0.pdf>

<sup>738</sup> *Ibid.* p. 28.

<sup>739</sup> Amalipe, 2021, op. Cit.

statistical data, which is mostly provided from international, European or civil-society organisations and result in the persistent marginalisation and inequality of the Roma community in Bulgaria. There are sufficient (although at times not properly designated and indicated) provisions in the Bulgarian law to tackle this system of inequality. However, the execution of these laws has been hindered by insufficient resources, bureaucratic obstacles, corruption and lack of political will and competence. Bulgaria has transposed all relevant EU Directives and framework programmes. However, the country has exhibited some difficulty in their proper transposition and adaptation to the national context. The pandemic has exacerbated and illuminated some structural processes to the everyday experiences of unequal treatment of Roma people in Bulgaria, as they have been disproportionately ill-affected by the national and regional prevention measures.

## B. COUNTRY REPORT - DENMARK

### B.1 Causes of racism, xenophobia and racial discrimination

Denmark has traditionally been seen as an open and progressive society. As an example, the country was the first to ratify the UN Refugee Convention in 1951. In the 1980s, with the rise of far-right parties debates about the integration of “non-Western immigrants” started emerging. Other political parties started chasing the anti-immigrant rhetoric.<sup>740</sup>

Until the mid-1960s, the Danish population was exceptionally homogenous in terms of ethnic and religious background: 99% of the population was ‘white’ and close to 97% were Lutheran Protestants. In the last 20 years, however, the share of the Danish population with ‘non-Western’ background (first- and second-generation migrants) increased from 1% in 1980 to 8.9% in 2020<sup>741</sup>. Thus, a transition took place to a multi-ethnic and religiously plural society (only 74% of Danes are now members of the Lutheran state church)<sup>742</sup>.

Racial discrimination and xenophobia are present in Denmark, and 67% of Danish people think that discrimination based on ethnic origin or skin colour is “widespread”. Only 27% believe it is “rare”<sup>743</sup>.

According to research undertaken by the Danish Institute for Human Rights, although incidents of racist violence had already occurred previously, the threat level in particular against Muslims and Jews in Denmark has increased since 2015<sup>744</sup>.

### B.2 Dimensions of racism, xenophobia and racial discrimination

#### Racism against migrants

In recent years, Denmark’s policies towards migrants have been some of the most discouraging in the EU. As a result of the 2015 migration crisis, for example, the Danish Ministry of Immigration, Integration and Housing published advertisements in four Lebanese newspapers, actively discouraging potential migrants from Syria to come to Denmark. It was stated that Denmark reduced social welfare payments for refugees, while also having become more restrictive with regard to residence permits and family reunification<sup>745</sup>. In January 2016, the Danish parliament approved a law allowing the confiscation of cash and valuables from asylum seekers with an estimated value of more than DKK 10 000 (approximately EUR 1 340), in order to contribute towards the cost of living while their asylum claim is being processed<sup>746</sup>. In 2021, the government passed a law allowing for asylum seekers to be deported while their applications are being processed.<sup>747</sup>

<sup>740</sup> Chatham House, Denmark’s immigrants forced out by government policies, 28 June 2021, available at: <https://www.chathamhouse.org/2021/06/denmarks-immigrants-forced-out-government-policies> last accessed 1 November 2021.

<sup>741</sup> Mostert, Wolfgang, Is Denmark a racist country? 16 September 2020, available at: <https://mostert.dk/is-denmark-a-racist-country/> (accessed on 22 October 2021).

<sup>742</sup> Ibid.

<sup>743</sup> Special Eurobarometer 493. 2019. op. cit., p. 15.

<sup>744</sup> Danish Institute for Human Rights (2015), Human Rights in Denmark Status 2014-15, p. 43, available at: [https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/status\\_uk\\_2015\\_0.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/status_uk_2015_0.pdf)

<sup>745</sup> ECRI 2017. ECRI Report on Denmark (fifth monitoring cycle), published on 16 May 2017, p. 25, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/denmark>

<sup>746</sup> ECRI Report on Denmark, op. cit. p. 25f.

<sup>747</sup> Chatham House, 2021 op. cit.

## Afrophobia

According to Eurobarometer, 83 % of Danish respondents reported that they would feel comfortable working on a daily basis with people of African descent/black Europeans and 76 % would feel comfortable if their child was in a love relationship with a person of African descent/black European.<sup>748</sup> However, according to a 2018 FRA survey, 41 % of respondents of African descent/black Europeans in Denmark indicated that they had experienced racist harassment in the five years before the survey.<sup>749</sup> Most people of African descent/black European respondents in Denmark (92 %) identified themselves as Muslim when asked about their religion,<sup>750</sup> and 61 % of respondents who felt discriminated against because of their skin colour in Denmark also said that they had experienced religious discrimination.<sup>751</sup> According to the 2017 report of the European Commission against Racism and Intolerance, members of the black community in Denmark have reported ongoing experiences of discrimination, in particular in the fields of employment and housing. Reportedly, people of African descent/black Europeans often experience refusals in both fields due to their skin colour.<sup>752</sup> However, apart from this reported evidence, no official data or other forms of reliable information are available. In this context, ECRI criticised relevant state institutions that have so far not endeavoured to fill this gap and the fact that information collected by relevant community groups on this topic has so far not been published or taken into consideration by the authorities.<sup>753</sup>

## Antigypsyism

There are no official statistics on the national Roma population in Denmark since ethnic data is not registered by Danish authorities and institutions, but estimates range from 1 000 to 10 000 Roma<sup>754</sup>. Even though Denmark has a relatively small Roma population, antigypsyism appears to be the second most common ground for discrimination. Sixty-two percent of Danish respondents in the Special Eurobarometer 493 believe that anti-Roma discrimination is 'widespread' in their country (compared to 67% for ethnic origin, 61% for religion or belief and 55% for skin colour)<sup>755</sup>.

According to the 2017 ECRI Report on Denmark (fifth monitoring cycle), the situation of Roma in Denmark has long been characterised by low levels of school enrolment and high unemployment<sup>756</sup>. It is widely acknowledged that Roma face difficulties in the labour market, though there are no official statistics or estimates regarding the unemployment rates among Roma<sup>757</sup>. In December 2012, Denmark presented the National Roma Inclusion Strategy (NRIS) in response to the EU Framework for National Roma Integration Strategies adopted by the EC and the European Council in 2011. The Danish NRIS does not include specific programmes or measures for Roma in Denmark, but rather states that Roma

<sup>748</sup> *Special Eurobarometer 493*, op. cit., p. 25.

<sup>749</sup> FRA (2018), *Being Black in the EU*, op. cit., p. 15.

<sup>750</sup> FRA (2018), *Being Black in the EU*, op. cit., p. 23.

<sup>751</sup> FRA (2018), *Being Black in the EU*, op. cit., p. 39.

<sup>752</sup> ECRI, *Report on Denmark*, op. cit., p. 26.

<sup>753</sup> *Ibid.*

<sup>754</sup> The Roma population in Denmark can largely be distinguished into two categories; national Roma and other EU citizens of Roma origin. FRAnet national focal point (2012), Denmark, Social Thematic Study, The situation of Roma in 2012, Danish Institute of Human Rights, p. 3, available at: <http://fra.europa.eu/sites/default/files/situation-of-roma-2012-dk.pdf> .

<sup>755</sup> *Special Eurobarometer 493*, op. cit., p. 39.

<sup>756</sup> ECRI, *Report on Denmark*, op. cit., p. 27.

<sup>757</sup> FRAnet Denmark, op.cit., p. 3.

are included into broader national integration policies. Since the adoption of the NRIS, no Roma-targeted initiatives have been developed at governmental or municipal level<sup>758</sup>.

### Anti-Semitism

Denmark ranks as the country with the highest mean values of comfort with having a Jewish person as a neighbour or having someone from the family marry a Jewish person. The result for Denmark is 6.38 for neighbour and 5.71 for married family member (on the scale from 1=totally uncomfortable to 7=totally comfortable)<sup>759</sup>.

A number of antisemitic attacks have occurred in recent years. In August 2014, a Jewish school was vandalised, and in the same month a radio reporter wearing a Jewish skullcap was attacked and removed from a café by a group of men. During the terror attack in Copenhagen on 14/15 February 2015, a Jewish security guard was killed outside a synagogue in which a bar mitzvah celebration was being held. Also in 2015, a church congregation in Copenhagen invited a rabbi to speak during Sunday service. However, the church was vandalised the night before.<sup>760</sup> The number of recorded extremist crimes targeting Jews increased from five in 2011 to 79 in 2020.<sup>761</sup>

### Institutional racism in policing

Little recent information regarding **institutional racism in policing** is available for Denmark. The 2018 FRA Minorities and Discrimination Survey reveals that 30% of respondents of African descent in Denmark who were stopped by the police in the five years before the survey say that they were treated disrespectfully<sup>762</sup>. In addition, 2014 figures from Statistics Denmark show that immigrants or persons with a non-Danish ethnic background were 65-70% more likely to be charged for a crime they have not committed. Immigrants and descendants of immigrants with a non-Western background also had an 86-88% higher risk than persons of Danish ethnic origin of being arrested without subsequently being convicted<sup>763</sup>.

A 2011 study carried out by the Danish Institute for Human Rights on Danish law on non-discrimination, policing, counter-terrorism, immigration and border-control standards regarding ethnic profiling revealed there don't seem to be any guidelines or measures addressing discriminatory ethnic profiling within law enforcement in Denmark<sup>764</sup>. In the study, the Institute drew particular attention to the operation of stop and search under Section 6 of the Police Activities Act, which enabled the police to conduct stop and search for weapons without reasonable suspicion in defined "stop and search zones." While the police were required to provide evidence to show why an increased risk of violence existed within specific zones, there was no time limit on how often zone designations could be renewed. The study concluded that the lack of reasonable suspicion, geographical spread of zones and lack of time limit all increased the risk of arbitrariness, which could lead to ethnic profiling. According to the study,

<sup>758</sup> European Commission (2018), Civil society monitoring report on implementation of the national Roma integration strategies in Denmark, Directorate-General for Justice and Consumers, p. 9, available at: <https://op.europa.eu/en/publication-detail/-/publication/bd3e8b87-7268-11eb-9ac9-01aa75ed71a1/language-en>

<sup>759</sup> FRA. 2020. Antisemitism. Overview of Antisemitic Incidents Recorded in the European Union 2009-2019, p.9, available at: <https://fra.europa.eu/en/publication/2020/antisemitism-overview-2009-2019>

<sup>760</sup> ECRI, *Report on Denmark*, op. cit., 2017, p. 18.

<sup>761</sup> FRA, *Overview of antisemitic incidents*, op. cit., p. 36.

<sup>762</sup> FRA, *Being Black in the EU*, op. cit. p. 30.

<sup>763</sup> The Danish Institute for Human Rights (2020), Selected list of themes on ICERD, Denmark 2020, p. 12, available at: [https://www.humanrights.dk/sites/humanrights.dk/files/dansk\\_pub\\_pa\\_humanrights.dj/list\\_of\\_themes\\_cerd\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/dansk_pub_pa_humanrights.dj/list_of_themes_cerd_2020.pdf)

<sup>764</sup> The Danish Institute for Human Rights (2011), Ethnic profiling in Denmark – legal safeguards within the field of work of the police, available at: [https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/ethnic\\_profiling\\_english.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/ethnic_profiling_english.pdf) .

this power might contravene the right to respect for one's private and family life under the European Convention of Human Rights and recommended that the law be amended in accordance with the European Court of Human Rights judgment *Gillan and Quinton v. The United Kingdom*. The study also recommended that law enforcement should systematically collect stop data, including ethnicity and outcome; improve the complaints system; and that the Parliamentary Ombudsman carry out a full pattern-and-practice investigation into ethnic profiling in Denmark<sup>765</sup>.

Another widespread issue is **under-reporting of racist hate-speech and hate-crime**. In its 2017 report, ECRI had recommended that the Danish authorities set up a comprehensive data collection system for racist and homo-/transphobic hate speech incidents, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome<sup>766</sup>. In its 2020 update report, however, the Danish authorities confirmed to ECRI, that there is not yet a comprehensive collection of data on racist and homo-/transphobic hate speech incidents with fully disaggregated data as well as judicial follow-up and outcome in one and the same unified data collection system<sup>767</sup>.

### **Greenlanders (Inuit)**

An estimated 15 000 Greenlanders of Inuit ethnic background are residing in Denmark, being Danish citizens and entitled to the same rights and benefits as other Danish citizens. However, people with a Greenlandic Inuit background face a number of challenges in relation to enjoying equal treatment and opportunities. Many of them experience low levels of education and high levels of unemployment<sup>768</sup>.

## **B.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers**

### **Legislative Framework**

Anti-discrimination legislation in Denmark does not consist of one single piece of legislation but is ensued by a web of civil and criminal legislation, which has been introduced or amended when public debate or international and EU obligations focused on a specific field of application or a specific vulnerable group<sup>769</sup>. Denmark has not signed and ratified Protocol No. 12, which contains a general prohibition of discrimination<sup>770</sup>.

The **Danish Constitution** prohibits discrimination on the grounds of religion or race<sup>771</sup>.

Different pieces of legislation transpose and implement Directive 2000/43/EC and Directive 2000/78/EC. The relevant Acts to combat racism and racial discrimination include the **Act on the Prohibition of Discrimination due to Race** etc., which makes it a criminal offence to refuse, in connection with a commercial or non-profit business, to serve or allow entrance to a person on the basis of race, colour,

<sup>765</sup> Equinet (2019), Promising Practices by Equality Bodies, Compendium of Promising Practices on Ethnic Profiling, p. 2.

<sup>766</sup> ECRI, *Report on Denmark*, op. cit., p. 14.

<sup>767</sup> ECRI 2020. ECRI conclusions on the implementation of the recommendations in respect of Denmark subject to interim follow-up, published on 2 June 2020, p. 5.

<sup>768</sup> ECRI, *Report on Denmark*, op. cit., p. 26f.

<sup>769</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Denmark, p. 5

<sup>770</sup> ECRI, *Report on Denmark*, op. cit., p. 11.

<sup>771</sup> Constitutional Act of Denmark (1849), as amended: Articles 70 and 71.

national or ethnic origin, religious belief or sexual orientation<sup>772</sup>. The **Act on Ethnic Equal Treatment** defines and prohibits in its Articles 2 and 3 direct and indirect discrimination on grounds of racial or ethnic origin. Colour, language, religion, and citizenship, however, are not included among the enumerated grounds. Furthermore, the Act on Ethnic Equal Treatment does not contain a provision to prohibit segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate. In its 2017 report, ECRI recommends that the authorities should amend the Act on Ethnic Equal Treatment to include (i) colour, language, religion and citizenship as enumerated grounds; and (ii) a prohibition of acts of segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate<sup>773</sup>. The **Act on the Prohibition of Discrimination in the Labour Market etc.** prohibits direct and indirect discrimination in the labour market based on race, skin colour, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin<sup>774</sup>.

The relevant provisions to combat racism and racial discrimination are mainly contained in the **Danish Criminal Code**. It provides that any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation shall be liable to a fine or to imprisonment for a term not exceeding two years. The Criminal Code also establishes aggravating circumstances for crimes committed on account of race, colour, national or ethnic origin, religion, or sexual orientation.<sup>775</sup> However, according to the 2017 ECRI report, several gaps remain. For example, language and citizenship are not listed as enumerated grounds in these articles. In addition, race and colour are not included as enumerated grounds.<sup>776</sup> Furthermore, the Criminal Code does not contain a provision to criminalise the public denial, trivialisation, justification or condonation, with a racist aim, of crimes of genocide, crimes against humanity or war crimes. Furthermore, there is also no specific provision to criminalise the creation or the leadership of a group that promotes racism, support for such a group and participation in its activities.<sup>777</sup>

There are three independent authorities that are entrusted with the fight against racism and racial discrimination in Denmark: (1) The Parliamentary Ombudsman (*Folketingets Ombudsmand*); (2) The Board of Equal Treatment (*Ligebehandlingsnævnet*); and (3) The Danish Institute for Human Rights.

The **Parliamentary Ombudsman**, an independent institution, receives complaints made by victims of alleged discrimination by public institutions. The competences of the Ombudsman cover all parts of the public administration, although it lacks the right to initiate court cases (even when a specific victim is not referred to), and protection against retaliatory measures.

The **Board of Equal Treatment** established in 2009 by law only deals with concrete complaints related to discrimination, and may award compensation. The Board has no mandate to take up cases on its own initiative, and it can only base its decisions on written information and evidence received from the complainant, the defendant (the person/event complained about) and the secretariat. Decisions made by the Board are final and binding for both parties. In certain situations, the Board can decide that the

<sup>772</sup> Act on the Prohibition of Discrimination due to Race etc. (Lov om forbud mod forskelsbehandling på grund af race etc.), Consolidated Act No. 626 of 29 September 1987 with later amendments.

<sup>773</sup> ECRI, *Report on Denmark*, op. cit., p.12.

<sup>774</sup> Act on the Prohibition of Discrimination in the Labour Market etc. (Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.), Consolidated Act No. 1001 of 24 August 2017.

<sup>775</sup> Article 266(b) of the Danish Criminal Code, available at: <https://www.legislationline.org/documents/action/popup/id/20037>.

<sup>776</sup> ECRI, *Report on Denmark*, op. cit., p. 11.

<sup>777</sup> ECRI, *Report on Denmark*, op. cit., p. 12.

complainant is entitled to compensation.<sup>778</sup> According to the 2017 ECRI report, in the employment field the Board cannot deal with discrimination on the grounds of language, and outside the employment field, on the grounds of colour, religion, nationality and language. Nor does the Board provide advice to plaintiffs, conduct awareness-raising activities or monitor legislation.<sup>779</sup>

The **Danish Institute for Human Rights** (DIHR) assists victims of discrimination by processing their complaints and investigating alleged cases of discrimination. It also conducts surveys concerning discrimination, publishes reports on differential treatment and makes recommendations on how to improve the fight against discrimination. The DIHR can conduct investigations. Victims can refer their case back to the DIHR if the Board of Equal Treatment has rejected it. Moreover, if the DIHR considers that the compensation awarded to a plaintiff by the Board of Equal Treatment is not high enough, it can take the case to court with the aim of obtaining a higher amount. The DIHR can also bring cases of general interest to the public before the Board of Equal Treatment.<sup>780</sup>

## B.4 Statistics on racism, xenophobia and racial discrimination

In 2018, 45 % of immigrants and descendants of non-Western origin experienced discrimination in Denmark because of their ethnic background<sup>781</sup>. However, there is a serious lack of statistics and general research on discrimination, and there seems to be a profound lack of recognition that such discrimination takes place in Danish society. This lack of information partly stems from the tradition observed in Denmark of not discussing racism. This has prevented any appeased public discussion on the topic of racism in general, and certainly blocked any possibility to widen the debate to the acknowledgement of structural racism in the country.<sup>782</sup>

Statistics from FRA's EU-MIDIs II survey points to religion as being one of the areas where discrimination has been most prevalent. Twenty-five percent of people from the Sub-Saharan Africa target group questioned felt that they experienced discrimination on the basis of their religion (against an EU average of 12%). For those target groups surveyed (people whose origin can be traced in Turkey or sub-Saharan Africa), the perception of discrimination was higher in Denmark than other Member States felt particularly for discrimination at work (12% for an EU average of 9%), public or private services (22% for an EU average of 16%).<sup>783</sup>

## B.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

While the Danish criminal code does not cover some discrimination on the grounds of "race" and "colour", the drafting history of the law needs to be taken into account by the courts. However, given no case law on this has been identified, ECRI suggests that the Criminal Code is updated to include

<sup>778</sup> Equinet, Board of Equal Treatment – Denmark, available at: [https://adsdatabase.ohchr.org/issuelibrary/board%20of%20equal%20treatment%20\(denmark\).pdf](https://adsdatabase.ohchr.org/issuelibrary/board%20of%20equal%20treatment%20(denmark).pdf).

<sup>779</sup> ECRI, *Report on Denmark*, op. cit., p. 13.

<sup>780</sup> Ibid. p. 13 f.

<sup>781</sup> See numbers for the whole country of Denmark: [https://integrationsbarometer.dk/barometer/sammenlign/?v=0ce07f1c837d&include\\_country%3Aboolean=on&indicators%3Alist=5N1](https://integrationsbarometer.dk/barometer/sammenlign/?v=0ce07f1c837d&include_country%3Aboolean=on&indicators%3Alist=5N1).

<sup>782</sup> Quraishy, Basy, We need to talk about systemic racism in Denmark, 31 July 2020 in ENAR blog, available at: <https://www.enar-eu.org/We-need-to-talk-about-systemic-racism-in-Denmark> last accessed on 1 November 2021.

<sup>783</sup> FRA, Second European Union Minorities and Discrimination Survey: op. cit.

those grounds for discrimination.<sup>784</sup> In a similar vein, the Act on Ethnic Equal Treatment does not contain a provision to prohibit segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate.<sup>785</sup>

Data on hate speech and hate crime is not fully consistent. While the number of hate crimes recorded by the police has increased dramatically (from 274 in 2016 to 635 in 2020), there are no data on the number of cases prosecuted and sentenced. Fifty-seven percent of these reported hate crimes were motivated by racist and xenophobic biases, followed by anti-Muslim ones (14%) and anti-Semitic ones (12%).<sup>786</sup>

Nevertheless, public opinion in Denmark seems to evaluate the effectiveness of the efforts to fight discrimination favourably. More than one-third of respondents (32%) found the efforts “effective” and 32% “moderately effective”, contrasting the 24% of respondents who perceived the measures as “not effective” and 6% who considered that no efforts are made<sup>787</sup>. Overall, the trend over time, compared to the previous Eurobarometer survey in 2015, is more negative, with the perceptions of the effectiveness of the efforts to fight discrimination having gone down.

Ongoing discrimination has been recorded, in particular relating to obstacles to the integration of some communities and groups.

Increased islamophobia in the political discourse has fuelled experiences of discrimination, especially among young Muslims, many of whom have grown up in Denmark, master the language and successfully completed their education, yet perceive that they will not be accepted as equal member of Danish society.<sup>788</sup>

While there is a general absence of reliable information about the levels of discrimination and social exclusion of people of African descent / black Europeans, NGOs have complained about the lack of data especially due to the intersectional discrimination some groups face (especially Muslim women of African descent / black Europeans).<sup>789</sup>

## B.6 Impact of the COVID-19 pandemic on racism in the country

Not much information is available on the impact of the Covid-19 pandemic on racism in Denmark. Anecdotal evidence suggests that Danes of Asian origin have been increasingly subject to racist attacks since the start of the pandemic<sup>790</sup>.

Evidence suggests that ethnic minorities were particularly vulnerable to being infected during the COVID-19 epidemic, having been relatively more exposed to infection.<sup>791</sup> This can be explained, among other things, by housing conditions, job types and language skills. The authorities only realised

<sup>784</sup> ECRI, *Report on Denmark*, op. cit., p. 12.

<sup>785</sup> Ibid.

<sup>786</sup> OSCE Hate Crime Reporting statistics, available at: <https://hatecrime.osce.org/denmark> last accessed on 1 November 2021.

<sup>787</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 174.

<sup>788</sup> ECRI, *Report on Denmark*, op. cit., p.26.

<sup>789</sup> Ibid.

<sup>790</sup> ScandAsia, Nordic News and Business Promotion in Asia, Danes with Asian genes report racism as a result of the Covid-19 pandemic (7 September 2021), available at: <https://scandasia.com/danes-with-asian-genes-report-racism-as-a-result-of-the-covid-19-pandemic/> (accessed on 20 October 2021)

<sup>791</sup> FRA Bulletin #6, Coronavirus Pandemic in the EU – Fundamental Rights Implications: Focus on Social Rights, 1 September – 31 October 2020, p. 31, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-coronavir-us-pandemic-eu-bulletin-november\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavir-us-pandemic-eu-bulletin-november_en.pdf)

relatively late in the process that an extra effort in the form of targeted, translated information and the opportunity to ask questions and get answers in their mother tongue is absolutely crucial during a pandemic. In addition, the Department of Human Rights called for important press conferences on the corona pandemic to be resynchronized. As a result, an information campaign about Covid-19 specifically aimed at ethnic minorities living in Denmark was launched. It included the distribution of posters, booklets and online videos<sup>792</sup>, aiming to keep minorities up to date with the latest news. In addition, a social media campaign targeted at young people was created, and efforts were made to ensure that messages were made accessible to illiterate persons. Moreover, the Danish Health Authority developed information material on Covid-19 for people with an ethnic-minority background, which is available in 19 languages, and set up an expert group to advise on how to communicate new information to ethnic minority groups and help disseminate relevant material in their networks<sup>793</sup>.

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<sup>792</sup> For example "Mino Denmark" (<https://mino.dk/>) keeps minorities up to date with the latest news from the government's Covid-19 messages in 25 languages.

<sup>793</sup> Council of Europe (2021), Responses to the Covid-19 pandemic in the fields of nondiscrimination, diversity and inclusion. Promising and good practice examples. CDADI/2021)3rev, p. 7f.

## C. COUNTRY REPORT - GERMANY

### C.1 Causes of racism, xenophobia and racial discrimination

Racism, xenophobia and racial discrimination in Germany have existed for centuries. The Holocaust is the darkest chapter in Germany's history, and has a special place in the culture of remembrance in Germany. In addition, Germany is a multi-cultural country with an increasing number of people with foreign roots. In 2020, 21.9 million people had a migrant background, representing 26.7% of the population in Germany<sup>794</sup>.

Nevertheless, in recent years, the number of reported cases of racial discrimination in Germany has continued to increase. According to Bernhard Franke, acting head of the Federal Anti-Discrimination Agency (FADA), "Germany has an ongoing problem with racial discrimination and does not support victims consequently enough in enforcing the law."<sup>795</sup>

This trend can mainly be explained through political factors over the last decade. For example, Germany received an extraordinarily large number of asylum seekers in 2015. In parallel, a series of attacks on asylum shelters started. The German Chancellor Angela Merkel as well as ministers publicly spoke out against hate speech and called on social networks to enforce their guidelines on removing hate speech<sup>796</sup>.

However, racism and xenophobia remain a concern in Germany. According to the Special Eurobarometer 493, Germans think that discrimination based on ethnic origin (55%) and skin colour (57%) is widespread in their country.<sup>797</sup> Recent years also saw an increased number of violent riots and hate crimes with racist motives. In addition, far-right activists increasingly use social media networks to spread hateful content on issues such as migration and foreign policy in order to influence voters and media and to undermine trust in institutions<sup>798</sup>. The debate about Islam, terrorism and immigration, which has been heated for years, is also increasing anti-Semitism. These debates heavily influenced public perceptions and have given a boost to right-wing populist movements and parties, which in turn are now pushing these issues further. This development created a political climate of polarization in Germany, with inflammatory slogans and (implicitly or explicitly formulated) conspiracy theories<sup>799</sup>.

### C.2 Dimensions of racism, xenophobia and racial discrimination

#### Anti-Gypsyism

There are no official statistics in Germany on the number of Sinti and Roma<sup>800</sup>. The latest qualitative study about the situation of Sinti and Roma in Germany dates back to 2011. In this study, 81.2% of the

<sup>794</sup> Statistisches Bundesamt, Migration and Integration, available at: [https://www.destatis.de/EN/Themes/Society-Environment/Population/Migration-Integration/\\_node.html](https://www.destatis.de/EN/Themes/Society-Environment/Population/Migration-Integration/_node.html) (accessed on 12.11.2021).

<sup>795</sup> Annual Report 2019: Significant increase in enquiries regarding racial discrimination, available at: [https://www.antidiskriminierungsstelle.de/SharedDocs/pressemitteilungen/EN/2020/20200609\\_Jahresbericht.html](https://www.antidiskriminierungsstelle.de/SharedDocs/pressemitteilungen/EN/2020/20200609_Jahresbericht.html)

<sup>796</sup> ECRI report on Germany (6<sup>th</sup> Monitoring Cycle), published on 17 March 2020, p. 7, available at: <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>

<sup>797</sup> Eurobarometer Discrimination in the European Union, op. cit. p. 15ff.

<sup>798</sup> ECRI *Report on Germany* op. cit., p. 18.

<sup>799</sup> Bundesministerium des Innern, für Bau und Heimat (2016), Antisemitismus in Deutschland – Aktuelle Entwicklungen, p. 13.

<sup>800</sup> Due to the persecution and holocaust of Sinti and Roma during the period of Nazi rule, many Sinti and Roma oppose strongly against the collection of any data about them. See: Reuss, Anja / Mack, Jonathan, Data Collection on Equality, Discrimination and Antigypsyism, Central Council of German Sinti and Roma, in: Dimensions of Antigypsyism in Europe',

Sinti and Roma respondents had suffered from open or hidden discrimination, while 54% felt intimidated, badly treated or discriminated by the authorities<sup>801</sup>. According to the Special Eurobarometer 493, 52% of German respondents believe that anti-Roma discrimination is 'widespread' in their country, and only one-third of respondents believe anti-Roma discrimination to be 'rare' in Germany<sup>802</sup>. These figures suggest an acknowledgement that anti-Roma discrimination is present in German society.

Government statistics on "politically motivated crime" recognise the antigypsyist hate crime category since 2017. According to the ODIHR's online hate crime reporting database, 3 anti-Roma hate crimes were recorded in Germany in 2020. According to a report by the Independent Commission for combating anti-Gypsyism in Germany, a large part of racist experiences against Roma in public places engages in non-verbal communication. Besides verbal abuse, there are looks and whispering, disparagement, denial of belonging, criminalisation, physical violence and attacks<sup>803</sup>. The report attributes social media an increasing role regarding anti-Roma discrimination and the dissemination of racist stereotypes more generally<sup>804</sup>.

### Anti-Semitism

In recent years, Germany has been experiencing a considerable rise in anti-Semitic acts. According to the latest available data (2020) in ODIHR's online hate crime reporting database, 643 anti-Semitic hate crimes were recorded in Germany in 2020, of which 128 were violent attacks against people, 121 were threats and 394 were acts against property<sup>805</sup>. Some anti-Semitic attacks generated international media attention. For example, on 9 October 2019, a heavily armed right-wing extremist attempted to force his way into a synagogue in Halle, intending to murder the worshippers gathered for the festival of Yom Kippur. His attempt failed, but the attacker still managed to kill two people at random<sup>806</sup>.

### Racism against migrants

Germany has long been one of the main destinations for irregular migration in Europe. In 2015, at the height of the migration crisis, Germany accepted around 890 000 migrants.<sup>807</sup> However, anti-immigrant movements in Germany have since swelled and are increasingly mainstream. According to findings of the Migrant Integration Policy Index (MIPEX), between 2014 and 2019, Germany's progress in creating more inclusive integration policies has slowed. In addition, according to the findings, Germany's approach does not provide long-term security for non-EU migrants and anti-discrimination protections

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published by the European Network Against Racism (ENAR) and the Central Council of German Sinti and Roma, Brussels 2019, p. 249f.

<sup>801</sup> Strauß, Daniel (2011) Studie zur aktuellen Bildungssituation deutscher Sinti und Roma / Dokumentation und Forschungsbericht. Marburg 2011, p. 99 (though the study relied on a relatively small sample of 261 interviews).

<sup>802</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 35.

<sup>803</sup> Bundesministerium des Innern, für Bau und Heimat (2021), Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation. Bericht der Unabhängigen Kommission Antiziganismus, p. 173.

<sup>804</sup> Ibid., p. 159.

<sup>805</sup> ODIHR online hate crime reporting database (for 2020), available at: <https://hatecrime.osce.org/germany?year=2020> (accessed on 10.11.2021).

<sup>806</sup> Equal rights, equal opportunities. Annual Report of the Federal Anti-Discrimination Agency (2019), p. 12.

<sup>807</sup> Bundesamt für Migration und Flüchtlinge, *Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung, Migrationsbericht 2015*, p. 15, available at: <https://www.bamf.de/SharedDocs/Anlagen/EN/Forschung/Migrationsberichte/migrationsbericht-2015.html?nn=403964>.

are 'one of the weakest' out of all the countries surveyed.<sup>808</sup> As a consequence, Germany no longer ranks in the top 10 countries for integration policy and, alongside the improvements in other countries in this area, this means that "German integration policies are now relatively average for Western European/OECD countries."<sup>809</sup>

### Islamophobia

Islamophobia is widely spread in Germany and has even intensified in the last few years in parts of the population. In 2015, around 890 000 migrants, mostly Muslims, arrived in Germany.<sup>810</sup> At present, between 5.3 and 5.6 million Muslims with a migration background from a predominantly Muslim country of origin live in Germany. The proportion of Muslim religious members with a migration background in the total population in 2019 was between 6.4 and 6.7%.<sup>811</sup> The German Interior Ministry registered 1 026 anti-Muslim attacks in 2020.<sup>812</sup> However, these statistics only represent the official cases. Research undertaken by anti-discrimination bodies has shown that discrimination against Muslims and Islamophobic hate crime are not isolated incidents in Germany. Negative attitudes towards Muslims also influence institutional practices, which are conducive to structural discrimination and far-reaching social exclusion and thus prevent the integration of the biggest religious minority in Germany.<sup>813</sup>

### Afrophobia

According to Eurobarometer, 77% of German respondents reported that they would feel comfortable working on a daily basis with a black person and 63% would feel comfortable if their child was in a love relationship with a black person<sup>814</sup>. However, according to a 2018 FRA survey, skin colour is the most commonly mentioned ground of discrimination, and Germany has one of the highest rates of discrimination on the ground of skin colour observed (37%)<sup>815</sup>. In addition, 48% of respondents of African descent in Germany indicated that they experienced racist harassment in the five years before the survey. Results of discrimination include restricted access to social housing and a low proportion of ownership of the dwelling.

The German Federal Anti-Discrimination Agency stated in its annual report 2020 that the Black-Lives-Matter movement has put the situation of black people in Germany in the focus of the debate around racial discrimination. The topic is very present and has also affected the work of the Agency: it received a total of 2 101 inquiries about discrimination on grounds of racist or ethnic origin in 2020. This

<sup>808</sup> Migrant Integration Policy Index (2020), fifth edition, Findings for Germany, available at: <https://www.mipex.eu/germany> (accessed on 10.11.2021).

<sup>809</sup> Ibid.

<sup>810</sup> Bundesamt für Migration und Flüchtlinge, *Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung*, Migrationsbericht 2015, p. 15, available at: [https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Migrationsberichte/migrationsbericht-2015.pdf?\\_\\_blob=publicationFile](https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Migrationsberichte/migrationsbericht-2015.pdf?__blob=publicationFile).

<sup>811</sup> Bundesamt für Migration und Flüchtlinge (2021), *Muslimisches Leben in Deutschland 2020*, p. 9, available at: <https://www.bamf.de/SharedDocs/ProjekteReportagen/DE/Forschung/Integration/muslimisches-leben-deutschland-2020.html?nn=283560>.

<sup>812</sup> Bundesministerium des Innern, für Bau und Heimat, Bundeskriminalamt, *Politisch motivierte Kriminalität im Jahr 2020, Bundesweite Fallzahlen*, p. 8, available at: [https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf?__blob=publicationFile&v=4).

<sup>813</sup> Netzwerk gegen Diskriminierung und Islamfeindlichkeit (2015), *Anti-Muslim Racism and Islamophobia in Germany*, p. 7, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared\\_Documents/DEU/INT\\_CERD\\_NGO\\_DEU\\_20112\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared_Documents/DEU/INT_CERD_NGO_DEU_20112_E.pdf).

<sup>814</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 25ff.

<sup>815</sup> Fundamental Rights Agency (2018), Second European Union Minorities and Discrimination Survey. Being Black in the EU, p. 38.

corresponds to an increase of almost 79% compared to the previous year, a larger increase than in the four previous years combined<sup>816</sup>.

### **Institutional racism in policing**

In recent years, an increasing amount of discriminatory measures by the police were reported, followed by revelations of racism or far-right extremism in Germany's police and security agencies. Research published in 2020 by the political magazine Der Spiegel found that the German Länder and the federal police force had recorded at least 400 suspected incidents of right-wing extremist, racist or anti-Semitic activity in recent years among police officers or trainees<sup>817</sup>. Despite this evidence, the German Interior Minister, who oversees the country's police and security agencies, first refused to admit that there is a problem with racism or right-wing extremism in the police<sup>818</sup>. In July 2020, he rejected the need for a study into racial profiling by the police, and later denied that there was a structural problem with right-wing extremism in the security forces. In addition, authorities at both federal and Länder level failed to establish an independent complaints mechanism to investigate discriminatory and unlawful behaviour by police<sup>819</sup>. In December 2020, the Federal Ministry of the Interior commissioned a study on the topic of "Motivation, Attitude and Violence in everyday life by law enforcement officers." The Federal Anti-Discrimination Agency received 113 complaints about discrimination on racial grounds or on the grounds of ethnic origin by police officers or other security forces. The Agency therefore argued that it is essential that the study commissioned by the Federal Ministry of Interior should explicitly not only cover attitudes, but also potentially discriminatory effects of current police practices<sup>820</sup>.

## **C.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers**

The German legislative framework on the types of anti-discrimination is composed of several elements:

- Provisions in the German Basic Law;
- General Law on Equal Treatment;
- Provisions in the Criminal Code;
- Provisions in the Labour Code;
- National Action Plans.

The principle of equality and the prohibition of discrimination play an important role in the **German Basic Law** (ratified in 1949), and the most important fundamental rights are enlisted in the first Articles. For example, the equality of all human beings before the law is proclaimed in Article 3. The equality of women and men is prescribed by Article 3(2) (included during a constitutional reform in 1994), and Article 3(3) addresses diverse characteristics and states that no person shall be favoured or disfavoured

<sup>816</sup> Antidiskriminierungsstelle des Bundes. Jahresbericht 2020. April 2021, p. 20.

<sup>817</sup> Der Spiegel, The dark side of State power. Exploring right-wing extremism in Germany's police and military, published on 13.08.2020, available at: <https://www.spiegel.de/international/germany/the-dark-side-of-state-power-exploring-right-wing-extremism-in-germany-s-police-and-military-a-0600aa1e-3e4e-45af-bfc9-32a6661e66ef> (accessed on 28.09.2021).

<sup>818</sup> Zeit Online, Horst Seehofer stimmt Rassismus-Studie bei der Polizei zu, published on 20.10.2020, available at: <https://www.zeit.de/politik/2020-10/rassismus-polizei-studie-horst-seehofer-zustimmung-rechtsextremismus?page=5> (accessed on 14.04.2022).

<sup>819</sup> Amnesty International Report 2020/21 (2021). The state of the world's human rights, p. 168.

<sup>820</sup> Antidiskriminierungsstelle des Bundes. Jahresbericht 2020. April 2021, p. 26.

because of their sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. In 1994, discrimination against disabled people was also included in this prohibition as part of the constitutional reform<sup>821</sup>.

Germany has ratified all major agreements on the protection of human rights such as the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). Furthermore, Germany considers the concluding observations of the Committee on the Elimination of Racial Discrimination on the combined 19th to 22nd reports of the Federal Republic of Germany of 30 June 2015 an important frame of reference<sup>822</sup>.

The **General Equal Treatment Act** (Allgemeines Gleichbehandlungsgesetz – AGG) of 14 August 2006 (which was last amended on 3 April 2013) is the main instrument incorporating the EU equality directives. It covers all grounds set out in the directives (race, ethnic origin, religion, belief, disability, age or sexual orientation). In addition, discrimination on the grounds of nationality is generally regarded as possible indirect discrimination on the basis of race or ethnic origin and is therefore prohibited.<sup>823</sup> The AGG is part of a legal package that amended other existing legal regulations. On 18 August 2006, the Act implementing European Directives putting into effect the principle of equal treatment was enacted.<sup>824</sup> This Act encompasses the General Equal Treatment Act,<sup>825</sup> the Equal Treatment of Soldiers Act<sup>826</sup> and amendments to various legal regulations. The general aim of the laws is to combat discrimination on the grounds of race, ethnic origin, sex, religion or philosophical belief, disability, age or sexual identity. It includes labour, civil and parts of public law, and goes beyond what is demanded by European law. Multiple discrimination is also prohibited by law. Section 4 of the AGG provides that any unequal treatment on the basis of multiple prohibited grounds must be justified for each of these grounds. However, it has not been clarified how the norm applies to cases of intersectionality.<sup>827</sup>

The **German criminal law** does not contain any specific provisions pertaining to discrimination, with the exception of the offence of Incitement to hatred (section 130 Criminal Code). An act of discrimination could therefore be prosecuted in the same way as a criminal act, but only if it fulfilled the requirements of an existing crime such as defamation or personal injury. For example, racist statements may be punishable as 'insults' under Section 185 of the Criminal Code. In terms of hate crime, Section 46 of the German Criminal Code states explicitly that when weighing the seriousness of the offence, courts shall give particular consideration to the motives and aims of the offender, particularly where they are of a racist or xenophobic nature or where they otherwise show contempt for human dignity.<sup>828</sup> In addition, Section 130 of the Criminal Code prohibits incitement to hatred,

<sup>821</sup> Article 3(3) of the German Basic Law. This prohibition was augmented in 1994 with the inclusion of discrimination against disabled persons.

<sup>822</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany*, 30 June 2015, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsv4qujPA8gSE3O3exJU3P3wgutKMsq%2B7wnmDaL0QG%2BCrQz3WvutmtVfB6y0GzXGYzIb14Z8mkSN66F26sFOGGKy4FLsqrYqhgFFqEl2aUrdXdmlB MqnWzLzyypNzGqRUw%3D%3D>.

<sup>823</sup> European network of legal experts in gender equality and non-discrimination, *Country report non-discrimination, Germany 2021*, p. 65, available at: <https://www.equalitylaw.eu/downloads/5476-germany-country-report-non-discrimination-2021-2-67-mb>.

<sup>824</sup> Act implementing European Directives Putting into Effect the Principle of Equal Treatment (Gesetz zur Umsetzung Europäischer Richtlinien zur Verwirklichung des Grundsatzes der Gleichbehandlung), 14 August 2006.

<sup>825</sup> General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz – AGG), 14 August 2006.

<sup>826</sup> Equal Treatment of Soldiers Act (Soldatinnen- und Soldaten- Gleichbehandlungsgesetz – SoldGG), 14 August 2006.

<sup>827</sup> European network of legal experts in gender equality and non-discrimination, Germany op. cit., p. 26.

<sup>828</sup> Germany, Criminal Code, Article 46 Strafgesetzbuch, Grundsätze der Strafzumessung.

incitement to violence and incitement to arbitrary measures 'against a national, racial, religious group or a group defined by their ethnic origins'.<sup>829</sup> Section 86 of the Criminal Code prohibits the dissemination of propaganda material of unconstitutional organisations. In terms of the use of symbols of unconstitutional organisations, Section 86a outlaws the 'use of symbols of unconstitutional organisations' outside the contexts of 'art or science, research or teaching'.<sup>830</sup>

As a response to the increasing spread of hate crime and other criminal content, especially on social networks such as Facebook, YouTube and Twitter, the German Bundestag passed the **Network Enforcement Act** (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken - NetzDG)<sup>831</sup> in June 2017. The law introduced compliance rules with fines for providers of social networks regarding the handling of user complaints about hate crime and other criminal content on the Internet, as well as a quarterly reporting obligation for providers. The law also gives victims of violation of their personal rights on the Internet the right to information about the infringer's inventory data, based on a court order.

In the wake of the right-wing extremist terrorist attack on the synagogue in Halle in October 2019, the German Federal Ministry of Justice developed a new law to combat right-wing extremism and hate crime<sup>832</sup>, which came into force on 3 April 2021. It expands definitions of offences under the Criminal Code, such as protection against defamation and malicious gossip, and increases the penalties. For example, antisemitic motives are now explicitly included as one of the motives that lead to an increase in the penalty imposed. Social networks will be required to report hate speech to the Federal Criminal Police Office, and it will be easier for victims of threats, insults and unauthorised stalking to have an information ban entered in the population register under the Federal Act on Registration.

There are other German legal regulations relevant for anti-discrimination law. In labour law, there is a general anti-discrimination clause in the **Works Constitution Act**<sup>833</sup>, and the fundamental principle of equal treatment of employees has been consistently established by case law<sup>834</sup>.

### Equality Body

In 2006, the German Federal Anti-Discrimination Agency (FADA) was established through Section 25 AGG as a stand-alone body with its own legal personality. The sole mandate of the FADA is non-discrimination. Organisationally, the agency is associated with the Ministry of Family Affairs, Senior Citizens, Women and Youth. The role of the agency is to support people to protect their rights against discrimination on the grounds of race, ethnic origin, sex, religion, belief, disability, age and sexual identity. It also deals with discrimination against migrants as their discrimination can fall under several grounds, such as race, ethnic origin, religion and belief etc<sup>835</sup>.

The head of the agency is appointed by the Minister of Family Affairs, Senior Citizens, Women and Youth, after a proposal by the Government. The position is independent and subject only to the law.

<sup>829</sup> Germany, Criminal Code, Article 130 Strafgesetzbuch, Volksverhetzung.

<sup>830</sup> Germany, Criminal Code, Article 86a Strafgesetzbuch, Verwenden von Kennzeichen verfassungswidriger und terroristischer Organisationen.

<sup>831</sup> Netzwerkdurchsetzungsgesetz. Bundesministerium für Arbeit und Soziales. 6. April 2020. Archiviert vom Original am 8. Mai 2020. Abgerufen am 8. Mai 2020.

<sup>832</sup> Federal Ministry of Justice and Consumer Protection, Legislative package to combat hate and hate speech has entered into force, 19 May 2021, available at: <https://www.bmjj.de/EN/FocusTopics/Legislative-package-combat-hate-hate-speech.html?nn=6427850> (accessed on 29.09.2021).

<sup>833</sup> Works Constitution Act (Betriebsverfassungsgesetz – BetrVG), Section 75(1) BetrVG, 25 September 2001.

<sup>834</sup> European network of legal experts in gender equality and non-discrimination, Country report non-discrimination, Germany 2021, p. 16.

<sup>835</sup> Ibid., p. 85.

Its tenure runs in parallel to the legislative period of the Bundestag, which could raise concerns regarding the independence of the body<sup>836</sup>.

The FADA has the competence to provide independent assistance to victims; to conduct surveys, produce scientific studies and publish independent reports; and to issue independent recommendations on discrimination issues, including recommendations in its reporting to the Parliament<sup>837</sup>.

In addition to FADA, the following organisations also play an important role:

- The German Institute for Human Rights (GIHR) also has an equality mandate that covers the public sector. According to the ECRI report, the Institute has no competence to receive complaints and lacks other basic support and litigation competences. It cannot, for example, bring cases of racial profiling before the courts. However, GIHR's annual reporting contributes substantially to better informing the public about the issue of discrimination.<sup>838</sup>
- Given Germany's federal structure, equality bodies can be set up at the federated level. In 2019, 11 of the 16 states (Länder) had established equality bodies. However, these entities have apparently been set up within the administrations of the Länder and are hence not independent. The Land Berlin, however, adopted its own anti-discrimination law and established an independent Ombud's office as an equality body with the mandate to mediate in cases of discrimination emanating from public authorities of the state and to request, in the case of unsuccessful mediation, that the relevant authority remedy the situation.<sup>839</sup>

### National Action Plans and Strategies

In addition, a **National Integration Plan** (NIP) was adopted in 2007 to improve the integration of migrants living in Germany. The Plan was renewed as the **National Integration Action Plan** (NAP-I) in 2012. Against the background of the high levels of immigration that Germany experienced since 2015, a further development of the concepts included in the NAP-I was decided in 2018, dividing the Plan into five phases of implementation. In 2021, the NAP-I had entered its 4<sup>th</sup> phase. Phase 5 will be devoted to the question of how discrimination and racism can be overcome long-term. In the planning of Phases 4 and 5 in 2020, a Cabinet Committee to combat right-wing extremism and racism in Germany was also set up<sup>840</sup>.

In 2017, the Federal Government adopted the **National Action Plan Against Racism**<sup>841</sup> (NAPAR). The Action Plan is an expansion of the first national action plan against racism, xenophobia, antisemitism and related intolerance<sup>842</sup>, which was launched to prevent violence and discrimination. However, the

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<sup>836</sup> Ibid., p. 84.

<sup>837</sup> Ibid., p. 85.

<sup>838</sup> Ibid., p. 9 f.

<sup>839</sup> Ibid., p. 10.

<sup>840</sup> Die Bundesregierung. Nationaler Aktionsplan Integration. Available at: <https://www.nationaler-aktionsplan-integration.de/napi-de/aktionsplan> (accessed on 12.11.2021).

<sup>841</sup> National Action Plan Against Racism – Positions and Measures to Address Ideologies of Inequality and Related Discrimination (Nationaler Aktionsplan gegen Rassismus – Positionen und Massnahmen zum Umgang mit Ideologien der Ungleichwertigkeit und den darauf bezogenen Diskriminierungen, 2017).

<sup>842</sup> National action plan against racism, xenophobia, antisemitism and related intolerance (Nationaler Aktionsplan der Bundesrepublik Deutschland zur Bekämpfung von Rassismus, Fremdenfeindlichkeit, Antisemitismus und darauf bezogene Intoleranz, 2008).

initial plan was criticised for mainly containing descriptions of already existing political and legal measures to combat racism, xenophobia and antisemitism<sup>843</sup>.

The German NAPAR includes a long discussion on racism and, while it mentions the concept of institutional racism in the context of the NSU (Nationalsozialistischer Untergrund / National Socialist Underground) case, it shies away from using it operationally. The NAPAR acknowledges that racism "can occur in all structures of society and government", it uses the concept of "racism in institutions", or "institutional discrimination".<sup>844</sup> Furthermore, the document lists antisemitism, antigypsyism, Islamophobia and racism against black people. The Federal NAPAR also includes the concept of intersectionality. In terms of data collection, it proposes the recording, analysis and study of incidents of racist violence, so that the competent authorities, with the conclusions to which they will be led, take more appropriate precautionary measures to prevent their recurrence, as well as the creation of a database of such crimes. Amongst other mechanisms proposed by the NAPAR are surveys with a sample of victims of racist crime, in order to identify the causes of their victimization and to examine any other parameters that prompted the perpetrator to act. The document includes an annex summarising the main issues, organisations and measures in each of Germany's 16 federated states.

It is noteworthy that there is **not a specific strategy or national integration action plan for Roma**. There is, nevertheless, an integrated set of policy measures building on the country's general social inclusion policies. However, representatives of German Sinti and Roma have placed great importance on ensuring that their communities are not presented in being in need of social inclusion policies, in order not to trigger any antigypsyism<sup>845</sup>. Instead, the German Parliament set up the "Independent Commission for combating antiziganism in Germany" in March 2019, with the objective to analyse the existing prejudice and stereotypes and to develop recommendations on how to remedy these. In June 2021, the Commission published its first comprehensive report, highlighting that antigypsyism is a serious problem in Germany<sup>846</sup>.

## C.4 Statistics on racism, xenophobia and racial discrimination

Similar to the situation in other countries, statistics about racism, xenophobia and racial discrimination need to be interpreted with caution due to under-reporting of incidents by victims, under-recording by the police and various specificities of reporting classification systems.

The ODIHR hate crime reporting database indicates 10 240 hate crimes recorded by the police for the year 2020 (the most current year for which data is available). This marks a steep increase in hate crime incidents (compared to 8 585 in 2019 and 8 113 in 2018). Racism and xenophobia were by far the leading grounds for the reported crimes (9 420 cases), followed by anti-Semitic hate crimes at 2 351 incidents. The hate crimes motivated by racism and xenophobia were mainly 'unspecified' (7 520 incidents), while 814 incidents were physical assault and 643 incidents were damages to property.

Another important source of data on hate speech are the sets of six-monthly transparency reports that social network companies are publishing under the NetzDG. For the period January-June 2021, Google

<sup>843</sup> European network of legal experts in gender equality and non-discrimination, Country report non-discrimination, Germany 2021, p. 92.

<sup>844</sup> German Federal Government, National Action Plan Against Racism - Positions and Measures to Address Ideologies of Inequality and Related Discrimination, p 90.

<sup>845</sup> ECRI report on Germany (6<sup>th</sup> Monitoring Cycle), published on 17 March 2020, p. 31

<sup>846</sup> Bundesministerium des Innern, für Bau und Heimat (2021). Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation. Bericht der Unabhängigen Kommission Antiziganismus. June 2021.

reported that 311 839 items on YouTube were reported, of which 84 010 items concerned hate speech or political extremism. Among the 48 157 removed contents there were 16 850 cases of hate speech or political extremism<sup>847</sup>. Facebook published that in the period between 1 January 2021 and 30 June 2021, there were 77 671 NetzDG reports identifying a total of 67 028 pieces of unique content. Of those, 22 696 regarded incitement to hatred, 29 498 regarded insult, 13 388 were attributed to dissemination of propagandamaterial of unconstitutional organisations and 8 698 were attributed to using symbols of unconstitutional organisations. A total of 11 699 pieces of content were deleted or blocked. Facebook also stated that they received 1 255 000 reports from users on content where users reported “hate speech” (under the community standards category selected by the reporter). Of those, 178 000 volumes were deleted<sup>848</sup>.

Further statistics are available from the Equality Body in Germany, the German Federal Anti-Discrimination Agency. In 2020, FADA recorded the largest increase in inquiries to date. There were 6 383 requests referring to at least one discrimination ground protected according to the AGG. The number of requests for advice increased by 78% compared to the previous year<sup>849</sup>. This increase of requests for advice is most likely related to the Covid-19 pandemic. Around 30% of the advice given was related to questions around the pandemic. The number of inquiries related to racist discrimination also increased significantly in 2020. With 2 101 cases, these account for a third (33 percent) of all inquiries<sup>850</sup>.

## C.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

### General Law on Equal Treatment

Some shortcomings have been identified in the transposition of the EU equality directives into German national law through the AGG and accompanying legislation.

For example, while the AGG prohibits victimisation in employment relations, there is no special prohibition of victimisation in German civil law, as set out in Article 9, Racial Equality Directive (2000/43/EC). However, given the authoritative standards of Article 20(3) Basic Law, according to which any victimisation is illegal, it is assumed that no breach of European law exists in this respect<sup>851</sup>.

In addition, Sections 15 and 21 AGG state that the claim for damages and compensation is made dependent on intent or negligence. This, however, seems to be in breach of European law,<sup>852</sup> also based on case law of the CJEU<sup>853</sup>, as the claim for damages and compensation is made dependent on

<sup>847</sup> Google Transparency Report, Removals under the Network Enforcement Law. Removing content from YouTube based on the Network Enforcement Law. Timeframe January-June 2021, available at: <https://transparencyreport.google.com/netzdg/youtube?hl=en> (accessed on: 12.11.2021).

<sup>848</sup> Facebook. NetzDG Transparency Report, July 2021, p. 5ff. available at: <https://about.fb.com/de/wp-content/uploads/sites/10/2021/07/Facebook-NetzDG-Transparency-Report-July-2021.pdf> (Accessed on 12.11.2021).

<sup>849</sup> Antidiskriminierungsstelle des Bundes. Jahresbericht 2020. April 2021, p. 43.

<sup>850</sup> Ibid., p. 47.

<sup>851</sup> European network of legal experts in gender equality and non-discrimination, Country report non-discrimination, Germany 2021, p. 80.

<sup>852</sup> Lembke, Ulrike. Europäisches Diskriminierungsrecht in Deutschland. Bundeszentrale für politische Bildung, 26.2.2016. available at: <https://www.bpb.de/apuz/221575/europaeisches-antidiskriminierungsrecht-in-deutschland?p=1> (accessed on 12.11.2021).

<sup>853</sup> Judgment of 22 April 1997, Draehmpaehl, C-180/95, EU:C:1997:208, available at: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=100350&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3968846>, para. 37. (accessed on 10.11.2021).

intent or fault. The prevailing opinion in the literature is that thereby, the provisions of the AGG weaken the effective protection against discrimination set out by European antidiscrimination law.

The EU equality directives (Racial Equality Directive 2000/43/EC and the Equality Framework Directive 2000/78/EC) also require that those affected by discrimination must be able to go to court. It is sufficient that these people present evidence of discrimination so that the defendants have to prove that there was no discrimination (reversal of the burden of proof). Anti-discrimination associations are allowed to represent or support those affected. After a complaint, employees must be protected from sanctions from their employers. These requirements have largely been implemented by the AGG. However, associations may not engage in criminal proceedings (no right of representation), which is in violation of the EU equality directives<sup>854 855</sup>.

Finally, the burden of proof norm according to Section 22 AGG is difficult to implement in practice. The extremely short period of two months to assert claims under the AGG remains problematic. Those affected often need time to come to terms with the discrimination, seek advice, and decide on legal action. The EU equality directives (Racial Equality Directive 2000/43/EC and the Equality Framework Directive 2000/78/EC) explicitly leave the setting of the deadline to the national legislators and thereby considerably weaken the protection<sup>856</sup>.

### Equality Body

In its report on Germany as part of the sixth monitoring cycle, ECRI pointed out that the mandate of the FADA is limited to the scope of the AGG and does not explicitly cover hate speech, the discrimination grounds of skin colour, language, citizenship and gender identity and intersectional discrimination<sup>857</sup>. According to ECRI, FADA also **lacks the competence to intervene in the legislative procedure** and **lacks substantial competences with regard to its support and litigation function**, i.e. FADA cannot provide persons exposed to racism and intolerance with legal assistance, represent them before institutions, adjudicatory bodies and the courts, bring cases in its own name or intervene as a third party or expert. Its competence in this area is restricted to providing these persons with information, redirecting them to other organisations and mediating.<sup>858</sup> FADA also lacks the power to question persons and to apply for an enforceable court order or impose administrative fines if an individual or institution does not comply with a decision related to its investigative powers.<sup>859</sup>

Furthermore, there are shortcomings concerning FADA's independence. For example, the head of FADA is appointed by the Federal Ministry for Family Affairs, based on a proposal of the Federal Government, meaning that **the executive has a decisive influence on the selection procedure**. In addition, the duration of the mandate of the head is tied to the legislative term of the Parliament.<sup>860</sup> According to feedback from civil society, the last vacancy was not publicised widely and in a

<sup>854</sup> Lembke, Ulrike. Europäisches Diskriminierungsrecht in Deutschland. Bundeszentrale für politische Bildung, 26.2.2016. available at: <https://www.bpb.de/apuz/221575/europaeisches-antidiskriminierungsrecht-in-deutschland?p=1> .

<sup>855</sup> The European Commission opened infringement proceedings against Germany in 2007. In October 2009, the Commission sent formal requests to Germany to comply fully with the Race Equality Directive (see IP/09/1617) and the Employment Equality Directive (see IP/09/1620). In response to the Commission's requests, which took the form of "reasoned opinions" under EU infringement procedures, Germany presented draft laws to comply with national jurisprudence and notified further national laws applying in this area. The Commission has concluded that, in the light of these changes, Germany has now properly implemented both Directives.

<sup>856</sup> Lembke, Ulrike. Europäisches Diskriminierungsrecht in Deutschland. Bundeszentrale für politische Bildung, 26.2.2016. available at: <https://www.bpb.de/apuz/221575/europaeisches-antidiskriminierungsrecht-in-deutschland?p=1> .

<sup>857</sup> ECRI Report on Germany op. cit., p. 9.

<sup>858</sup> Ibid. p. 9.

<sup>859</sup> Ibid.

<sup>860</sup> Ibid.

transparent manner, which led to an unsuccessful applicant lodging a complaint with the administrative court.<sup>861</sup> Furthermore, FADA and other institutions only have the legal obligation to draft a common report every four years for debate in the Parliament. By contrast, ECRI advised that equality bodies should publish annual reports that are discussed by parliament and government but are not subject to their approval or the approval of any other external party.<sup>862</sup> Despite these shortcomings, ECRI is of the opinion that FADA has made – despite its restricted resources – a valuable contribution to preventing and combating discrimination and intolerance.<sup>863</sup>

### **National Action Plans and Strategies**

The 2020 ECRI report also criticises that the NAP-I does not contain indicators to measure progress, and that the process for its revision is slow. Examples mentioned are the insufficient integration of children with a migration background in day care facilities as well as in primary and secondary education. Children with a migration background are more than twice as likely to leave school without a diploma<sup>864</sup>.

With regard to the NAPAR, ECRI criticises that it “does not contain concrete objectives, measures, timelines, budgets, indicators with starting and target values, and the authority and member of staff responsible for achieving each objective and implementing each measure”<sup>865</sup>.

### **Reporting of hate speech and hate crime**

The NetzDG introduced compliance rules with fines for providers of social networks regarding the handling of user complaints about hate crime and other criminal content on the Internet, as well as a quarterly reporting obligation for providers. While several fine proceedings are underway, the effectiveness of the NetzDG needs to be further evaluated. In its 2020 report, ECRI has positively noted that large social network providers have invested considerable resources in applying the law in an efficient manner<sup>866</sup>. There is, nevertheless, a recommendation that German authorities should standardise the reporting of online hate speech on social media platforms and ensure that evidence of such speech is systematically transmitted to the police<sup>867</sup>.

ECRI pointed out in its 2020 report that statistics of civil society continue to show higher numbers of potential hate crime cases than the official statistics, which suggests that many hate crimes are still not reported to the police. The Act to Combat Right-Wing Extremism and Hate Crime (Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität)<sup>868</sup>, which came into force in April 2021, significantly tightened penalties, put greater pressure on investigation and put in place information barriers in the reporting law to better protect those affected by hate crime. Given that the law is fairly recent, little can be said to date about its effectiveness.

In its 2020 report ECRI recommended that the police should analyse, together with civil society, evidence for hate crimes, initiate studies about the investigation of hate crime and publish hate crime

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<sup>861</sup> Ibid.

<sup>862</sup> Ibid.

<sup>863</sup> Ibid. p. 10.

<sup>864</sup> ECRI *Report on Germany* op. cit., p. 8.

<sup>865</sup> Ibid., p. 8.

<sup>866</sup> Ibid., p. 21.

<sup>867</sup> Ibid., p. 8.

<sup>868</sup> Bundesgesetzblatt Jahrgang 2021 Teil I Nr. 13, ausgegeben zu Bonn am 1 April 2021, p. 441, available at: [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s0441.pdf%27%5D\\_1650314609425](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s0441.pdf%27%5D_1650314609425).

reports. Training of police, prosecutors and judges on hate crime should be intensified and victims whose applications for asylum were rejected should not be deported before they have testified<sup>869</sup>.

## C.6 Impact of the COVID-19 pandemic on racism in the country

According to the FADA, the Covid-19 has been a major driver of discrimination and racism<sup>870</sup>. Especially the beginning of the pandemic was marked by racist attacks against people who were perceived as Asian. The total number of all consultation requests to the FADA related to discrimination rose from 3 580 cases in the previous year to 6 383 in 2020, of which 1 904 were specifically related to the Covid-19 pandemic. This is an increase of 78.3%. In particular, the calls for help because of discrimination "on the basis of ethnic origin, or on racist grounds<sup>871</sup>" increased significantly with 2 101 requests. In 2019, there were only 1 176 requests.

Experiences of discrimination included harassing checks by the police and the regulatory authorities of people of Asian ethnic origin as well as Sinti and Roma, difficult access to medical services, job losses and open hostility. The Roma population in particular felt stigmatised in their immediate living environment in dealing with infection control measures<sup>872</sup>.

The FADA also stated that long-term consequences of the Covid-19 crisis could be further disadvantages especially for people with a migration background, since the pandemic will exacerbate educational inequalities and access to integration services (such as language courses, counselling and leisure activities) is lacking or significantly more difficult<sup>873</sup>.

## C.7 Conclusion

While the German society is shaped by a pluralism of lifestyles and ethno-cultural diversity, racism, xenophobia and racial discrimination have been increasing in recent years. Reasons for this trend lie in historical and political events as well as in an increasing polarisation by far-right activities and social media. In addition, the effects of the Covid-19 pandemic have further worsened the situation. The German legal and policy framework for countering racial discrimination is largely in compliance with the EU equality directives, however, there are a number of shortcomings and areas for improvement. The latest policy measures have been put in place in 2021 and need further evaluation of their effectiveness.

However, the number of terrorist attacks and xenophobic demonstrations, as well as electoral successes of xenophobic political parties at Federal as well as Länder-level in recent years, increase the need to continue preventing attitudes that give rise to discrimination. The help of and interplay between civil society organisations, government and political actors, is thereby of fundamental importance.

<sup>869</sup> ECRI *Report on Germany* op. cit., p.8.

<sup>870</sup> Antidiskriminierungsstelle des Bundes, *Diskriminierungserfahrungen im Zusammenhang mit der Corona-Krise*, May 2020, available at: [https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/Dokumente\\_ohne\\_anzeige\\_in\\_Publikationen/2020504\\_Infopapier\\_zu\\_Coronakrise.pdf?\\_\\_blob=publicationFile&v=1](https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/Dokumente_ohne_anzeige_in_Publikationen/2020504_Infopapier_zu_Coronakrise.pdf?__blob=publicationFile&v=1).

<sup>871</sup> Antidiskriminierungsstelle des Bundes, *Diskriminierungserfahrungen im Zusammenhang mit der Corona-Krise*, May 2020, p. 1

<sup>872</sup> Antidiskriminierungsstelle des Bundes. *Jahresbericht 2020*. April 2021, p. 16.

<sup>873</sup> *Ibid.*, p. 16.

## D. COUNTRY REPORT - GREECE

### D.1 Causes of racism, xenophobia and racial discrimination

Two main factors are often pointed out as central driving forces for racist and xenophobic attitudes and behaviour in Greece.<sup>874</sup> The first is the economic crisis of 2009 which resulted in a severe economic downturn and imposition of austerity measures, whose effects are still felt today. The second factor is the position of Greece as an entry point for refugees and asylum seekers in the EU and the associated challenge of hosting a large number of migrants on its territory.<sup>875</sup> Each of these two factors taken separately was of great severity but the combination of the two simultaneously makes an already difficult situation even more complex. The lack of coherent EU asylum and migration policy has further contributed to the prolongation of the status quo, characterized by overcrowded and inadequate living conditions among refugees and asylum seekers and prevented their smooth integration into society.<sup>876</sup> Arguably, however, external factors such as the economic and migrant crises per se are not sufficient to deterministically account for racism and xenophobia unless they are also met with a narrow and exclusive perceptions of national identity.<sup>877</sup> Such confluence creates rife grounds for the burgeoning of political extremism as was seen with the rise of the far-right political party Golden Dawn. The recent court ruling from October 2020 against Golden Dawn, which declared it a criminal organization, has been hailed as a victory for the rule of law.<sup>878</sup> Despite that, recent developments point to a rise in hate crimes. This is in part due to the general trend of political polarization in the EU and globally which is felt in Greece as well. In addition, statements by some political leaders at the national and local levels and some media play a role in continuing to incite xenophobic and racist attitudes. Finally, a recent trend that has contributed to a spike in discrimination and structural racism against target groups has been the Covid-19 pandemic. It added a new dimension to the problem as refugees, migrants and Roma are additionally seen as a public health threat (see Section D.6 on the impact of Covid-19).

### D.2 Dimensions of racism, xenophobia and racial discrimination

#### Racism against migrants

The main dimension of racism is specific to the situation in Greece and is expressed against refugees, asylum-seekers and migrants in general. The popularity and spread of xenophobic ideologies among some segments of Greek society is giving rise to organised forms of racist violence.<sup>879</sup> Refugees, asylum-seekers, and economic migrants have been the main target of far-right extremist groups, who engage in physical and verbal assaults, harassment and threats, blockades of disembarkation ports, arson of accommodation sites and damage to personal property. These far-right extremist groups act as vigilante squads, self-assigning the task of law enforcement to themselves. Indeed, it is reported that

<sup>874</sup> FRA. 2013. Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary, p. 9.

<sup>875</sup> See UNHCR data available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

<sup>876</sup> LIBE committee report, The EU Approach on Migration in the Mediterranean, June 2021, pp 51-70, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL\\_STU\(2021\)694413\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU(2021)694413_EN.pdf)

<sup>877</sup> ECRI. 2015. ECRI Report on Greece (fifth monitoring cycle). ECRI (2015)1, p. 39.

<sup>878</sup> The Guardian, Golden Dawn guilty verdicts celebrated across Greece, October 2020, available at: <https://www.theguardian.com/world/2020/oct/07/golden-dawn-leader-and-ex-mps-found-guilty-in-landmark-trial>

<sup>879</sup> Reuters (2018), 'Racist violence creeping up in Greece, report finds', 28 March 2018, available at: <https://www.reuters.com/article/us-greece-racism-idUSKBN1H41VF>.

of 107 recorded cases of attacks, 77 incidents were perpetrated by a group of at least two people.<sup>880</sup> Furthermore, most attacks are perpetrated in public spaces, public transportation, stores, banks and restaurants. In recent years, NGOs have repeatedly warned of increases in the number of attacks against refugees and migrants.<sup>881</sup>

### Antigypsyism

Another major target group of discrimination are the Roma. The Roma living in Greece are estimated to be about 2.47% of the total population or approximately 265 000 people.<sup>882</sup> However, official data does not exist as the Greek state does not collect data on minorities in general, including the Roma.<sup>883</sup> Some initiatives of partially counting the Roma population have been made. For example, as part of the National Roma Inclusion Strategy, a mapping of Roma settlements was undertaken on the basis of which it was estimated that some 50 000 Roma live in them. The lack of official quantitative data carries a number of negative implications including difficulties for Roma to access social inclusion schemes. The general lack of statistical data on ethnic and religious minorities has been expressed as a concern by international organizations as it hinders the monitoring and evaluation of human rights protection as well as the adoption of policies and measures in favour of minorities.<sup>884</sup> Greece has also not ratified the Framework Convention for the Protection of National Minorities of the Council of Europe.

Bias and negative attitudes toward Roma are pervasive. According to Special Eurobarometer 493, 82% of Greek respondents hold the view that discrimination against Roma is widespread, which is the highest proportion of all EU countries (together with Sweden also at 82%).<sup>885</sup>

Segregation in education and housing is one of the central issues in terms of Roma inclusion in Greece. With regard to education, 41 % of the Greek population report that they would feel uncomfortable if their child had Roma classmates, which is the most negative attitude of all EU countries.<sup>886</sup> Indirect practices of segregation, such as the operation of single-culture schools (in practice Roma-only schools) persist,<sup>887</sup> despite several court cases adjudicated by the European Court of Human Rights.<sup>888</sup> Lack of reliable official data is another obstacle to the development of adequate legal and policy responses.<sup>889</sup> With regard to housing, a recurring issue is the refusal of some municipalities to issue a specific document required for a real estate purchase if the buyer is Roma.<sup>890</sup> Access to housing in general is

<sup>880</sup> UNHCR, *Racist Violence Recording Network. Annual Report 2020*, available at: <https://www.unhcr.org/gr/en/19763-racist-violence-recording-network-annual-report-2020.html>.

<sup>881</sup> Reuters (2018), 'Racist violence creeping up in Greece, report finds', 28 March 2018, available at: <https://www.reuters.com/article/us-greece-racism-idUSKBN1H41VF>.

<sup>882</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-greece\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-greece_en) Last accessed 23 September 2021.

<sup>883</sup> Roma Civil Monitor. *Civil Society Monitoring Report on implementation of national Roma integration strategies in Greece*, p. 21.

<sup>884</sup> Greek National Commission on Human Rights. 2021. *Observations on Greece's combined 23<sup>rd</sup> and 24<sup>th</sup> periodic report to the Committee on the Elimination of Racial Discrimination (CERD) on the International Convention on the Elimination of All Forms of Racial Discrimination*, p. 10-11.

<sup>885</sup> European Union (2019). *Special Eurobarometer 493: Discrimination in the European Union*, p. 35.

<sup>886</sup> European Commission (2019), *Special Eurobarometer 493: Discrimination in the European Union*, p. 136, available at: [https://data.europa.eu/euodp/en/data/dataset/S2251\\_91\\_4\\_493\\_ENG](https://data.europa.eu/euodp/en/data/dataset/S2251_91_4_493_ENG).

<sup>887</sup> Roma Civil Monitor. *Country Fiche: Greece*, available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3172/c2-greece.pdf>.

<sup>888</sup> European Commission (2017), *Roma and the Enforcement of Anti-discrimination law*, p. 16, available at: <https://ec.europa.eu/newsroom/just/redirection/document/47560>.

<sup>889</sup> *Ibid.*, p. 19.

<sup>890</sup> Greek Ombudsman. *Equal Treatment Special Report 2020*, p. 54, available at: <https://www.synigoros.gr/?i=stp.en.specialreporten>.

problematic for the Roma community, including qualifying for housing subsidies. High unemployment is another persistent issue. A particular area of concern is the especially low official employment level of Roma women (compared to Roma men). There is resistance at the local level for local inclusion of Roma, even when municipalities attempt to address the issue.

The Greek National Roma Integration Strategy 2011-2020 (NRIS) expired last year. However, the General Secretariat for Social Solidarity and the Fight against Poverty of the Ministry of Labour and Social Affairs continued the application of the National Operational Action Plan for the Social Integration of Roma.<sup>891</sup> The process of preparation of the National Strategy for Inclusion of Roma (2021-2027) is ongoing. The Greek National Commission for Human Rights (GNCHR) has called for a comprehensive long-term public consultation to be launched for the elaboration of the new Strategy, with a specific focus on the participation of Roma representative organisations as well as Roma communities directly. Developing a set of indicators (e.g. structural, process, outcome, etc.) to monitor the implementation of the Strategy, as encouraged by the European Commission, has been another recommendation.<sup>892</sup>

### **Racist and xenophobic discrimination in law enforcement**

Instances of racist and xenophobic discrimination in Greek law enforcement have been attributed to organizational culture and structural issues. Racial profiling in policing is one aspect of the problem of institutional racism in Greece. For example, 47% of Roma people and 59% of South Asian people in Greece report having been stopped by police.<sup>893</sup> The issue has become exacerbated in the context of restrictions of movement due to the coronavirus pandemic (lockdowns), which increased the number of people stopped and having their identity checked due to their skin colour or ethnic origin (see more details in Section D.6).

Beyond racial profiling in police stops, some law enforcement officials engage in ill-treatment or arbitrary and overreaching behaviour, including imposing fines, detention, and excessive force against Roma, migrants and refugees.<sup>894</sup> Denial or tolerance of mistreatment is a common response by police officers and has been attributed to institutional culture. Practical issues such as lack of translation services contribute to the precarious situation of some vulnerable groups in custody.<sup>895</sup>

Statistics support the view that individuals with foreign background are more often the target of police mistreatment. Between 2009-2017, out of 201 investigations of arbitrary police behaviour, 136 involved non-nationals.<sup>896</sup> Of 55 allegations that could be considered torture under the relevant law, 39 concerned foreign nationals.<sup>897</sup> In addition, the Racist Violence Reporting Network (RVRN) has recorded 25 violent incidents involving law enforcement officials (compared to 22 in 2018 and 17 in 2019). The victims were mainly refugees, asylum seekers and migrants as well as Greek citizens who supported them or Greek citizens of different ethnic origin.<sup>898</sup> Many of the incidents involved police checks related

<sup>891</sup> FRA. 2021. Franet National Contribution to the Fundamental Rights Report 2021:Greece, p 26.

<sup>892</sup> Greek National Commission on Human Rights. 2021. Observations on Greece's combined 23<sup>rd</sup> and 24<sup>th</sup> periodic report to the Committee on the Elimination of Racial Discrimination (CERD) on the International Convention on the Elimination of All Forms of Racial Discrimination, p. 25-31.

<sup>893</sup> ENAR. 2019. Data-driven policing: the hardwiring of discriminatory policing practices across Europe, p. 8-9.

<sup>894</sup> UN. 2015. Concluding Observations on the Second Periodic Report of Greece, p. 3-4.

<sup>895</sup> Council of Europe. 2019. Report. Round Table on Professional Policing: Treatment of Apprehended Persons and Consequences.

<sup>896</sup> Ibid, p. 9.

<sup>897</sup> Ibid.

<sup>898</sup> Racist Violence Recoding Network. 2020. Annual Report 2020, p 39-40.

to lockdown measures. NGO workers and human rights advocates are also often targeted for their work for supporting refugees and asylum seekers.

### **D.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers**

The Greek legislative framework pertaining to anti-discrimination within the scope of the study consists of:

- General constitutional provisions
- Equal Treatment Law 4443/2016
- Law 927/1979 on punishing acts or activities aiming at racial discrimination
- Law 4285/2014 amending Law 927/1979 and its adjustment to the framework decision 2008/913/JHA
- Law 4356/2015 on civil partnership, exercise of rights, penal and other provisions
- Provisions relating to non-discrimination on various grounds in other pieces of legislation such as the Criminal Code (e.g. Article 82A on bias motivation as an aggravating circumstance in some crimes) and Labour law

The Greek constitution sets out some general principles regarding equality and non-discrimination<sup>899</sup>. The Equal Treatment Law 4443/2016 is the centrepiece in the legislative framework. It transposes Directives 43/2000/EC, 78/2000/EC and 54/2014/EU and replaces the previous legislation, Law 3304/2005. Some of the most important features of the new legislation are that it extends the list of protected grounds to include chronic illness, descent, family or social status and gender identity or characteristics and extends the mandate of the equality body to include the private sector in addition to the public one.

As regards criminal law, Law 927/1979 on punishing acts or activities aiming at racial discrimination prohibits discrimination on grounds of racial or ethnic origin. It was amended by Law 4285/2014 which incorporates Council Framework Decision 2008/913/JHA. Another element of the legislative framework under criminal law is Law 4356/2015 on civil partnership, exercise of rights, penal and other provisions, which expands the grounds for discrimination with regard to provisions of goods and services.

A recent legislative development is the adoption of Law 4604/2019 on substantive gender equality, prevention and fight against gender-based violence. The law contains a provision related to public sector recruitment, which abolishes the one-year period during which newly naturalized Greek citizens are not eligible to apply for public sector employment.<sup>900</sup>

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<sup>899</sup> Article 5 of the Greek constitution, available at: <https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>.

<sup>900</sup> European Network of Legal Experts. Flash Report from 1 July 2019. Available at: <https://www.equalitylaw.eu/downloads/4907-greece-new-act-4604-2019-on-substantive-equality-entered-into-force-on-26-march-2019-pdf-102-kb> Last accessed on 21 Sept 2021.

## National Action Plan against Racism and Intolerance

In 2020, Greece adopted its first National Action Plan against Racism and Intolerance 2020-2023.<sup>901</sup> The NAPRI was drafted by the National Council against Racism and Intolerance, which is a collective advisory body established in 2015 under the General Secretariat for Transparency and Human Rights of the Ministry of Justice. The Action Plan is structured along the following priority axes:

- Discrimination, stereotypes, prejudices (bias)
- Fight against Racist Crime
- Awareness – Information
- Integration/ Empowerment
- Horizontal/ cross-sectoral policies

For each of the above priority axes, operational objectives, actions, target groups and evaluation indicators are defined. The target groups are divided into two categories: a) target groups who are potential victims of racism and intolerance and b) target groups whose role is crucial to combat these phenomena. Some but not all actions in the NAPRI have been allocated budgets.

## Equality Body

The Greek Ombudsman is the officially designated equality body for Greece. It was originally established in 1998 pursuant to Law 2477/1997 with the narrow mandate to mediate in cases of maladministration between citizens and administrative authorities.<sup>902</sup> With the entry into force of the Equal Treatment Law 4443/2016<sup>903</sup>, the competencies of the Greek Ombudsman extended beyond the public sector to also include the private sector. Therefore, these two previously separate jurisdictions were unified in one body with competencies in the field of employment, education and access to goods and services. Beyond its work as an equality body, the Greek Ombudsman's office has a number of special remits such as promotion of the implementation of the UN Convention of the Rights of People with Disabilities, promotion of children's rights, monitoring of forced returns of third-country nationals, and investigation of arbitrary incidents by the security forces. The Ombudsman is also active in the area of migration and asylum.

The Greek Ombudsman is an independent institution, formally not accountable to other state bodies. The Ombudsman is appointed for a five-year non-renewable term by the Parliament. Six Deputy Ombudsmen are appointed by the Ministry of Interior on the proposal of the Ombudsman.

The activities of the Greek Ombudsman include review of complaints, responses to inquiries, issuing of recommendations and proposals to other national and municipal institutions, conducting independent surveys and publications of reports, awareness-raising and information campaigns. The decisions of the Greek Ombudsman are not legally binding and the office does not have the authority to impose sanctions or penalties or annul acts. The Ombudsman can forward cases to other state institutions (such as the public prosecutor) and urge other administrative bodies to act to address causes of discrimination.<sup>904</sup>

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<sup>901</sup> Hellenic Republic. National Action Plan Against Racism and Intolerance 2020-2023. Available at: <https://moj.gov.gr/wp-content/uploads/2021/03/NAPRI-en.pdf>

<sup>902</sup> The law is available on the Ombudsman's office website at: [https://www.synigoros.gr/?i=stp.en.law2477\\_97](https://www.synigoros.gr/?i=stp.en.law2477_97)

<sup>903</sup> Available at: <https://www.gov.gr/en/sdq/work-and-retirement/equal-treatment/general/law-4443-2016>

<sup>904</sup> See the website of the Greek Ombudsman, available at: <https://www.synigoros.gr/?i=stp.en.home>.

### **Other state bodies active in the area of non-discrimination**

Beyond the Greek Ombudsman, there are a number of other institutions and bodies that have competences in the area of non-discrimination. Notably, one such body is the Greek National Commission for Human Rights (GNCHR). Established in 1998, the Commission maintains contact and cooperates with international organizations such as the CoE and relevant UN bodies, issues opinions and makes recommendations to relevant state authorities about the harmonization of Greek legislation with international human rights standards and thus has an important role in policy promotion. It is part of the European network of national human rights bodies. Additionally, various ministries have dedicated departments dealing with equality and non-discrimination issues such as the General Secretariat for Transparency and Human Rights of the Ministry of Justice and the Social Protection Directorate of the Ministry of Labour. In 2015, the National Council against Racism and Intolerance was established. It is a collective advisory body under the General Secretariat for Human Rights of the Ministry of Justice, Transparency and Human Rights. Among its members are representatives of relevant ministries, the Greek Ombudsman, the Greek National Commission for Human Rights (GNCHR), and the Racist Violence Reporting Network (RVRV). One of its functions is to coordinate anti-discrimination activities among those various bodies.

### **Court ruling in the Golden Dawn trial**

In October 2020, a Greek court reached a guilty verdict in the trial against Golden Dawn, pronouncing it a criminal organization.<sup>905</sup> Golden Dawn was founded in the 1980 and became the third largest political party in the wake of the economic crisis in Greece. It was represented in the Greek Parliament between 2012 and 2019. The trial, which lasted more than five years, was comprised of four separate cases. Three of the cases involve violent attacks on a Greek rapper (who was fatally stabbed), fishermen of Egyptian origin and left-wing activists. The fourth court case was about whether Golden Dawn was operating as a criminal organization. At the center of the trial was the question of whether the individual violent attacks could be linked to the party and its leadership. Seven of the Golden Dawn leaders and former members of parliament, including its chairman, were found guilty of running a criminal organization and sentenced to 13 years on prison while the other defendants were found guilty of participating in a criminal organization. The ruling is a victory for human rights defenders and anti-discrimination advocates and sends a clear signal to extremist far-right groups.

## **D.4 Statistics on racism, xenophobia and racial discrimination**

As a general note, statistics about racism, xenophobia and racial discrimination need to be interpreted with caution due to under-reporting of incidents by victims, under-recording by the police and various specificities of reporting classification systems.

In 2018 (the most current year for which data is available), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) hate crime reporting database indicated 164 hate crimes recorded by the police (including 51 hate speech crimes). This marks an increase in hate crime incidents (40 in 2016 and 128 in 2017). Seventeen incidents were prosecuted (compared to 46 in 2017) and four sentencing decisions were issued in 2018. Racism and xenophobia was by far the leading ground for the reported crimes (64 cases), with sexual orientation and gender identity second at 24 incidents. The hate crimes

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<sup>905</sup> The Guardian, Golden Dawn guilty verdicts celebrated across Greece, October 2020, available at: <https://www.theguardian.com/world/2020/oct/07/golden-dawn-leader-and-ex-mps-found-guilty-in-landmark-trial>

motivated by racism and xenophobia included 44 violent attacks against people, 11 threats, and nine attacks against property<sup>906</sup>.

The Racist Violence Reporting Network, which is a network of non-governmental organizations, registered 107 cases of racist violence in 2020.<sup>907 908</sup> Of them, 74 incidents targeted migrants, asylum-seekers and refugees, or their human rights defenders due to their association and advocacy for those groups. Three incidents were on the grounds of ethnic origin for Greek citizens. A significant number of the attacks involved personal injury (forty-four incidents involved physical assault). According to the data on hate crimes provided by Hellenic Police to the Racist Violence Reporting Network (RVRN) in 2020, the police recorded 222 incidents of which 161 were with possible motive on the grounds of national or ethnic origin, descent, colour or race.<sup>909</sup>

In 2020, the Greek Ombudsman received 951 complaints of which 70% were within the competence of the Office to review.<sup>910</sup> Complaints alleging discrimination on the grounds of national or ethnic origin formed five percent of the cases and another four percent of the cases concerned discrimination on the grounds of race or colour. In comparison, the top three grounds for complaints were gender (51%), disability or chronic illness (22%) and family status (11%). Two issues that were highlighted for 2020 were problems with issuing documents to purchase real estate when the buyer is Roma and discrimination when applying for public sector jobs when the applicants are naturalized Greek citizens.

## D.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

### Improving the protection framework for anti-discrimination

One of the aspects of the anti-discrimination framework which could be improved is the area of protections.<sup>911</sup> Sanctions, damages and procedural aspects of Law 4443/2016 could be strengthened to increase its effectiveness. Currently, the various grounds for protection from discrimination are not equally protected. Disciplinary sanctions for public servants need to be established as the sanctions in public employment cannot be considered to comply with EU requirements of effectiveness, proportionality and dissuasiveness. Similarly, administrative sanctions by the Labour Inspectorate Body are inadequate. Finally, the Civil Code lacks provisions linking the non-discrimination law to actions for damages.

The establishment of the National Council against Racism and Intolerance has been a positive development. Some concrete outputs include the “Guide to the Rights of Victims of Racist Crimes” as well as the National Action Plan against Racism and Intolerance (mentioned above). However, the understaffing of the NCRI has been highlighted as an issue for the effective functioning of the body.<sup>912</sup>

<sup>906</sup> Data from the ODIHR available at: <https://hatecrime.osce.org/index.php/greece>

<sup>907</sup> Racist Violence Recording Network. 2020. Annual Report 2020, p. 12.

<sup>908</sup> Not all of the recorded incidents were reported to the police.

<sup>909</sup> Racist Violence Reporting Network. 2020. Annual Report 2020, p. 50.

<sup>910</sup> The Greek Ombudsman, Equal Treatment – Special Report 2020, available at: <https://online.fliphtml5.com/hmpf/anuo/>

<sup>911</sup> European Commission. 2020. Country Report Non-discrimination: Greece, available at:

<https://op.europa.eu/en/publication-detail/-/publication/55e94d40-152c-11ec-b4fe-01aa75ed71a1/language-en>

<sup>912</sup> Greek National Commission on Human Rights. 2021. Observations on Greece’s combined 23<sup>rd</sup> and 24<sup>th</sup> periodic report to the Committee on the Elimination of Racial Discrimination (CERD) on the International Convention on the Elimination of All Forms of Racial Discrimination, p. 21.

The adoption of the NAPRI, developed by the NCRI, has been a major step forward. Among some of its positive features is the evaluation system which allows annual monitoring of progress on various actions. However, some issues remain to be addressed. A major shortcoming of the NAPRI is that it does not offer a comprehensive set of interventions but instead to a large extent groups already ongoing or planned (and often financed through EU instruments) individual actions. The issue of underreporting of hate crimes is acknowledged and partially addressed but more concrete actions on structural issues are not considered, such as, for example, the lack of interpretation services on the special reporting telephone line which significantly restricts the effectiveness of this reporting and complaint mechanism. Other omissions include the absence of actions assigned to some Ministries such as the Ministry of Health which are directly or indirectly involved in creating policies to support victims of hate crimes.<sup>913</sup>

Regarding the issue of underreporting, the Plan includes references to the promotion of equal access to basic rights, the effective implementation of the anti-racist legal framework, as well as the establishment of a comprehensive referral system for the support and protection of victims of hate crimes.<sup>914</sup>

### **Hate crimes and hate speech**

In June 2021, the European Commission sent a letter of formal notice to Greece for not fully or accurately transposing EU rules on combating racism and xenophobia by means of criminal law (Council Framework Decision 2008/913/JHA). In particular, issue was taken with the fact that “the Greek legal system criminalizes hate speech only when public incitement to violence or hatred endangers public order or poses a threat to life, freedom or physical integrity of persons.”<sup>915</sup>

Regarding data collection on hate crimes, a joint database between the Ministry of Justice and the Hellenic Police exists, which has already led to some increased homogeneity in statistical reporting.<sup>916</sup> Another positive development is the introduction of an identifier code “RV” (racist violence) to the classification system of case files. However, this has been implemented only in the Prosecutor’s Office of Athens and moreover, the system is not externally accessible. Further improvements can be made such as a better classification and more granular reporting of the data at all stages of the investigative and judicial process, which will allow trends or certain parameters to emerge and be used to more effectively address hate crimes.<sup>917</sup> The introduction of a unified national system for monitoring a case from its recording by the police to the relevant procedures at the prosecutor level and the courts. will produce more transparency and create trust.<sup>918</sup>

A positive development has been the amendment of Article 81A (now 82A) of the Criminal Code, which makes discriminatory motivation an aggravating circumstance of crimes, hence increasing the associated penalties. The amendment replaced the term “hatred” with the lower-threshold concept of targeting the victim based on his or her characteristics.<sup>919</sup> In theory, this facilitates the application of the Article during investigation and trial. It is encouraging that there have been two court cases in 2020

<sup>913</sup> Ibid, p. 21-22.

<sup>914</sup> Greek National Commission for Human Rights. 2021. Submission to the Committee on LoIPR for the Third Periodic examination of Greece under the ICCPR, p. 9., available at: <https://www.amnesty.org/en/wp-content/uploads/2021/10/EUR2547772021ENGLISH.pdf>

<sup>915</sup> European Commission. 2021. “June infringement package: key decisions” Available at [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_21\\_2743](https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_2743).

<sup>916</sup> Hellenic Republic. National Action Plan against Racism and Intolerance 2020-2023, p. 14.

<sup>917</sup> RVRN. 2020. Annual Report, op. cit.

<sup>918</sup> Greek National Commission for Human Rights. 2021., op. cit. p. 9.

<sup>919</sup> RVRN. 2020. Annual Report, op. cit.

based on this article even though overall the use of this article has been limited. Moreover, convictions of perpetrators of hate crimes by national courts also remain low.

In line with an ECRI recommendation to integrate the motivation of discriminatory bias as an integral part of investigations from the very beginning, training on human rights protection and racial discrimination for the Hellenic Police and National Security School, including with a focus on hate crimes and hate speech have been conducted.<sup>920</sup> The Ombudsman also delivered lectures on human rights racism, sexual orientation and gender identity to the Police Academy. The National School of Judges added to its curriculum for judges and prosecutors topics on racism and xenophobia.

Another positive trend with regard to combatting hate crimes has been the appointment of special prosecutors for the investigation of racist crimes. Initially, this was done in five cities and it was recently extended so that now there are 24 such special prosecutors. Furthermore, two new divisions and 68 offices were established within the Hellenic Police to investigate acts of racist violence.<sup>921</sup>

### **Strengthening the Greek Ombudsman**

The European Commission has recommended a set of standards for the national equality bodies.<sup>922</sup> One of the recommendations concerns the capacity of the equality body to provide assistance and actively intervene on behalf of victims by, inter alia, providing legal advice to victims and representing complainants in court. Currently, the Greek Ombudsman does not have such competence to intervene actively in support of victims. It would be a positive development to amend the framework specifying the competences of the equality body to include this capacity.<sup>923</sup>

Another area for improvement concerns the deadlines for filing court cases alleging discrimination. It is recommended that when a complaint is lodged with the Ombudsman's office, the administrative deadline for filing a criminal or other action is postponed accordingly. Otherwise, an alleged victim of discrimination is faced with having to choose between pursuing their rights through the Ombudsman or through the judicial system.

Finally, the budget of the Greek Ombudsman, like those of other public bodies, was drastically cut in 2009 in the wake of the Greek sovereign debt crisis. Despite increasing marginally over the past several years, it is still well below its pre-crisis level. At the same time, the expansion of the mandate of the equality body to also cover the private sector was supposed to be accompanied by a staff increase of 10 people. These positions are covered through secondments.<sup>924</sup> Adequate resources – especially in the light of expanding responsibilities – is one of the preconditions of independence and effectiveness of an equality body.<sup>925</sup>

### **Combating institutional racism in law enforcement**

Two main mechanisms are available for reporting and investigating ill-treatment at the hands of the police, both of which, however, have deficiencies due to which they cannot fulfil the criteria of an

<sup>920</sup> ECRI. 2018. ECRI Conclusions on the Implementation of the Recommendations in respect of Greece Subject to Interim Follow-up, p. 6.

<sup>921</sup> RVRN. 2020. Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09), 18 December 2020, p. 2-3. Last accessed on 9 October 2020. Available at: [http://hudoc.exec.coe.int/enq?i=DH-DD\(2020\)1178E](http://hudoc.exec.coe.int/enq?i=DH-DD(2020)1178E)

<sup>922</sup> Commission Recommendation of 22.6.2018 on standards for equality bodies. C(2018) 3850 final.

<sup>923</sup> European Commission. 2020. Country Report Non-discrimination: Greece, op. cit.

<sup>924</sup> Ibid.

<sup>925</sup> European Commission, Recommendation of 22 June 2018 on standards for equality bodies, C(2018) 3850 final, p. 8, available at: [https://ec.europa.eu/info/sites/info/files/2\\_en\\_act\\_part1\\_v4.pdf](https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf).

effective investigation as set out by the ECtHR.<sup>926</sup> The first mechanism is filing a complaint with the Office of Internal Affairs of the Greek Police. The shortcoming of this mechanism is that this office is formally not an independent external oversight body. The second mechanism is the National Mechanism for the Investigation of Arbitrary Behaviour, set up in 2017, whose implementation is under the remit of the Greek Ombudsman<sup>927</sup>. It has the mandate to monitor, refer for disciplinary investigation and oversee the disciplinary process for a class of serious unlawful conduct including i) torture, ii) unlawful intentional violations of the right to life, physical integrity, health, personal freedom, and sexual freedom, iii) illegal use of firearm and iv) unlawful conduct with racist or other discriminatory bias motivation. In 2020, the Ombudsman received 263 cases for review from the law enforcement bodies, which represents a 26% increase compared to the previous year. It received 53 reports from citizens, which marks 76% increase over the past year.

This mechanism has contributed to increased accountability and improvements in the disciplinary investigation procedures, as a result of recommendations by the Ombudsman.<sup>928</sup> The main shortcoming of the National Mechanism is that it does not have binding power and eventually the cases are transferred to the regular channels of criminal and disciplinary investigations, which have not proven effective.<sup>929</sup> To address this issue, the National Mechanism was strengthened to include an option to refer cases to the Minister of Public Protection in cases where there were deviations from the Ombudsman's findings, which were not sufficiently justified.<sup>930</sup> Four cases were referred in 2020 and the results of the review are awaited and viewed as test for how effective this new option is.<sup>931</sup> Improving the effectiveness of the complaint and investigation mechanisms is important for addressing the pockets of culture of impunity in the Greek law enforcement structures. One way to address the shortcomings is to make the existing National Mechanism under the Ombudsman legally binding or to create a separate body with investigative powers and binding decisions which is outside of the chain of command in law enforcement.<sup>932</sup> The Greek Prime Minister made a statement in March 2021 indicating that establishing an autonomous structure with a dedicated Deputy Ombudsman under the Greek Ombudsman is one direction for addressing this issue.<sup>933</sup> A concrete follow-up to this proposal remains to be seen. Moreover, civil society has called for the introduction of a fast-track procedure of investigations of arbitrary violence by police when there is suspicion of racist motivation and more transparency in the handling of the cases.

## D.6 Impact of the COVID-19 pandemic on racism in the country

The coronavirus pandemic has had a disproportionately negative impact on Roma communities, refugees and migrants and has exacerbated structural inequalities affecting them across all sectors

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<sup>926</sup> Council of Europe. 2019. Report. Round-Table on Professional Policing: Treatment of Apprehended Persons and Consequences.

<sup>927</sup> The Greek Ombudsman, available at: [https://www.synigoros.gr/resources/toolip/doc/2019/04/02/stp\\_emidhpa\\_2019\\_0312\\_eng\\_final\\_web.pdf](https://www.synigoros.gr/resources/toolip/doc/2019/04/02/stp_emidhpa_2019_0312_eng_final_web.pdf)

<sup>928</sup> The Greek Ombudsman. 2020. National Mechanisms for the Investigation of Arbitrary Incidents. Special Report 2020, p. 9.

<sup>929</sup> Council of Europe. 2019. Report. Round-Table on Professional Policing: Treatment of Apprehended Persons and Consequences.

<sup>930</sup> Ibid, p. 9.

<sup>931</sup> Ibid, p. 9.

<sup>932</sup> Council of Europe. 2019. Report. Round-Table on Professional Policing: Treatment of Apprehended Persons and Consequences, p. 16.

<sup>933</sup> Greek National Commission for Human Rights. 2021. Submission to the Committee on LoIPR for the Third Periodic examination of Greece under the ICCPR, p. 14.

from education, to employment, social services and healthcare. With regard to housing, the crowded living conditions and inadequate access to clean water and sanitation have disproportionately exposed migrants and Roma to the risk of contracting Covid-19 coupled with unequal access to healthcare. The pandemic has created a new context for harassment and violence on the basis of race, skin colour or ethnicity. For example, incidents of racial and ethnic profiling have been recorded in the context of police checks related to restriction of movement measures put in place due to the pandemic.<sup>934</sup>

Moreover, measures on restrictions on movement in accommodation sites for asylum-seekers and in the Reception and Identification Centres (RICs) have been harsher than for the general population with negative consequences when it comes to access to healthcare and education. For example, incidents of imposition of arbitrary fines for leaving the RIC despite possessing all the necessary documentation have been reported. Children in accommodation sites were restricted from attending off-site schools before distance education was introduced. When schools re-opened, problems with obtaining access to Covid-19 self-tests as a precondition to attend was an issue.<sup>935</sup> Distant education in itself also posed disproportionate challenges on vulnerable and disadvantaged children from refugee and Roma communities due to difficulties or unavailability of internet and devices. Further restrictive measures were placed on hospital admissions and medication shortages were experienced in accommodation sites and RICs.

Finally, negative result of the pandemic is an increase in the intolerant rhetoric toward minority groups from some politicians and media outlets as they are newly framed as a public health threat.

Access to vaccines has been another aspect of inequality during the pandemic. Refugees and asylum seekers in Greece have not been defined as a priority group. However, a positive development is that Greek authorities have made possible the issuance of temporary social security number specifically for the purposes of Covid-19 vaccination and issuance of vaccination certificates, which is particularly important for undocumented migrants.<sup>936</sup>

With respect to responses to the Covid-19 pandemic, the Greek Ombudsman issued recommendations to relevant ministries for the adoption of specific protective measures for vulnerable and disadvantaged groups, such as elderly, suffering from severe chronic illnesses or homeless people, Roma communities, immigrants or asylum seekers, prisoners and detained people or people living in institutions.<sup>937</sup> The Ombudsman also requested from specific municipalities with Roma camps information on measures taken to protect the Roma population from Covid-19.<sup>938</sup>

Similarly, the General Secretariat for Social Solidarity and the Fight against Poverty of the Ministry of Labour and Social Affairs, which is in charge of responsible for the social integration of Roma and for carrying out the implementation of the 2011-2020 National Strategy for the Social Inclusion of Roma, circulated informational documents and recommendations for measures to relevant institutions. The Ministry of Interior released funds (appr. EUR 2.25 million) to 98 municipalities with Roma settlements and camps to help contain the pandemic.<sup>939</sup>

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<sup>934</sup> Racial Violence Report Network. 2020. Annual Report, p. 21-22.

<sup>935</sup> Greek Council for Refugees & Save the Children. 2021. "Back to School? Refugee Children in Greece Denied the Right to Education" September 2021.

<sup>936</sup> FRA. 2021. Coronavirus Pandemic in the EU- Fundamental Rights Implications: Vaccine rollout and equality of access in the EU. Bulletin #7. June 2021.

<sup>937</sup> Source: <https://equineteurope.org/covid-19-response/#data>;

<sup>938</sup> Greek Ombudsman. 2020. Equal Treatment Special Report, p. 94.

<sup>939</sup> FRA. 2021. Franet National Contribution to the Fundamental Rights Report 2021:Greece, p 30.

## D.7 Conclusion

Racist and xenophobic attitudes and behaviour in Greece have been fuelled by the dual challenges of the economic crisis of 2009 and associated austerity measures as well as the humanitarian crisis of refugees and asylum-seekers accessing the EU via Greece compounded by inconsistent EU asylum and migration policy. The main targets of discrimination are refugees, asylum-seekers, migrants and Roma communities.

A specific feature of the Greek context is violent attacks by organized extremist groups on the above target groups. Another central issue is the role of the police, which in some cases has been reported to passively enable such attacks or even participate in them. The mistreatment of people, especially vulnerable groups such as Roma, refugees and asylum-seekers at the hands of law enforcement, has been recognized as an area of concern. One way in which it is being addressed is through the establishment of the National Mechanism for Arbitrary Incidents which is implemented by the Greek Ombudsman. Progress in the area of hate crime and hate speech includes the setup of 24 special prosecutorial offices dedicated to the investigation of hate crimes. To integrate the investigation of bias motivation in crimes, trainings and curriculum amendments on human rights and discrimination have been implemented in the law enforcement and judicial systems. However, there is a scope for improvement by reporting more transparently and in greater detail on the types of cases and their progress from police recordings through to the judicial system. Segregation in education and housing as well as the lack of official data have been a persistent problem with regard to Roma integration.

The coronavirus pandemic has exacerbated the inequalities experienced by refugees, asylum-seekers, migrants and Roma. It has also aggravated the context for hate crimes, especially related to police stop and checks due to lockdown measures. Finally, the pandemic also exacerbated existing inequalities experienced by disadvantaged children from vulnerable groups in their access to education.

## E. COUNTRY REPORT - FRANCE

### E.1 Dimensions of racism, xenophobia and racial discrimination

#### Afrophobia

The roots of Afrophobia are largely fed by a lack of understanding of the physical, psychological and symbolic violence which targeted the black population in France throughout its history.<sup>940</sup>

In 2018, the annual report of the Commission nationale consultative des droits de l'homme (National Consultative Commission on Human Rights, CNCDH) revealed paradoxical findings; on the one hand, the country's population of people of African descent/black Europeans is among the most accepted, while on the other hand it is one of the racial groups most discriminated against. The majority of French people (59 %) agree that all human races are equal, while 33 % of the population are of the opinion that human races do not exist.<sup>941</sup>

The CNCDH points to a paradox with regard to Afrophobia. While the black minority is – along with the Jewish minority – the racialised group that has the best image in France, people of African descent/black Europeans are subject to regular and numerous occurrences of discrimination and to anti-black racism built against a constructed 'white norm'. According to the CNCDH, this phenomenon has its roots in the colonial period. A person of African descent/black European is 32 % less likely to find a place to live than others in France.

One of the particularities of Afrophobia in France is the institutional racism people of African descent/black Europeans are subject to, in particular from law enforcement authorities. This is discussed in more detail at the end of this section dealing with institutional racism.

#### Anti-Semitism

Racism against Jews is another paradoxical phenomenon in France. Over 90% of the population feels that Jewish people are 'French people like others' (the highest figures amongst the groups asked about). At the same time, a significant minority (22%) of the population agree with the statement that "Jews have too much power in France". Almost half of the respondents agreed with statements such as 'Jews have a special relationship with money' (48 %) or 'for French Jews, Israel is more important than France' (49 %).<sup>942</sup>

The number of recorded antisemitic actions and threats increased for two consecutive years from 2017 to 2019, before a drop from 687 antisemitic actions and threats in 2019 to 339 in 2020. The highest number of antisemitic actions and threats in the 2010–2020 period was recorded in 2014 (851 cases).<sup>943</sup>

According to FRA, 95 % of respondents in France saw antisemitism as 'a very big' or 'a fairly big problem', the highest proportion among all Member States. Ninety-three per cent of respondents also said that the level of antisemitism had increased over the five years prior to the survey.

The CNCDH 2020 report focused on the emergence of antisemitic speech online, especially on YouTube. Opposition to the government's response to the COVID pandemic has also crystallised

<sup>940</sup> Niang, Mame-Fatou, Des particularités françaises de la négrophobie, in *Racismes de France* (2020), p 155.

<sup>941</sup> CNCDH, *Rapport 2020 sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, July 2021, p. 24, available at: [https://www.cncdh.fr/sites/default/files/rapport\\_racisme2020\\_basse\\_def.pdf](https://www.cncdh.fr/sites/default/files/rapport_racisme2020_basse_def.pdf).

<sup>942</sup> CNCDH *Rapport 2020*, p31.

<sup>943</sup> FRA, *Antisemitism - Overview of antisemitic incidents recorded in the European Union 2010-2020*, p. 41, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

around elements such as antisemitism, with antisemitic placards appearing during some demonstrations.<sup>944</sup>

### Antigypsyism

The phenomenon of antigypsyism is widespread in France. A large majority of the French population (72%) are of the opinion that Roma people form a separate group within society. In addition 59.5% of the population feels that Roma people are not “French people like others”. Racial stereotypes are still very strong: 74% of the population is of the opinion that Roma people are nomads, 65% -that ‘they very often exploit children’, and 58% -that they mainly live through stealing and trafficking”. Despite this negative view, these figures are diminishing from previous years<sup>945</sup>.

The situation in France in relation to antigypsyism is also dire, members of the Roma community are being targeted in racial attacks. On 16 March 2019, a rumour first appeared on social media platforms causing a series of attacks to be carried out against members of the Roma community. Since the attacks started, a Roma organization La Voix des Roms and its partners have recorded 38 assaults: assault and battery in the street, death threats, shots near living quarters, arson, etc.<sup>946</sup>

Antigypsyism is one of the forms of racism which is the most accepted in French society, as illustrated by the violent rhetoric used by prominent French politicians against Roma people. Examples include Manuel Valls, then minister of the interior, stating that Roma people “have a way of life which is very different from, and in confrontation to, ours”, or the current president Emmanuel Macron publicly stating that a boxer of Yenish background must have been coached in one of his statements, given he “did not express himself like a gypsy”.<sup>947</sup> Nicolas Sarkozy’s rhetoric and actions against Roma people when he was president<sup>948</sup> faced a strong reaction by Viviane Reding, then Vice-president of the Commission and played a role in the development of the EU Framework for National Roma Integration Strategies.<sup>949</sup>

### Islamophobia

Islamophobia is extremely present in the public discourse in France. Controversies relating to Islam emerge on a regular basis and often dominate the agenda. Recent controversies include wearing hijab in universities, shops or by parents accompanying school trips, teaching of Arabic at school, etc. The term islamophobia started being used in France after one such controversy relating to the ban on wearing the hijab in school.<sup>950</sup>

Furthermore, the link between islamophobia, migration and the socio-economic situation in the country is extremely strong. A large north African community came to France, when the country was in need of workforce after the Second World War. Media representations of Muslims in France emerged

<sup>944</sup> CNCDH, *Rapport 2020*, op. cit., p. 31.

<sup>945</sup> CNCDH *Rapport 2020*, p 30.

<sup>946</sup> Alliance against Antigypsyism, *Combating antigypsyism in the post-2020 EU Roma Framework Recommendations*, p 4, available at <https://ergonetnetwork.org/2019/05/combating-antigypsyism-in-the-post-2020-eu-roma-framework-recommendations/>

<sup>947</sup> Mile, Saimir, *L’antitsiganisme, une tradition française*, in *Racismes de France*, 2020, p 188; see also open letter of the European Roma Rights Centre, 14 February 2019, available at: <http://www.errc.org/news/lettre-ouverte-au-president-macron-de-quelle-facon-un-gitan-est-il-cense-parler>.

<sup>948</sup> L’Humanité, *Sarkozy mis à l’index pour sa politique anti-Roms*, 22 July 2011, available at: <https://www.humanite.fr/sarkozy-mis-lindex-pour-sa-politique-anti-roms>

<sup>949</sup> European Commission, *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*, COM(2011) 173 final, 5 April 2021.

<sup>950</sup> Asal, Houda, *L’islamophobie en France : le déni d’un phénomène bien réel*, in *Racismes de France*, 2020, p 172.

in the 1980s during labour disputes in automobile factories. In the 1990s and 2000s, a political and media discourse amalgamated suburbs (banlieues), petty criminality and radical Islam. Following the terrorist attacks in January and November 2015, a state of emergency granted additional powers to the police which disproportionately targeted Muslims or those perceived as such. After each terrorist attack, there were calls from French Muslims to condemn the attacks, thus implying that French Muslims are responsible for the attacks by mere fact of being Muslim.<sup>951</sup>

### Anti-migrant racism

Racism and discrimination targeting migrants shares many of the attributes of islamophobia and Afrophobia. The majority of the population (62%) agrees with the statement that ‘today in France, we do not feel at home like before’. Furthermore, 73% of the population says that the current economic and social conditions of the country is partly to blame on migrants and 52% that many migrants only come to France to access benefits.<sup>952</sup>

However, it is their status as migrants which is the determining factors in the racism and discrimination they face. One of the most visible forms of racism against migrants in France is the harassment by law enforcement authorities faced by migrants. According to Amnesty International migrants and asylum seekers continue to experience degrading treatment by police.<sup>953</sup>

Amnesty international also reports regular evictions of migrants and refugees living in informal settlements continued especially in Paris and Northern France. Furthermore, border police continued to push back migrants and asylum-seekers to Italy; and migrants continued to face administrative detention, without consideration for the protection of their health during the pandemic.<sup>954</sup>

### Institutional racism

Racial profiling, police violence and systemic discrimination by security forces are a big and recognised problem in France. In 2019, Défenseur des droits (the French equality body) found that police practices equated to racial and social profiling, based on discriminatory orders to stop ‘gangs of black and north African people’ and the systematic eviction of Roma people.<sup>955</sup> Studies carried out in France in the 1980s showed that at least since the 1970s, the decision to stop, arrest and ultimately prosecute people was influenced in large part by their physical appearance, with the rate being much higher for those categorised by the police as ‘of African type’ or ‘north African type’.<sup>956</sup>

Beyond the higher rates of prosecution among black and north African people, their treatment by the police differs significantly from how the rest of the population is treated. Forty-one per cent of young black or north-African people reported being addressed by the police with the informal ‘tu’ (versus 16 % for the population as a whole), while 21 % reported having been insulted, and 20 % brutalised by the police (versus 7 % and 8 % respectively for the general population).<sup>957</sup>

<sup>951</sup> See for example, Le Monde, Condamner les attentats au nom de leur religion : le dilemme des Français musulmans, 1 August 2016, available at: [https://www.lemonde.fr/religions/article/2016/08/01/condamner-publiquement-au-nom-d-une-religion-relevant-du-prive-le-dilemme-des-musulmans-en-france\\_4977199\\_1653130.html](https://www.lemonde.fr/religions/article/2016/08/01/condamner-publiquement-au-nom-d-une-religion-relevant-du-prive-le-dilemme-des-musulmans-en-france_4977199_1653130.html).

<sup>952</sup> CNCDH 2020, p24.

<sup>953</sup> Amnesty International, France 2020, available at: <https://www.amnesty.org/en/location/europe-and-central-asia/france/report-france/>.

<sup>954</sup> Amnesty International, op. cit.

<sup>955</sup> Slaouti, O., Jobard, F., ‘Police, justice, État: discriminations raciales’, in *Racismes de France*, 2020, p. 41, available at: <https://www.cairn.info/racismes-de-france-9782348046247-page-41.htm>.

<sup>956</sup> Ibid. p. 42.

<sup>957</sup> Ibid. p. 43.

The policing practice of stopping people for ID verification is widespread in France and is therefore of greater significance in the public debate. Carrying a valid ID card at all times is compulsory in France. Police officers have the right to randomly stop people to verify their identity. While there is no follow-up to the majority of identify checks, these controls account for almost a quarter of the deaths resulting from police interventions in the last 40 years.<sup>958</sup> These deaths disproportionately affect populations living in suburbs with poor living conditions and few employment prospects. Unsurprisingly, these deaths have often been the trigger of revolts notably those started after the death of two young men in Clichy-sous-Bois, which led to the 2005 wave of riots in suburbs around Paris.<sup>959</sup>

The death of Adama Traoré while being taken in custody in circumstances that are still to be clarified and the ensuing movement to clarify these circumstances is a strong signifier of the institutional racism in the French police and institutions. A series of demonstrations started following the death of Adama Traoré gathered wide support. Despite the lack of clarity around Adama Traoré's death, diverging account given by law enforcement authorities, two of the gendarmes involved in the arrest have still not been heard by the investigative judge.<sup>960</sup> The Défenseur des Droits, who had launched an inquiry into the affair was not given some key documents.<sup>961</sup> In addition, according to the OHCHR, members of his family have been subject to what that can be considered judicial repression<sup>962</sup>. One of his brothers, Bagui, was jailed for 5 year before being acquitted on the basis of a miscarriage of justice. One of his sisters, Assa, the spokesperson for the family has been indicted in no less than five affairs, including for defamation by the gendarmes who were present during her brother's death.<sup>963</sup>

Adama Traoré's example, which as highlighted by the High Commissioner for Human Rights' report on racism, racial discrimination, xenophobia and related forms of intolerance<sup>964</sup> is symptomatic of institutional racism. Amnesty International has a similar view, stating that police in France engage in a longstanding and widespread practice of ethnic profiling that constitutes systemic discrimination.<sup>965</sup>

According to Amnesty International, institutional racism exists in the French law enforcement forces as the legitimisation of stereotypes, racial bias and targeting exist in the work culture. Another issue is that the discriminatory treatment is not corrected by the judicial system and perpetuate structural inequalities.<sup>966</sup>

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<sup>958</sup> Ibid. p. 42.

<sup>959</sup> Ibid. p. 50.

<sup>960</sup> See for example [https://www.francetvinfo.fr/faits-divers/police/violences-policieres/affaire-adama-traore-le-defenseur-des-droits-reclame-pour-la-deuxieme-fois-aux-juges-d-instruction-une-piece-importante-du-dossier\\_4017921.html](https://www.francetvinfo.fr/faits-divers/police/violences-policieres/affaire-adama-traore-le-defenseur-des-droits-reclame-pour-la-deuxieme-fois-aux-juges-d-instruction-une-piece-importante-du-dossier_4017921.html)

<sup>961</sup> Ibid.

<sup>962</sup> Letter of the OHCHR to the French government, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26793>.

<sup>963</sup> See for instance International Service for Human Rights, Soumission conjointe à la Haute-Commissaire des Nations Unis aux droits de l'Homme, and Fundamental Rights Forum panel, 'Racial Justice in Europe', available at <https://hybrid.fundamentalrightsforum.eu/Programme?session=c2Vzc2lrbio5NzgyMw%3D%3D>.

<sup>964</sup> OHCHR, Report: Agenda towards transformative change for racial justice and equality, June 2021, available at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>

<sup>965</sup> Amnesty International, France: Systemic Police Discrimination Requires Reforms, 27 January 2021, available at: <https://www.amnesty.org/en/latest/news/2021/01/france-systemic-police-discrimination-requires-reforms/>

<sup>966</sup> Op. Cit. Slaouti, p 56.

## E.2 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

A comprehensive body of legislation exists in France to protect people from racism, xenophobia and racial discrimination. The French constitution first article stipulates the equality of all citizens, regardless of origin, race or religion. This is an evolution of the principle of equality set out in the 1789 constitution, which stated that 'Human Beings are born and remain free and equal in rights'.

The main laws on protection against racism, discrimination and xenophobia are the following:

**Table 8: Key legislation on protection against racism, discrimination and xenophobia in France**

Law	Summary
Loi du 29 juillet 1881 sur la liberté de la presse (Law on the freedom of press)	This law on the freedom of press, amended a number of times criminalises incitement to racial discrimination, hatred, or violence on the basis of one's origin or membership in an ethnic, national, racial, or religious group
Loi Pleven (La loi du 1er juillet 1972) (Pleven law)	This law increases the scope of organizations able to initiate a procedure "when defamation or insult committed against a group of persons, by their origin, race or religion, will have been designed to arouse hatred among citizens or residents" is committed. This had only been possible by the prosecution since 1939 (except between 1940 and 1944).
Loi no 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe (Loi Gayssot) – Law on the répression of all racist, anti-semitic or xenophobic acts	Amongst other elements, this law prohibits any discrimination founded on membership or non-membership of an ethnic group, a nation, a race or a religion.

Source: Asterisk research and Analysis

However, the law does not define racial or ethnic origin..<sup>967</sup>

The **French** Criminal code includes provisions prohibiting discrimination, violence or racial hatred, as well as defines aggravating circumstances for offences committed because of a person's race, ethnicity, nationality or religion. This includes provocation to discrimination, racial discrimination or hatred (Article R 625-7 of the Criminal Code), contesting the existence of crimes against humanity (Articles 131-35 of the Criminal Code), violation of a grave characterised by a racist or anti-religious motive (Articles 225-18 of the Criminal Code). Criminal law also covers instances where a crime is aggravated by the intent of targeting someone or a group of people on the grounds of their race, ethnicity, nationality or religion. This includes the aggravating circumstance leading to enhanced penalties for criminal offences motivated by the real or presumed race, ethnicity, nationality or religion of another

<sup>967</sup> European network of legal experts in gender equality and non-discrimination – Country report Non-discrimination, France 2020.

person or a group of persons (Articles 132-76 of the Criminal Code) sex, or actual or supposed sexual orientation or gender identity (Articles 132-77 of the Criminal Code).

In addition to this body of legislation, a number of bodies have been established, including:

The **Commission Nationale Consultative des Droits de l'Homme (CNCDH)** is the national human rights institution in France. Its main mission is to:

- Advise and make proposals to the Government and Parliament in matters related to human rights and international humanitarian law, through its public opinions;
- Control the effectiveness in France of the rights protected under the international human rights conventions; and
- Contribute to the work of the United Nations human rights bodies and to the Universal Periodic Review.

Since the Gaysot law of 1990, the CNCDH is also in charge of compiling an annual report on the state of racism and the fight against racism in the country.

The **Défenseur des Droits (DDD)** is the French equality body. The DDD, was set up in 2008 as the legacy organisation of the Médiateur de la République. The DDD is competent in the following areas:

- the rights of the users of public services, (as the national Ombud)
- the defense of children's rights,
- the non-discrimination and promotion of equality (as the National equality body), and
- the issue of ethics in security services (police and other private security services complaints' Commission).

DDD has powers of inquiry and powers of intervention, including resolving conflicts by mutual agreement by making recommendations or through mediation/conciliation, intervening in support of a civil or criminal action, requesting disciplinary action against a security officer, requesting observations before a court order, and recommending sanctions by the administration against a physical person or legal entity at the origin of discrimination.

In 2012, the inter-ministerial delegate to combat racism and anti-Semitism (délégué interministériel à la lutte contre le racisme, l'antisémitisme), was set up. In 2016, the position was amended to also fight hatred against LGBTI. One of its roles is to develop and implement the national action plans against racism. The latest Plan<sup>968</sup>, which covered the 2018-2020 period sought to build on the 2015-2017 plan on "Mobilizing France against Racism and Anti-Semitism". The plan sought to:

- **Fight hate on the internet:** establishing a system of liability for online platforms with respect to racist and anti-Semitic content and hatred at EU level; amending national legislation to fight online hatred more effectively; strengthening the means and methods for fighting hate on the Internet; supporting the production of positive content, and raising awareness on hate on the internet.
- **Educate against prejudice:** improving schools' response and support for education teams facing difficulties; developing resources for education against racism and anti-Semitism; making fighting

<sup>968</sup> DILCRAH, Plan National de lutte contre le racisme et l'antisémitisme 2018-2020 , available at : [https://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2018/05/plan\\_national\\_de\\_lutte\\_contre\\_la\\_racisme\\_et\\_lantisemitisme\\_2018-2020.pdf](https://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2018/05/plan_national_de_lutte_contre_la_racisme_et_lantisemitisme_2018-2020.pdf)

racism and anti-Semitism and refusing competition between remembrances a main focus of memorial policies; mobilising higher education and research to improve knowledge and counter racist and anti-Semitic phenomena.

- **Protecting citizens and supporting victims** : better protecting victims and ensuring effective punishment for perpetrators; strengthening protection and prevention; implementing a national training plan for people working in the public and social spheres; improving the collection and dissemination of data and statistics on racism and anti-Semitism;
- **Investing in new areas of action**: strengthening country-wide networks and dialogue with civil society; improving the guidance and referral of victims and access to rights through better coordination of public authorities; acting for equality of people from Overseas France; involving sport movements at every level; mobilising culture against racism and anti-Semitism, boosting visibility of the diversity in communication and media, strengthening international and European cooperation and the sharing of best practices amid the spread of populism and xenophobia in Europe.<sup>969</sup>

### E.3 Statistics on racism, xenophobia and racial discrimination

One of the main issues relating to assessing the extent of racism, xenophobia and racial discrimination is the fact that France does not collect statistics based on racial and ethnic origin. The only relevant data collected in the census relates to nationality and the origin of first degree ascendants (for limited purposes).<sup>970</sup> In its decision of 15 November 2007, the Constitutional Council forbade the processing of data necessary for carrying out studies regarding diversity which infringe the principle laid down in Article 1 of the Constitution<sup>971</sup>. This has resulted in the prohibition of:

- the processing of data of a personal nature indicating directly or indirectly the racial or ethnic origins of persons.
- the introduction of variables of race or religion in administrative records. This applies to the National directory for the identification of natural persons.

In its commentary, the Constitutional Council stipulated that the *a priori* definition of an "ethno-racial classification" would be contrary to the Constitution.<sup>972</sup>

According to the National statistical office, in 2017 1.1 million people out of the country's population claimed to have been subject to at least one racist act.<sup>973</sup> However, given the lack of centralised data collection overseen by a state organisation, collection of data on racist and discriminatory acts falls on civil society organisations. While statistics on discrimination against Christians or Jewish people exist, there is currently no organisation having the organisation and financial resources to develop such data

<sup>969</sup> DILCRAH, Plan d'Action National contre le Racisme et l'Anti-Sémitisme (2018-2020). 2019.

<sup>970</sup> European network of legal experts in gender equality and non-discrimination – Country report Non-discrimination, France 2020.

<sup>971</sup> French Senate report Interdiction de toute statistique reposant sur des critères ethniques, available at: <https://www.senat.fr/questions/base/2007/qSEQ071102595.html>

<sup>972</sup> Conseil constitutionnel Décision n° 2007-557 DC du 15 novembre 2007, Loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile.

<sup>973</sup> INSEE, Enquête annuelle « Cadre de vie et sécurité », 2018

collection tools representing Roma people or the Muslim community. As such, within racialised groups, there is a discrimination on the quality of the data.<sup>974</sup>

Nevertheless, some data does exist. The Ministerial Statistical Department for Internal Security collects information on offences 'of a criminal nature, committed on the grounds of origin, ethnicity, nationality, a claimed race or religion'. In 2019, they totalled 5 730 (a 11% increase compared to the previous year). The Ministry of Justice reported 6 603 cases of a racist nature referred by public prosecutors, however, the rate of acquittal for cases of a racist nature (16%) is twice as high as the average (7%).<sup>975</sup>

## E.4 Evaluation of the antiracism and antiracial discrimination policies and legislation

France's criminal legislative framework, while covering aggravating circumstances relating to origin, ethnicity, nationality, race, religion, sexual orientation and gender identity, omits the grounds of citizenship, skin colour and language (the first two, however, covered by case law). Furthermore, French law contains no provision criminalising the public expression with a racist aim of an ideology that claims the superiority of or denigrates a group of persons on prohibited grounds. ECRI also noted a rise in hate speech and racism driven by racism and intolerance.<sup>976</sup>

ECRI also criticised France on the racist language used in public by French politicians. The Roma in particular, are a recurrent target of that discourse. The same goes for Muslims, who are also regularly stigmatised (including by MPs of radical right parties, or representatives of the mainstream parties).<sup>977</sup> The CHCDH provides additional examples of racism by public figures or publications such as the portrayal of MP Danièle Obono as a slave in a far-right publication.<sup>978</sup>

Assessed through the checklist developed by ENAR of what constitutes a good NAPAR, the 2018-2020 plan fails in a number of areas.<sup>979</sup> First of all, the Plan only contains a list of actions and does not provide any discussion, definition of recognition of racism or specific forms of racism. Second, while the plan calls for the effective collection of data (especially on hate crimes), it does not include collection of data and statistics based of racial or ethnic origins. The law explicitly prohibits the collection of statics disaggregated by "racial or ethnic origin".<sup>980</sup> Finally, while the Plan was supposed to be evaluated 18 months after its introduction, no evaluation seems to have taken place to date. Worse, there is not follow-up Plan in place despite the minister in charge stating in Parliament that it would be published before the summer 2021.<sup>981</sup> Action plans at the local level (département) have been developed, but their effectiveness is difficult to assess<sup>982</sup>.

<sup>974</sup> Dru, Alain, Racisme en France: les chiffres et la réalité, in Cause Commune n°17, mai/juin 2020.

<sup>975</sup> CNCDH, Report on the fight against racism, anti-semitism and xenophobia, 2019

<sup>976</sup> ECRI Report on France (fifth monitoring cycle), 2016.

<sup>977</sup> ECRI, Report on France, op. cit. p.15.

<sup>978</sup> CNCDH, Rapport 2020, op. cit. p 146.

<sup>979</sup> ENAR, Lessons for effective national anti-racism policies, National Action Plans Against Racism,

<sup>980</sup> Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés : Article 8, available at : [https://www.legifrance.gouv.fr/loda/article\\_lc/LEGIARTI000037822923/](https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000037822923/)

<sup>981</sup> See Le gouvernement va mettre en place un plan national de lutte contre le racisme, in La 1ere le portail des outre-mer, available at <https://la1ere.francetvinfo.fr/le-gouvernement-va-mettre-en-place-un-plan-national-de-lutte-contre-le-racisme-966118.html> last accessed on 22 October 2021.

<sup>982</sup> These Plans are not available centrally, but on each of the 101 departments's websites. See for example: <http://www.puy-de-dome.gouv.fr/plan-departemental-de-lutte-contre-le-racisme-l-a8525.html>

However, ECRI has noted how 'firmly in line' the Défenseur des Droits (DDD) was with the wording of its General Policy Recommendations and welcomed the fact that the DDD's role is enshrined in the Constitution. While DDD's status, independence and powers have been strengthened, the number of discrimination cases that are submitted has dropped.<sup>983</sup> According to the DDD, the number of cases has dropped by 6% to 96 894 between 2019 and 2020.<sup>984</sup>

The CNCDH's most recent annual report pointed to the systematic discrimination of racialised people, including greater difficulties in finding employment, more controls by the police, worse living conditions and bad representation and visibility in the media.<sup>985</sup>

## **E.5 Impact of the COVID-19 pandemic on racism in the country**

The Association des jeunes Chinois de France (Association of young Chinese of France - AJCF) reported elements such as racial slurs, refusal to be served and physical attacks against Asian people as a result of the Covid-19 crisis. The number of reported incidents has remained low, but this is due to the low reporting of incidents, while the real number thought to be higher. A research project found that over 30% of people identified as Asian questioned reported having been subject to racist acts since January 2020, while over half reported having been refused entry to public or private places. In addition, a number of Asian shops and restaurants have seen an important decrease in their number of customers. Given the difficulty in getting figures on racist incidents the CNCDH uses figures from social networks to assess the scale of the issue. Through the analysis of messages in 18 languages, posted between February and April 2020, the number of tweets calling for violence against China and Chinese people rose by 300%.<sup>986</sup>

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<sup>983</sup> ECRI, *Report on France*, op. cit., para 18-19 (p. 14) and para 88-90 (pp. 30-31).

<sup>984</sup> Défenseur des Droits, Annual Activity Report 2020, p 12, available at : <https://www.defenseurdesdroits.fr/fr/rapports/2021/03/rapport-annuel-dactivite-2020>

<sup>985</sup> CNCDH, Rapport 2020, op. cit. p 22.

<sup>986</sup> CNCDH, Rapport 2020 sur la lutte contre le racisme, l'antisémitisme et la xénophobie, July 2021.

## F. COUNTRY REPORT - HUNGARY

### F.1 Causes of racism, xenophobia and racial discrimination

In recent years, there has been a pronounced intensification of xenophobic and racist attitudes and sentiments in Hungary. This trend is mainly explained through political factors that have been at work in the course of the last decade, namely party politics, political rhetoric by the established and far-right parties, the Government's anti-immigration campaign, and certain developments in the educational system. Nevertheless, it is important to recognise the historical roots of racism in present-day Hungary. The impact of the communist legacy is particularly powerful: even though anti-Semitism was formally renounced after 1945 (all anti-Semitic laws were repealed and many leading anti-Semitic politicians and intellectuals were put on trial),<sup>987</sup> racial discrimination at the state and society levels, especially against the Roma and Jewish minorities, persisted throughout the communist era<sup>988</sup>.

Increased expressions of xenophobic nationalism are correlated with support for far-right political parties that frequently mobilise anti-Roma and anti-migrant rhetoric<sup>989</sup>.

According to some independent observers, such as Bajomi-Lázár, the anti-migration campaign launched between 2015 and 2016 is regarded as a significant driver of the subsequent increase in xenophobic attitudes from 45 % in 2015 to 54 % in 2016.<sup>990</sup> Seventy-six per cent of respondents in a 2016 public opinion poll expressed anti-Muslim attitudes, despite the very low Muslim presence in the country (0.4 % of the population).<sup>991</sup> Due to limited pluralism in the media and politics, anti-migrant and anti-Muslim language has permeated public discourse, targeting migrants as well as civic actors, such as American-Jewish billionaire George Soros, who has been accused of sponsoring the settlement of Muslim migrants in Europe.<sup>992</sup> The general climate of intolerance and hostility to 'otherness' is most powerfully expressed by the Prime Minister's open statement that '*we [Hungarians] do not want to become diverse in a way that we get mixed, our colour, our traditions, our national culture getting mixed with others. We don't want that. [...]*'.<sup>993</sup> In the context of the influx of refugees, the Government implemented severe anti-migration policies, framed as being necessary to 'defend' the nation.<sup>994</sup> European Parliament Resolution of 10 June 2015 on the situation in Hungary denounced the public consultation on migration launched by the Hungarian Government, arguing that the Government

<sup>987</sup> Hanebrink, P., 'Continuities and Change in Hungarian Antisemitism, 1945–1948', *Hungary and the Holocaust Confrontation with the Past*, Symposium Proceedings, Center for Advanced Holocaust Studies, United States Holocaust Memorial Museum, 2001.

<sup>988</sup> Hanebrink, P., 'Antisemitism in an Era of Transition: Continuities and Impact in Post-Communist Poland and Hungary'. Ed. François Guesnet and Gwen Jones. Frankfurt am Main: Peter Lang, 2014. *Slavic review*, Vol. 74 (3), 2015, pp. 624–625.

<sup>989</sup> Kovács, A., 'Antisemitic Prejudices and Dynamics of Antisemitism in Post-communist Hungary', 2014, available [online] at: [www.imberlin.de/antisemitism-today/Kovacs.pdf](http://www.imberlin.de/antisemitism-today/Kovacs.pdf). p.22.

<sup>990</sup> Bajomi-Lázár, P., 'An Anti-migration Campaign and Its Impact on Public Opinion: the Hungarian Case', *European Journal of Communication*, Vol. 34 (6), 2019, pp. 619–628, available at: <https://journals.sagepub.com/doi/abs/10.1177/0267323119886152>.

<sup>991</sup> Pew Research Center, *Europe's Growing Muslim Population*, 2017, available at: <https://www.pewforum.org/2017/11/29/europes-growing-muslim-population/>.

<sup>992</sup> Kalmar, I., 'Islamophobia and Anti-Anti-Semitism: the Case of Hungary and the 'Soros Plot'', *Patterns of Prejudice*, Vol. 54 (1-2), 2020, pp. 182-198, available at: <https://www.tandfonline.com/doi/abs/10.1080/0031322X.2019.1705014>.

<sup>993</sup> EELN (European Equality Law Network), *Non-discrimination in Hungary, Country report*, 2020a, p. 124, available at: <https://www.equalitylaw.eu/country/hungary>.

<sup>994</sup> Krekó, P., Hunyadi, B., and Szicherle, P., 'Anti-Muslim Populism in Hungary: From the Margins to the Mainstream', Brookings, 2019, available at: <https://www.brookings.edu/research/anti-muslim-populism-in-hungary-from-the-margins-to-the-mainstream/>.

relied on xenophobic misconceptions, stigmatising asylum-seekers as welfare migrants and security threats.<sup>995 996</sup>

The continuing rise of intolerance is to be explained also by key education curriculum changes that were put in place alongside the centralisation of the education system in the early 2010s. Mass atrocities and systemic discrimination against minorities in the past have not been fully acknowledged in the history curriculum, which has provided a basis for the resurgence of extremist anti-Semitic and anti-Roma rhetoric, notably among younger people<sup>997</sup>. For example, history textbooks de-emphasise the atrocities suffered by Jews and Roma during World War II and recommend as reading material the works of overtly anti-Semitic authors<sup>998</sup>.

## F.2 Dimensions of racism, xenophobia and racial discrimination

According to the studies, members of racial and ethnic minority groups in Hungary suffer unequal treatment in society as well as institutional discrimination. There are also instances of hate crimes and hate speech, in particular by far-right groups, however, such assaults are often not classified as hate crimes due to the lack of consideration of racist and ideological motives by the police<sup>999</sup>. Out of the thirteen national minorities enjoying special minority rights under Hungarian law, it is the Roma community that is the most discriminated against<sup>1000</sup>. Systematic discrimination, particularly in the areas of education, health, employment, housing and access to services, aggravates the already disadvantageous social situation of Roma, which is characterised by poverty and marginalisation<sup>1001</sup>. Multiple discrimination affects Roma women in its greatest complexity<sup>1002</sup>.

The segregation of Roma pupils in the Hungarian educational system is one of the most prominent manifestations of institutional racism in the country. Roma children are placed in special schools and classes, or automatically assigned to correctional schools<sup>1003</sup>. As a result, over 60 % of Roma children attend segregated schools and nearly 80 % of pupils in correctional educational institutions are Roma<sup>1004</sup>. Segregation often amounts to direct discrimination as in segregated classes education is of lower quality, which detrimentally affects children's future opportunities<sup>1005</sup>. Disconcertingly, the former Minister of Human Capacities<sup>1006</sup> has voiced his support for the segregation of Roma children on several occasions, while a number of high-ranking politicians have questioned the 'justness' of

<sup>995</sup> European Parliament, European Parliament resolution on the situation in Hungary, 2015/2700(RSP), 2015, available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.html).

<sup>996</sup> European Parliament, *European Parliament Resolution on the Situation in Hungary*, 2015/2700(RSP), 2015.

<sup>997</sup> Op. Cit. van Iterson and Nenadović, 2013, p. 94.

<sup>998</sup> *Ibid.* p. 95.

<sup>999</sup> Pap, A., 'Hate Crimes, Underpolicing, Institutional Discrimination: Hungarian Cases, ECHR Reflections'. MTA Law Working Papers, 2017. p.3.

<sup>1000</sup> ECDD, European Center of Democracy Development, *Legislation Impacting Anti-discrimination and Anti-radicalisation Efforts*, Civic Nation Internet project, 2021b, available [online] at: [https://civic-nation.org/hungary/government/legislation/legislation\\_impacting\\_anti-discrimination\\_and\\_anti-radicalisation\\_efforts/](https://civic-nation.org/hungary/government/legislation/legislation_impacting_anti-discrimination_and_anti-radicalisation_efforts/)

<sup>1001</sup> OCFRH, Office of the Commissioner for Fundamental Rights of Hungary, *Universal Periodic Review on Human Rights in Hungary, NHRI Report, 2nd Cycle, April/ May 2016*, 2016., pp 6-7.

<sup>1002</sup> Op. Cit. Ministry of Human Capacities of Hungary, 2014, p. 13.

<sup>1003</sup> Op. Cit. ECDD, 2021b.

<sup>1004</sup> *Ibid.*

<sup>1005</sup> OCFRH, Office of the Commissioner for Fundamental Rights of Hungary, *Synergies of National and International Protection of Minorities Living in Hungary: Activities of the Ombudsman for Minority Rights of Hungary 2013-2019*, 2019 p.25.

<sup>1006</sup> In Hungary, this is the equivalent of a Minister of Education.

damages granted to Roma pupils educated in a segregated manner, thus undermining the effectiveness and credibility of de-segregation efforts<sup>1007</sup>.

Regarding racial discrimination in employment, research conducted in 2012 shows that unequal treatment based on colour and ethnic origin is one of the most common forms of workplace discrimination against disadvantaged groups<sup>1008</sup>. There is widespread discrimination against Roma people in the labour market as well as institutional discrimination in public work schemes<sup>1009</sup>. Concerning housing and healthcare, reports of discriminatory practices targeting Roma are not uncommon, however, there is insufficient information regarding the experiences of other racial and ethnic groups. In numerous hospitals maternity wards are segregated and inadequate and Roma female patients suffer racial and physical abuse<sup>1010</sup>. The majority of Roma live in the most disadvantaged regions and in segregated residential zones with rather poor housing conditions<sup>1011</sup>. Some local housing authorities have systematically engaged in discriminatory treatment, such as unjustified evictions, and the Government's efforts to improve access to housing are sometimes obstructed at the municipal level<sup>1012</sup>. Institutional discrimination against members of racial and ethnic minorities is also visible in the practices of local self-governments and is generally not condemned at the state level<sup>1013</sup>. For example, in 2016, local legislative decrees were adopted in a number of municipalities, legalizing the "popular patrolling" of Roma neighbourhoods<sup>1014</sup>.

Another aspect of institutional racism is racial discrimination embedded in the structures and practices of law-enforcement. The main facets of this problem include: institutional racism in the police, failure to investigate crimes on equal terms when the victims are Roma, systemic under-classification of hate crimes, racial profiling, detention of citizens on the basis of ethnic origin, disproportionate fines, accordance of more severe verdicts to Roma individuals, and violence against Roma and asylum-seekers during document verification and detention<sup>1015</sup>. With respect to racial and ethnic profiling in particular, research shows that Roma are three times more likely to be stopped by the police than ordinary citizens. Civil society actors warn that the police use a regime of disproportionately high fines for low-risk offenses as a tool to keep Roma citizens in certain areas under control<sup>1016</sup>. Regarding discrimination in policing targeting members of other racial and ethnic groups, in particular people of African descent, more research is needed.

<sup>1007</sup> Op. Cit. ECDD, 2021b, EELN, 2020a, p. 124, and EELN, European Equality Law Network, *Prime Minister Calls Damages Granted to Roma Pupils for Decade-Long Segregation 'Unjust' During Pending Court Case*, Flash report, 2020b.

<sup>1008</sup> Ministry of Human Capacities of Hungary, *Hungarian National Social Inclusion Strategy II: Permanently Deprived – Children Living in Poor Families – Roma (2011-2020)*, 2014. Pp 33-34.

<sup>1009</sup> OCFRH, 2016, op. cit. p. 7.

<sup>1010</sup> HHK, Hungarian Helsinki Committee, *Submission by the Hungarian Helsinki Committee Regarding the Eighteenth to Twenty-fifth Periodic Reports of Hungary to the UN Committee on the Elimination of Racial Discrimination at Its 98th Session (April-May 2019)*, 2019. p.14.

<sup>1011</sup> OCFRH, 2019, op. cit. p. 22.

<sup>1012</sup> OCFRH, 2019, op. cit. p. 22, ECRI, European Commission against Racism and Intolerance, *Conclusions on the Implementation of the Recommendations in Respect of Hungary*, Council of Europe, 2018., p.6.

<sup>1013</sup> ECDD, European Center of Democracy Development, *Discriminatory Practices Against Minorities*, Civic Nation Internet project, 2021c, available [online] at: [https://civic-nation.org/hungary/government/law\\_enforcement\\_practices/discriminatory\\_practices\\_against\\_minorities/](https://civic-nation.org/hungary/government/law_enforcement_practices/discriminatory_practices_against_minorities/)

<sup>1014</sup> Op. Cit. ECDD, 2021b.

<sup>1015</sup> Op. Cit. ECDD, 2021b, 2021c, European International Tolerance Center et al, 2017, p. 39.

<sup>1016</sup> ECDD, 2021c

### F.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

A comprehensive review of the legal system was carried out following the 2010 general elections and, as a result, the Constitution and several other human rights-relevant laws were repealed and re-enacted<sup>1017</sup>. The Fundamental Law of Hungary (2011)<sup>1018</sup> contains a general prohibition of discrimination on the basis of an open-ended list of protected grounds, including race, colour and national origin (Article XV). Although the Fundamental Law does not explicitly prohibit indirect discrimination, the Curia (Hungary's Constitutional Court) acknowledges the inclusion of indirect discrimination in the general provision<sup>1019</sup>.

The Law on Equal Treatment and Promotion of Equal Opportunities (2003) (ETA Act) is the main instrument that implements the State's constitutional duties in relation to equality and non-discrimination and that transposes Directives 2000/43/EC and 2000/78/EC<sup>1020</sup>. It stipulates that direct and indirect discrimination, harassment, segregation and retribution constitute violations of equal treatment (Articles 7(1), 8, and 10). The protected characteristics include racial origin, colour, nationality, and origin of national or ethnic minority (Article 8). Specific provisions regulate the enforcement of equal treatment in employment, social security, health care, housing, education, and sale of goods and services (Chapter III). In general, the Act represents a move toward a substantive approach to equality<sup>1021</sup>.

The Civil Code (2013) also prohibits discrimination and identifies respective sanctions<sup>1022</sup>. In addition, Hungary has abolished any laws and regulations contrary to the principle of equal treatment<sup>1023</sup>. The ETA Act and other laws have been amended several times to meet the standards of the non-discrimination *acquis*. Hungary has signed and ratified all the major international and European human rights treaties, with the exception of Protocol 12 to the European Convention on Human Rights concerning non-discrimination<sup>1024</sup>.

The Office of the Commissioner for Fundamental Rights of Hungary (OCFRH) functions simultaneously as a national human rights institution, equality body and ombudsman.<sup>1025</sup> It has quasi-judicial competence to consider individual complaints against public authorities and other entities providing public services, carry out investigations and issue recommendations.<sup>1026</sup> It also scrutinises laws and policies and makes proposals for amendment or repeal. The OCFRH's powers have continuously expanded: most recently, in 2021, the Equal Treatment Authority<sup>1027</sup> merged into it. The Ombudsman for the Rights of National Minorities who is also Deputy Commissioner contributes to the protection of the rights of ethnic and national minorities. His/her competences primarily encompass observation,

<sup>1017</sup> OCFRH, 2019, op. cit. p. 9.

<sup>1018</sup> Fundamental Law of Hungary, *English translation of the consolidated version of the Fundamental Law of Hungary as in force on 29 of June 2018*, 2011, available at: <https://www.refworld.org/pdfid/53df98964.pdf>.

<sup>1019</sup> Halmos, S., 'The Impact of EU Law on Hungarian Anti-discrimination Law in Employment', *ELTE Law Journal*, Issue 2, 2018.

<sup>1020</sup> *Ibid.*

<sup>1021</sup> *Ibid.*

<sup>1022</sup> EELN, 2020 op. cit., p. 130.

<sup>1023</sup> *Ibid.*, p. 118.

<sup>1024</sup> *Ibid.*, p. 132.

<sup>1025</sup> EQUINET, European Network of Equality Bodies, 'Office of the Commissioner for Fundamental Rights', available online at: [https://equineteurope.org/author/hungary\\_commissioner/](https://equineteurope.org/author/hungary_commissioner/).

<sup>1026</sup> OCFRH (2019), op. cit., p. 2.

<sup>1027</sup> The Equal Treatment Authority was Hungary's self-standing equality body.

evaluation and awareness-raising activities.<sup>1028</sup> The Directorate of Police Complaints of OCFRH independently investigates complaints against the police and makes inquiries into all petitions on issues related to criminal proceedings and law enforcement.<sup>1029</sup>

With respect to the enforcement of the principle of equal treatment in education, unlawful educational segregation is prohibited by the ETA Act and the Law on National Public Education (2011). Other key legislative and policy instruments for countering segregation are: the National Social Inclusion Strategy (2011 and 2014), the national centralization of school management (2013), the National Strategy on Public Education (2014), the Anti-segregation Roundtable (2013) and anti-segregation working groups (2019)<sup>1030</sup>. A 2014 amendment to the Law on National Public Education has lowered the level of regulation and may open the door to legalising segregated educational practices by increasing the number of church-run schools<sup>1031</sup>.

A series of court cases strongly suggest that the State has not successfully tackled educational segregation<sup>1032</sup>. In 2009, a lawsuit was initiated against the Ministry of Human Capacities for not ending segregation in 28 elementary schools and, in 2019, the court of second instance concluded that the Ministry had failed to act, thus violating equal treatment<sup>1033</sup>. In 2015, the Curia (Hungary's Supreme Court) found segregation of Roma pupils in a school in Gyöngyöspata<sup>1034</sup>. Sixty-three Roma pupils launched a lawsuit for damages against the school and the relevant state and local authorities. The first instance court whose decision was upheld at the second instance found a violation of equal treatment and granted compensation in 60 cases. In 2017, the Curia upheld a second instance judgement which had established that the municipality of Kaposvár had violated equal treatment by allowing ethnic segregation in a school and had ordered the closure of the school<sup>1035</sup>.

Regarding equal treatment in employment, the provisions of the ETA Act are supplemented by sectoral acts, including the Labour Code (2012)<sup>1036</sup>. The latter introduced special rules regarding remuneration<sup>1037</sup>. Employers' duty to ensure equal treatment has been acknowledged in judicial practice as a fundamental principle of labour law<sup>1038</sup>. When it comes to the burden of proof, Hungarian law is both more favourable for the claimant and more accurate than it is prescribed by the *acquis*. Concerning housing, the Government has limited power to ensure non-discrimination as it is the local

<sup>1028</sup> OCFRH (2019), op. cit., pp. 13-14, 39.

<sup>1029</sup> OCFRH, Office of the Commissioner for Fundamental Rights of Hungary, *Report on the Activities of the Commissioner for Fundamental Rights of Hungary and His Deputies – 2020, 2021*, p. 57.

<sup>1030</sup> Government of Hungary, *Combined eighteenth to twenty-fifth reports submitted by Hungary under article 9 of the Convention, due in 2004*, Combined 18th to 25th national reports of Hungary submitted to the Committee on the Elimination of Racial Discrimination (CERD), 2018, p.7, Government of Hungary, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, National report submitted to the Human Rights Council Working Group on the Universal Periodic Review, twenty-fifth session (2-13 May 2016), 2016, P.14, Franet, *Franet National contribution to the Fundamental Rights Report 2020: Hungary, 2020*, p.16.

<sup>1031</sup> European Commission, *The Commission's assessment of the implementation of Hungary's national strategy*, 2014, p2, Op. Cit. OCFRH, 2019, p. 27.

<sup>1032</sup> HHK, 2019, p. 17.

<sup>1033</sup> EELN, European Equality Law Network, *Second Instance Court Decision on Education Ministry's Responsibility for Failing to Take Effective Action Against Segregation in 28 Elementary Schools*, Flash report, 2019a.

<sup>1034</sup> EELN, European Equality Law Network, *First Instance Court Decision on Damages for Segregation in Education*, Flash report, 2019b, EELN, 2020b.

<sup>1035</sup> EELN, European Equality Law Network, *Curia Upholds Decision Establishing Segregation in Education and Ordering the Closing Down of Segregated School*, News report, 2017a, EELN, European Equality Law Network, *Ministry of Education Is Also Responsible for Segregation, but Implementation of Desegregation Plan Is Not Ordered by the Court*, News report, 2016.

<sup>1036</sup> Halmos 2018.

<sup>1037</sup> *Ibid.*

<sup>1038</sup> *Ibid.*

authorities that are responsible for urban planning and housing allowances. A positive development is the Policy Strategy to Manage Segregated Housing (2015), which aims to eliminate segregated settlements<sup>1039</sup>. Discriminatory treatment in housing has been established in a number of court judgements and decisions by the Equal Treatment Authority<sup>1040</sup>. The most critical is the 2018 Miskolc case, in which the Miskolc Regional Court whose decision was later upheld at the second instance found that the local authorities' discriminatory housing practices against Roma citizens amounted to harassment based on ethnicity<sup>1041</sup>.

### Hate crime and hate speech

The new Criminal Code (2012) implements Framework Decision 2008/913/JHA.<sup>1042</sup> Hate crime is established as a separate type of offence under the provision of 'violence against a member of the community'. It comprises intimidating conduct as well as violent assault or compulsion; preparation, aiding and abetting are also criminalised. However, the most serious offences motivated by racism, such as murder, are generally classified not as hate crimes, but as crimes committed with malicious intent.<sup>1043</sup> In addition, the Criminal Code contains no general provisions on racism-motivated property-related offences, nor on the consideration of racist motivation in other crimes.<sup>1044</sup> A noteworthy development is the recent adoption of a protocol by the Police aiming at reinforcing the recognition of hate motives in criminal procedures.<sup>1045</sup> Criminal provisions have been strengthened regarding disbanded organisations and illegal conduct of public security activities.<sup>1046</sup> Membership of antisemitic groups and Holocaust denial are criminalised.<sup>1047</sup>

With respect to hate speech, the Fundamental Law forbids the exercise of freedom of expression aimed at violating the dignity of any national, ethnic or racial group (Article IX (5)). In the Criminal Code, hate speech is prohibited under the provision of 'incitement against a community'<sup>1048</sup>. However, only the most extreme manifestations are covered and no specific rules regarding perpetration by public figures are prescribed.<sup>1049</sup> A 2016 amendment to the provision addressed the European Commission's finding that Hungary had not complied with the Framework Decision on Racism and Xenophobia.<sup>1050</sup> Hate

<sup>1039</sup> ECRI, op. cit. 2018.

<sup>1040</sup> For an example of a decision by the Authority, see: EELN (2017b).

<sup>1041</sup> HCLU, Hungarian Civil Liberties Union, *Hungarian Courts Protect the Rights of Roma in the Largest Anti-discrimination Lawsuit*, 2019, available [online] at: <https://hclu.hu/en/articles/hungarian-courts-protect-the-rights-of-roma-in-the-largest-anti-discrimination-lawsuit>, EELN, European Equality Law Network, *First Instance Court Decision on the Harassing Practices of the Municipality of Miskolc*, Flash report, 2019c.

<sup>1042</sup> FRANET (2020), op. cit., p. 14.

<sup>1043</sup> OCFRH (2019), op. cit., pp. 12-13.

<sup>1044</sup> Ibid., p. 12.

<sup>1045</sup> FRANET (2020), op. cit., p. 15, Perry, J., Dombas, T., and Kozáry, A. (2019), 'Connecting on Hate Crime Data in Hungary', CEJL, Brussels, p. 10.

<sup>1046</sup> Government of Hungary, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, National report submitted to the Human Rights Council Working Group on the Universal Periodic Review, twenty-fifth session (2-13 May 2016)*, 2016, pp. 15-16.

<sup>1047</sup> ECDD (European Centre for Democracy Development), *Anti-discrimination Legislation*, Civic Nation Internet project, 2021a, available online at: [https://civic-nation.org/hungary/government/legislation/anti-discrimination\\_legislation/](https://civic-nation.org/hungary/government/legislation/anti-discrimination_legislation/).

<sup>1048</sup> OCFRH, op. cit. 2019, p.13.

<sup>1049</sup> OCFRH (2019), op. cit., p. 6, CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019.

<sup>1050</sup> Government of Hungary (2019), op. cit., p. 11.

speech against members of any national, ethnic or racial group is also prohibited in the Civil Code.<sup>1051</sup> The media law does not allow publication of content that incites hatred.<sup>1052</sup>

#### F.4 Statistics on racism, xenophobia and racial discrimination

Strict data protection rules have led public authorities to cease collecting personal data revealing racial or ethnic origin.<sup>1053</sup> This has a detrimental effect on the assessment of countrywide trends regarding discrimination.<sup>1054</sup>

The level of xenophobia in Hungary has been steadily increasing. The findings of research carried out in 2018 demonstrate that Hungarians are the European nation that expresses the most hostility to migrants: 48 % of the population are categorised as xenophobes<sup>1055</sup>. In a social attitudes poll conducted in 2016, 32% of respondents demonstrated anti-Semitism and 64% - anti-Roma sentiments. The level of migrantophobia in 2016 reached 82%.<sup>1056</sup>

Concerning racial discrimination, the highest number of cases handled by the Minorities Ombudsman have consistently been those related to Roma citizens. For example, in 2018, out of a total of 385 cases, 178 were by Roma complainants<sup>1057</sup>. The majority of those tend to be correlated with the requirement of equal treatment, or the complainants referred to their Roma origins and/or discrimination. The highest number of complaints received by the Ombudsman concern education and housing and nearly all of those are filed by Roma citizens<sup>1058</sup>. There are no detailed statistics regarding the cases brought before the former Equal Treatment Authority, but the majority of them related to employment, access to services, education and housing. There are no statistics available on legal proceedings launched by Roma people before the courts<sup>1059</sup>.

Serious deficiencies with respect to data collection on hate crimes have led to underestimation of the scale of the problem<sup>1060</sup>. There is no specialized data collection by public authorities on hate crimes and no regular victimization surveys that would allow to measure underreporting. Nevertheless, a significant improvement was made in 2018: the investigative and prosecution authorities are now able to record information on i) whether or not an offence is a hate crime, and ii) the protected characteristic (though not on the specific group of population). The number of registered crimes classified as 'violence against a member of a community' is extremely low: according to official statistics by the Ministry of the Interior, between 2012 and 2016, only 194 offences were registered. Concerning the offence of unsanctioned pursuit of public security, according to the same source, between 2012 and 2016, only three such crimes have occurred<sup>1061</sup>. No official data on anti-Semitic hate crimes are recorded

<sup>1051</sup> CERD (2019), op. cit., p. 15.

<sup>1052</sup> ECRI (2015), *Report on Hungary* (fifth monitoring cycle).

<sup>1053</sup> Op. Cit. EELN, 2020a, pp. 26-27. The processing of personal data for scientific and statistical purposes is still allowed, however, as there are no public databases on which researchers may rely, national surveys are very rare. Recommendations to withdraw the prohibition in question have been made repeatedly (CERD, 2019; OCFRH, 2019, p. 18).

<sup>1054</sup> OCFRH, op. cit. 2016, p.7.

<sup>1055</sup> EELN, 2020a, op. cit. p. 103.

<sup>1056</sup> European International Tolerance Center, 2017, op. cit. pp. 42-43, 47, 51.

<sup>1057</sup> OCFRH, op. cit. pp. 140, 165-166.

<sup>1058</sup> Ibid.

<sup>1059</sup> EELN, 2020a, op. cit. p. 128.

<sup>1060</sup> GYEM, Working Group Against Hate Crimes, *Shadow report to the 98 Session to the Committee on the Elimination of Racial Discrimination (CERD)*, 2019, p.9.

<sup>1061</sup> Ibid.

in Hungary<sup>1062</sup>. Available unofficial data show that in the period 2013-2020 the number of anti-Semitic incidents gradually declined<sup>1063</sup>. In 2020, a total number of 30 such incidents were recorded<sup>1064</sup>.

## F.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

### Equal treatment and non-discrimination

Overall, the Hungarian legal framework is considered to be in line with the principle of equal treatment<sup>1065</sup>. Nevertheless, experts have pointed out that in some areas full compliance is uncertain and highly dependent on judicial interpretation<sup>1066</sup>. The main deficiencies include: the list of legally prohibited grounds of discrimination is incomplete<sup>1067</sup>; the requirement of equal treatment set forth by the ETA Act applies only to a restricted circle of private actors; the current system of legal remedies requires modification<sup>1068</sup>. In addition, there seems to be a considerable dissonance between legal norms and practice as the provisions prohibiting racial discrimination are not fully and consistently implemented<sup>1069</sup>.

Another disconcerting gap in the practical application of the principle of equal treatment relates to the effectiveness and independence of the OCFRH. In June 2021, the OHCHR's sub-committee on Accreditation recommended that OCFRH's status as an UN-accredited NHRI be downgraded from 'A – Fully compliant with the Paris Principles' to 'B – Partially compliant with the Paris Principles'.<sup>1070</sup> It raised serious concerns about OCFRH's mandate and exercise of powers. Alarming, it contended that OCFRH had not effectively engaged on all human rights issues, including in relation to vulnerable groups, such as ethnic minorities, refugees and migrants.<sup>1071</sup> Other independent observers have emphasised that the Commissioner for Fundamental Rights and the Minorities Ombudsman have been silent about the stigmatisation of migrants, asylum-seekers and refugees.<sup>1072</sup>

The recent abolition of the Equal Treatment Authority in January 2021, regarded as one of the best functioning rights protection bodies in Hungary, and the transfer of its competences to OCFRH has also been called into question.<sup>1073</sup> First, there was no consultation with the relevant stakeholders. Second, this change risks 'downgrading' the issue of non-discrimination as this topic was the single focus of the

<sup>1062</sup> FRA, European Union Agency for Fundamental Rights, *Antisemitism: Overview of Antisemitic Incidents Recorded in the European Union, 2010-2020*, 2021, p. 51.

<sup>1063</sup> *Ibid.*

<sup>1064</sup> *Ibid.*

<sup>1065</sup> The EC closed the infringement procedures launched against Hungary for the ETA's non-compliance with Directives 2000/43 and 2000/78 (in 2007 and 2010 respectively), and found that Hungarian legislation was in accordance with the Directives (EELN, 2020a, p. 123).

<sup>1066</sup> EELN, 2020a, op. cit. p.123.

<sup>1067</sup> CERD, 2019, op. cit. pp. 3-4.

<sup>1068</sup> EELN, 2020a, op. cit. pp. 123-124.

<sup>1069</sup> CERD, 2019, op. cit. pp. 3-4; HHK, 2019, p. 4.

<sup>1070</sup> See GANHRI Sub-Committee on Accreditation (SCA), website, available at: <https://ganhri.org/sub-committee-on-accreditation/>

<sup>1071</sup> GANHRI, Global Alliance of National Human Rights Institutions, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) – 14-24 June 2021*, 2021, pp. 12-18.

<sup>1072</sup> CERD (2019), op. cit., p. 2; HHK, Hungarian Helsinki Committee, *Submission by the Hungarian Helsinki Committee Regarding the Eighteenth to Twenty-fifth Periodic Reports of Hungary to the UN Committee on the Elimination of Racial Discrimination at Its 98th Session (April-May 2019)*, 2019, p. 4.

<sup>1073</sup> EELN (European Equality Law Network), Flash report: 'Legislation Adopted Abolishing the Equal Treatment Authority and Transferring Its Tasks to the Ombudsman', 2021, p. 2.

Authority, whereas OCFRH could not devote it as much attention and resources.<sup>1074</sup> Third, OCFRH's decisions are not binding, unlike those of the former Authority, and the new rules for the consideration of complaints by OCFRH might compromise requirements regarding quasi-judicial procedures.<sup>1075</sup> Despite the abolition, a number of good practices can be identified in the work of the Authority. These include the use of testing to establish discrimination, and the setting up of a local system of referees to provide free legal advice and assistance<sup>1076</sup>.

Concerning the enforcement of equal treatment in the priority areas of education, employment, housing and health, the European Commission, in its evaluation of Hungary's NSIS, has highlighted the lack of systematic activities to combat discrimination in these and other policy fields as a gap to be addressed<sup>1077</sup>. Nonetheless, there are some positive developments. Domestic jurisprudence concerning ways to end systemic discrimination is evolving: courts are moving away from a limited and generic understanding of their role towards the prescription of specific measures to enforce equal treatment<sup>1078</sup>. Another good practice is the requirement that municipalities and micro-regional associations devise local equal opportunity programmes covering education, employment, housing, health and social services, if they are to receive EU and national funding<sup>1079</sup>.

With respect to equal treatment in education, the State's inability to effectively tackle educational segregation has been repeatedly pointed out. In 2016, the European Commission launched an infringement procedure against Hungary over the segregation of Roma children in schools and in special education<sup>1080</sup>. Furthermore, the Government has failed to implement a critical judgment on the issue by the European Court of Human Rights (ECtHR) (*Horváth and Kiss v. Hungary*)<sup>1081</sup>. Some of the main shortcomings of state-level anti-segregation measures include absence of well-tailored programmes in the NSIS and ineffectiveness of the equality aspects of the policy of educational centralization<sup>1082</sup>. Regarding housing, significant resources have been allocated to interventions aiming to improve the conditions of Roma citizens living in segregated areas, but only a small section of the concerned population has benefited from those programmes. Furthermore, there is a growing problem of ghettoization aggravated by some local authorities' discriminatory practices<sup>1083</sup>. State efforts to counter racial discrimination in employment have also received international opprobrium: labour market discrimination has not been addressed by the NSIS and the public employment programmes have hardly improved the opportunities of disadvantaged groups<sup>1084</sup>.

Concerning institutional racism in law-enforcement, the Committee on the Elimination of Racial Discrimination (CERD) has emphasised the scale of this problem. The identification and countering of ethnic profiling in local fining practices is impeded by regulatory shortcomings, such as the prohibition for the police to process data on the ethnic origin of petty offenders as well as deficiencies in the

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<sup>1074</sup> Civilizáció, *Abolishing the Equal Treatment Authority and Transferring Its Tasks to the Ombudsperson May further Weaken Human Rights Protection in Hungary*, Statement, 2020.

<sup>1075</sup> EELN (2021), op. cit., p. 3.

<sup>1076</sup> EELN, 2020a, op. cit. p. 122.

<sup>1077</sup> European Commission, 2014, op. cit. p. 2.

<sup>1078</sup> EELN, 2020a, op. cit. p. 122.

<sup>1079</sup> Ministry of Human Capacities of Hungary, 2014, op. cit. pp. 108, 142; Government of Hungary, 2016, p. 14.

<sup>1080</sup> European Commission, *May Infringements' Package: Key Decisions*, Memo, Brussels, 2016, available [online] at: [https://ec.europa.eu/commission/presscorner/detail/EN/MEMO\\_16\\_1823](https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_16_1823).

<sup>1081</sup> HHK, 2019, op. cit. p. 16; ECRI, 2015.

<sup>1082</sup> OCFRH, 2019, op. cit. p. 25; HHK, 2019, p. 17.

<sup>1083</sup> HHK, 2019, op. cit. p. 5.

<sup>1084</sup> OCFRH, 2019, op. cit. p. 23.

ordinance regulating police actions in a multicultural environment<sup>1085</sup>. The police have also been unwilling to cooperate with civil society experts on the issue of ethnic profiling.<sup>1086</sup>

### Hate crime and hate speech

The national legal framework has been evaluated as sufficiently strong and comprehensive to tackle hate crime and hate speech. Furthermore, a significant development with respect to the investigation of hate crimes was made recently with the establishment of a special hate crime network at the National Police. In 2019, there were 21 hate crime officers countrywide. Professionals from the network and civil society experts have jointly developed a toolkit to help police officers identify bias criminal motives. In order to enhance the network's effectiveness, several setbacks in its operation ought to be addressed, in particular membership fluctuation and irregularity of trainings. There have been positive cooperative exchanges between the network and civil society, however, these have been unilaterally terminated by the police<sup>1087</sup>.

Despite the improvements in the investigation of hate crimes brought about by the establishment of the special hate crime network, there remain systemic gaps in law-enforcement<sup>1088</sup>. First, underclassification persists: hate motivations are regularly disregarded in crime classification and, even when a criminal procedure is launched, incorrect and more lenient provisions are applied<sup>1089</sup>. Second, the relevant authorities typically do not take all necessary investigative measures. Third, notwithstanding some recent positive examples, there have been failures by the police to undertake action at far-right assemblies directed against vulnerable groups.<sup>1090</sup> These systemic problems, taken together with underreporting, explain the extremely low number of registered hate crimes.<sup>1091</sup>

Inadequate law-enforcement, amounting to a violation of the European Convention of Human Rights, has been established in several judgments by the ECHR. In *Balázs v. Hungary*, the Court ruled that two Hungarian authorities had failed to investigate the hate motivation behind an act of violence against a Roma citizen<sup>1092</sup>. In *R.B. v. Hungary* and *Király and Dömötör v. Hungary*, the Court concluded that the State had not correctly implemented criminal law mechanisms and thus had failed to protect the applicants from racism-motivated harassment<sup>1093</sup>. In *M.F. v. Hungary*, the Court found that the authorities had failed to examine possible racial motives behind a violent crime committed by police officers in duty against a Roma citizen<sup>1094</sup>.

Concerning hate speech, there has been very limited application of the criminal provision on 'incitement against a community', especially when it comes to racist speech by public figures<sup>1095</sup>. The

<sup>1085</sup> CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, pp. 6, 21, available at: <https://digitallibrary.un.org/record/3862660>.

<sup>1086</sup> *Ibid.*

<sup>1087</sup> GYEM, 2019, op. cit. pp. 4-14.

<sup>1088</sup> CERD, 2019, op. cit. p. 3; GYEM, 2019, pp. 4-5; FRA, European Union Agency for Fundamental Rights, *Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary*, 2013.

<sup>1089</sup> Pap, 2017, op. cit. p. 3.

<sup>1090</sup> CERD, 2019, op. cit. p. 3.

<sup>1091</sup> HHK, 2019, op. cit. p. 12; Perry et al, 2019, p. 12.

<sup>1092</sup> ECtHR, European Court of Human Rights, *Balázs v. Hungary*, no. 15529/12, Judgement delivered by a Chamber, Strasbourg, 2015

<sup>1093</sup> ECtHR, European Court of Human Rights, *R.B. v. Hungary*, no. 64602/12, Judgement delivered by a Chamber, Strasbourg, 2016, ECtHR, European Court of Human Rights, *Király and Dömötör v. Hungary*, no. 10851/13, Judgement delivered by a Chamber, Strasbourg, 2017a.

<sup>1094</sup> ECtHR, European Court of Human Rights, *M.F. v. Hungary*, no. 45855/12, Judgement delivered by a Chamber, Strasbourg, 2017b

<sup>1095</sup> Op. Cit. CERD, 2019, p. 4; ECRI, 2015.

judiciary tends to read the provision in narrow terms and the police and the prosecution, in turn, have applied a very restrictive approach in the implementation of the judicial interpretation, disregarding the case-law of the ECHR. As a result, most criminal proceedings are either terminated at the investigative phase, or no charges are pressed by the prosecution<sup>1096</sup>. Thus, extremely hostile expressions remain unpunished, as illustrated by the case of *Király and Dömötör vs Hungary*<sup>1097</sup>, which concerned incitement that had led to anti-Roma violence but had not been officially investigated.<sup>1098</sup>

The law enforcement authorities have also not taken all necessary action to counter extremist groups<sup>1099</sup>. For instance, in 2015, the police failed to respond to anti-Roma activities by a radical far-right group, including patrolling and threats in a number of settlements<sup>1100</sup>. In 2016, the authorities took measures against a vigilante paramilitary organisation, but this only happened after a police officer was killed<sup>1101</sup>. Furthermore, contrary to a decision by the Supreme Court, in some cases the hate crime provision has been applied to protect members of far-right organisations. The provisions criminalizing unsanctioned pursuit of public security have also hardly been enforced. For example, only one investigation was launched in relation to the illegal patrolling by extremist groups of the southern border during the 2015 refugee crisis.<sup>1102</sup>

### Recommendations to the Hungarian State:

- Ensure the full implementation of the anti-discrimination legal provisions, facilitate effective access to justice and provide remedies for all victims<sup>1103</sup>.
- Prevent racist hate crimes and hate speech, including by providing training to law-enforcement authorities, publicly condemning such acts and ensuring that legal provisions be applied more freely<sup>1104</sup>.
- Eliminate structural discrimination against Roma, end educational segregation of Roma children, counter discriminatory practices by local housing authorities, and ensure that all Roma have access to health care without discrimination<sup>1105</sup>.
- Prevent ethnic profiling by law-enforcement, also by conducting training<sup>1106</sup>.

<sup>1096</sup> The Equal Treatment Authority used to fill this gap in law-enforcement by stepping up to pass decisions on cases where hate speech did not reach the level of a criminal offence (HHK, 2019, p. 7).

<sup>1097</sup> ECHR, European Court of Human Rights, *Király and Dömötör v. Hungary*, no. 10851/13, Judgement delivered by a Chamber, Strasbourg, 2017.

<sup>1098</sup> GYEM, 2019, op. cit. p. 6.

<sup>1099</sup> HHK, 2019, op. cit. p. 11.

<sup>1100</sup> *Ibid.*

<sup>1101</sup> *Ibid.*

<sup>1102</sup> GYEM, 2019, op. cit. pp. 3-6.

<sup>1103</sup> CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, p. 3.

<sup>1104</sup> ECRI, European Commission against Racism and Intolerance, *ECRI Report on Hungary* (fifth monitoring cycle), Council of Europe, 2015. CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, pp. 3-4.

<sup>1105</sup> ECRI, European Commission against Racism and Intolerance, *ECRI Report on Hungary* (fifth monitoring cycle), Council of Europe, 2015. CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, p. 5.

<sup>1106</sup> CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, p. 6.

- Ensure that detention of asylum-seekers is used as a last resort, open up reception facilities, and conduct public campaigns to promote tolerance<sup>1107</sup>.
- Give effect to the Durban Declaration and Programme of Action and implement policies targeting people of African descent.<sup>1108</sup>

## F.6 Impact of the COVID-19 pandemic on racism in the country

During the COVID-19 pandemic, ideological support for xenophobic nationalism in Hungary has increased. This development has taken place in parallel with the tightening of authoritarian measures, such as the introduction of emergency laws justified as necessary for management of the public health crisis by the government<sup>1109</sup>. The rise of anti-Asian racism has been particularly pronounced and to a considerable degree it is due to a proliferation in fake news and misinformation. There have been instances of racially motivated offences targeting people of Asian descent. A prominent example is that of an Asian university student who was insulted on the street and in response the rector of the institution produced an open letter appealing to the local population not to assault foreign students.

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The pandemic has also been used as a justification for the introduction of measures that may be seen as discriminatory. Notably, in March 2020, the Hungarian government announced the closure of transit zones for asylum seekers at the southern border to new arrivals, citing this as a precautionary measure at the onset of the health crisis. However, as transit zones were the only place migrants could apply for asylum, the closure of transit zones in March meant that the right to seek asylum in Hungary was effectively suspended.<sup>1111</sup> The Court of Justice of the European Union (CJEU) ruled that the detention of asylum seekers in transit zones was unlawful. Hungary complied with the judgment and dismantled transit zones.<sup>1112</sup>

## F.7 Conclusion

In Hungary, racism and xenophobia have been on the rise in recent years. This worrying trend is to be attributed to a considerable degree to political factors and has been aggravated by the regulatory and societal effects of the COVID-19 pandemic. Overall, the national legal and policy framework for countering racial discrimination is in compliance with *the acquis*, however, there is significant incongruence between legal norms and their practical implementation. Hungary's inability to effectively counter problems, such as institutional racism against vulnerable minorities in education,

<sup>1107</sup> ECRI, European Commission against Racism and Intolerance, *ECRI Report on Hungary* (fifth monitoring cycle), Council of Europe, 2015. CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, p.6.

<sup>1108</sup> CERD, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, 2019, p. 7.

<sup>1109</sup> Elias, A., Ben, J., Mansouri, F., and Paradies, Y. (2021). Racism and Nationalism during and beyond the COVID-19 Pandemic. *Ethnic Racial Stud.* 44 (0), 783–793., p. 786, available at: <https://www.tandfonline.com/doi/full/10.1080/01419870.2020.1851382>

<sup>1110</sup> Bard, P. and Uszkiewicz, E., *Crimes in Hungary During the Coronavirus Outbreak*, 2020, available [online] at: <https://jog.tk.hu/en/blog/2020/06/hate-crimes-in-hungary-during-the-coronavirus-outbreak> .

<sup>1111</sup> AI, Amnesty International, 'Policing the Pandemic: Human Rights Violations in the Enforcement of COVID-19 Measures in Europe', Amnesty International Ltd, London, 2020, p.15.

<sup>1112</sup> ECRE, European Council on Refugees and Exiles, *Hungary: Abolishment of Transit Zone Following CJEU Ruling*, 2020, available [online] at: <https://ecre.org/hungary-abolishment-of-transit-zone-following-cjeu-ruling/> .

housing, and law-enforcement, has been repeatedly emphasised by international institutions and independent observers. The ineffectiveness of state efforts is in part due to resistance by authorities at the local level. Nonetheless, a number of positive developments can be identified at the level of policy and judicial practice.

## G. COUNTRY REPORT - ITALY

### G.1 Dimensions of racism, xenophobia and racial discrimination

Most of the literature from civil society point to the crucial lack of public discussion of racism in the country and the subsequent belief that racism is either an issue not affecting the country, or a recent phenomenon.<sup>1113</sup> Despite having been a colonial power up to the mid-twentieth century, Italy was until very recently a country of emigration (as well as internal migration), which did not experience important waves of inward migration from former colonies.<sup>1114</sup> Italy demonstrates different forms of racism which are explored in this section.

#### Antigypsyism

Following the EU's enlargement, the Roma population in Italy grew. Hostility toward Roma populations soon exacerbated and culminated in a series of violent attacks on Roma populations which started in Ponticelli in May 2008<sup>1115</sup>. As a result of these incidents, the anti-Roma rhetoric developed further and resulted in the reinforcement of legislative powers (such as the introduction of an aggravating circumstance when a crime is "committed by someone who is illegally on the territory of the state", clearly targeting the Roma population from other EU Member State's nationality. In parallel, anti-Roma rhetoric flared. Anti-Roma rhetoric which had initially emerged during the 2001 electoral campaign<sup>1116</sup> reignited and was used by mainstream politicians and newspapers.<sup>1117</sup> Extreme violence against Roma re-emerged in 2019 with the Torre Maura incident, where neo-fascist activists set fire to a proposed reception centre.<sup>1118</sup>

While these are the most visible forms of antigypsyism, they emerge in a specific context. As indicated above, the anti-Roma rhetoric creates the conditions for these violent events to take place. According to numerous observers, Matteo Salvini's rhetoric (on the need for a Roma census to solve the "Roma problem" in 2019, or the need to clean to streets) clearly played a role in setting the scene for the attacks.<sup>1119</sup>

There is a common misconception in Italy that all Roma are nomadic (thus Roma are often referred to as *nomadi*). As such, housing policies for Roma populations have focused on building inadequate 'nomad camps' since the 1980s, creating additional difficulties for the families living in these camps (access to education, healthcare etc). Some such camps are closed at short notice, pushing families living in these camps into even greater hardship.<sup>1120</sup>

<sup>1113</sup> See for instance 'Cronache di ordinario razzismo, quinto libro bianco sul razzismo in Italia', a cura di Lunaria, 2020.

<sup>1114</sup> ENAR, Intersectional discrimination in Europe: relevance, challenges and ways forward, p.10.

<sup>1115</sup> See FRA, Incident Report – Violent attacks against Tom in the Ponticelli district of Naples, Italy, FRA, 2008.

<sup>1116</sup> ERRC, Anti-Romani statements saturate Italian election campaigns, <http://www.errc.org/roma-rights-journal/anti-romani-statements-saturate-italian-election-campaigns>

<sup>1117</sup> Letizia Moratti, the mayor of Milan, Walter Veltroni

<sup>1118</sup> La Repubblica, La rivolta di Torre Maura contro i rom: la procura di Roma indaga per odio razziale. Salvini: "No a scaricabarile", 3 April 2019, available at: [https://roma.repubblica.it/cronaca/2019/04/03/news/la\\_rivolta\\_di\\_torre\\_maura\\_contro\\_i\\_rom\\_la\\_procura\\_di\\_roma\\_in\\_daga\\_per\\_odio\\_razziale-223166214/](https://roma.repubblica.it/cronaca/2019/04/03/news/la_rivolta_di_torre_maura_contro_i_rom_la_procura_di_roma_in_daga_per_odio_razziale-223166214/)

<sup>1119</sup> See for instance Jonathen Lee, Salvini is escalating war on Italy's Roma community by deploying soldiers, in OpenDemocracy, available at: <https://www.opendemocracy.net/en/salvini-is-escalating-war-on-italys-roma-community-by-deploying-soldiers/>, or Rachel Donadio, The Outrage Cycle, Italian Style, available at: <https://www.theatlantic.com/international/archive/2018/06/media-salvini-italy/563426/>

<sup>1120</sup> The ERRC reports that on 26 July 2018, the Municipality of Rome cleared the settlement of Camping River where for 13 years about 300 Roma people lived. The Municipality proposed the inhabitants of the camp the sum of 800 euros per month to find themselves a rented house as part of their 'Roma Plan'. The proposal was poorly implemented; without a

Emergency law passed as a result of anti-Roma incidents and attack, have been found to be unlawful as there was no ground to justify the emergency intervention of the government.<sup>1121</sup>

### **Afrophobia**

There are no official figures on the number of people of African descent in Italy although estimates assess the number of residents from Sub-Saharan Africa residing in Italy at around 350 000.<sup>1122</sup> One of the very visible elements of Afrophobia in Italy relates to football. Racial slurs and overtly racist signs and chants are regularly reported from football stadium around the country.<sup>1123</sup> However, Afrophobia permeates other levels in football, including the football association. The former president of the Italian Football Federation remained in position despite openly racist comment about football players.<sup>1124</sup> Another example is the country's highest league, the Serie A, which used monkey pictures as part of an anti-racism campaign<sup>1125</sup>.

The Afrophobia in football is symptomatic of what happens elsewhere in society. Forty-eight percent of people of African decent / black Europeans responding to the EU-MIDIS II survey stated that they experienced racist harassment in the previous five years (against an average of 30% in the sampled countries).<sup>1126</sup> Racial profiling in the police is also a prominent problem, with 70% of people of African decent / black Europeans in Italy responding to the EU-MIDIS II survey having been stopped by the police perceived it as ethnic profiling (against an average of 44% across all Member States included in the sample).<sup>1127</sup>

### **Racism against migrants**

Racism targeting migrants encompasses elements of islamophobia, anti-black racism as well as antigypsyism. They are presented together as, in the current context, the hate speech and violence they are subjected to is related to their status as immigrants.

In 2015 Italy became part of one of the main routes for migrants, refugees and asylum-seekers seeking to reach the EU from North Africa. The unprecedented crisis left Italy bearing an unproportionally high number of migrants. This led to an increase in anti-migrant rhetoric and a rise in the share of the vote for parties adopting anti-immigration rhetoric.<sup>1128</sup>

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regular income, or any sort of mediation on the side of the municipality it was nearly impossible for the Roma to find someone willing to rent to them. Only 9% of the 359 people in the camp found a solution as foreseen by the Roma Plan of the Municipality of Rome. Out of all the Roma who were evicted from Camping River on 26 July in Rome, 52% (152 people) ended up living on the streets, under bridges or in cars. A further 34% (99 people) were transferred to reception centres or temporary facilities.

<sup>1121</sup> ERRC, New law against Roma camps in Italy is racist and illegal, available at: <http://www.errc.org/press-releases/new-law-against-roma-camps-in-italy-is-racist-and-illegal>

<sup>1122</sup> ENAR, Fact Sheet Briefing – Afrophobia in Italy, March 2016.

<sup>1123</sup> See for example, Open Society Foundations, Racism and Europe: Hope Lies in the Football Field, 18 November 2010, available at <https://www.opensocietyfoundations.org/voices/racism-and-europe-hope-lies-football-field>

<sup>1124</sup> Here we get 'Opti Poba' [invented name to indicate African players], who previously ate bananas and then suddenly becomes a first team player... in ENAR, Fact Sheet Briefing – Afrophobia in Italy, March 2016.

<sup>1125</sup> BBC, Serie A uses monkeys in anti-racism posters, 16 December 2019, available at <https://www.bbc.com/sport/football/50814275> .

<sup>1126</sup> Op. Cit. FRA, EU-MIDAS II – Black in the EU, p 16.

<sup>1127</sup> Op. Cit. FRA, EU-MIDAS II – Black in the EU, p 33.

<sup>1128</sup> See for example Eyes on Europe, 'Causes to the rise of populism in Italy, available at: <https://www.eyes-on-europe.eu/eu-looks-populism-in-italy/> .

The rhetoric used against immigrants is similar to that used against Roma. Concepts of foreigners not belonging in the country and not wishing to integrate are used interchangeably for Roma and immigrant populations.

Some political parties deploy anti-migrant rhetoric. According to media reports, the Lega and Fratelli d'Italia both played on fear of migrants after an 18-year-old woman was allegedly murdered by an illegal immigrant in Macerata in early 2018. A few days later a far-right extremist wounded six African migrants in a shooting rampage that he claimed was revenge for the murder.<sup>1129</sup>

### Other forms of racism

Other forms of racism, in particular anti-black, anti-Asian racism as well as anti-Semitism are also manifest themselves in the country. A recent example was the sketch on the popular show 'Striscia la Notizia' where racial stereotype were used to mock Chinese people.<sup>1130</sup> Anti-Asian racism has been exacerbated during the COVID-19 pandemic as discussed in Section 14.6.

### Institutional racism

As in other countries, it is difficult to gather data on instances or type of racist or discriminatory incidents by police or carabinieri forces. Italy, like other European countries, has adopted a post-racial approach to statistics gathering, meaning that there are very few data on institutional racism, especially by police and law enforcement forces. Data on hate crime are collected by OSCAD, the Osservatorio per la Sicurezza Contro gli Atti Discriminatori, which is part of the Ministry of Interior.<sup>1131</sup>

Like many European countries, Italy has had very little public debate and thus awareness of forms of institutional or systemic racism. As mentioned above, the main identified forms of racism in the country are directed at Roma or migrant populations. While it is difficult to prove institutional racism from an empirical point of view, looking at laws and regulations at national and local levels can provide some insights. As such, the scope of laws passed relating to migration provide an interesting analysis of the level of institutional racism at national level. The Bossi-Fini act of 2002 links the status of migrant to that of workers, reducing the rights of migrants not in employment.<sup>1132</sup>

Emergency decrees presented at targeting illegal immigration but in fact speeding up and increasing the returns of irregular migrants were passed in contravention of the ECHR and the EU Charter on Fundamental Rights (the Minniti law of February 2017 abolished appeals for asylum seekers, increased the number of administrative detention centres, where migrant are placed under administrative law and introduced the concept of voluntary work for migrants)<sup>1133</sup>.

The 'security' decrees<sup>1134</sup> reduced the rights of foreigners; the decrees removed the concept of 'humanitarian protection', severely limiting the ground on which one may seek protection in Italy, made it easier for a court to revoke and exclude migrant from international protection, reduced possibilities of migrants to apply for other forms of protection. In addition, the decrees *de facto* abrogated the possibility of asylum-seekers to access reception provided by civil society organisations,

<sup>1129</sup> *The Guardian*, 'Success of far-right Brothers of Italy raises fears of fascist revival', 3 August 2021, available at: <https://www.theguardian.com/world/2021/aug/03/success-of-far-right-brothers-of-italy-raises-fears-of-fascist-revival>.

<sup>1130</sup> AP, sketch mocking Chinese launches racism debate in Italy, available at <https://apnews.com/article/race-and-ethnicity-italy-media-social-media-coronavirus-pandemic-36fa3167eb6bd39c1734548a50cf0c6a>

<sup>1131</sup> See section 14.4.

<sup>1132</sup> Legge 30 luglio 2002, n. 189 (law of 30 April 2002), available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2002-07-30;189!vig=>.

<sup>1133</sup> Decreto-legge 17 febbraio 2017, n. 13 (decree-law of 17 February 2017), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13%21vig=>.

<sup>1134</sup> Decree-law of 4 October 2018, available at <https://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg>

creating collective reception centres with limited conditions of reception having to be fulfilled.<sup>1135</sup> The law was considerably amended in 2020, bringing the situation closer to what it was before and restoring some basic rights for asylum-seekers.<sup>1136</sup>

At the local level, institutional racism can also be traced to local ordinances, especially in the field of access to welfare, where local authorities have more power. One example is in the city of Lodi, with the regulation on preferential rates for school buses and canteens. Foreign nationals were asked to prove that they did not have assets in their country of origin to benefit from the preferential rates.<sup>1137</sup>

In terms of policing, there is no consistent analysis of racial profiling or police brutality. However, the number of people stopped as a result of racial profiling as well as some high-profile cases, appear to show that there is a problem that needs to be addressed. Some media reports point to events where violence or racist events have taken place in Italy. High-profile cases include alleged police force violence against migrants on a train between Genoa and Ventimiglia on the French border after a video with police officers hitting refugees was broadcast on national television.<sup>1138</sup>

## G.2 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

The **Italian constitution** states that “all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions” (article 3). Beyond this, the constitution also places the onus on the state to “remove those obstacles of an economic or social nature which constraint the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country”.<sup>1139</sup>

The main pieces of anti-discrimination legislation transpose EU Directives and are listed in the table below.

**Table 9: Anti-discrimination legislation in Italy**

Name of legislation	Description
Decreto Legislativo 215/03 - Attuazione della direttiva 2000/43/CE per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica (Implementation of Directive 2000/43 / EC for equal treatment between people regardless of race and ethnic origin)	The decree transposes the Race Equality Directive into Italian law. It aims to ensure non-discrimination and equality regardless of a person's racial or ethnic origin in any area or sector. Equal treatment is defined as the absence of any direct or indirect discrimination based on race or ethnic origin (art.2(1)). The decree further widens the discrimination to include 'harassment', defined as unwanted behaviours adopted on the grounds of race or ethnic origin that aim at or have the effect of causing the violation of a person's dignity and creating a hostile, intimidating, degrading, humiliating and offensive environment" (art.2(3).

<sup>1135</sup> See <https://eumigrationlawblog.eu/beyond-closed-ports-the-new-italian-decree-law-on-immigration-and-security/>

<sup>1136</sup> Law 173/2020 that converts Decree Law 130/2020.

<sup>1137</sup> Antonella Di Matteo, Razzismo istituzionale, quelle leggi che rifiutano e discriminano, in Voici Globali, September 2020.

<sup>1138</sup> <https://www.infomigrants.net/en/post/31273/italy-prosecutors-probe-alleged-police-violence-against-migrants>

<sup>1139</sup> Constitution of the Italian Republic, translated for the *Senato della Repubblica*, available at [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

Name of legislation	Description
Decreto Legislativo 216/03 - Attuazione della direttiva 2000/78/CE per la parità di trattamento in materia di occupazione e di condizioni di lavoro (Implementation of Directive 2000/78 / EC for equal treatment in matters of employment and working conditions)	The decree transposes the Employment Equality Directive into Italian law. It applies to discrimination based on religious belief, disability, age or sexual orientation.
Decreto Legislativo 286/98 - Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero (Consolidated text of the provisions concerning the discipline of immigration and rules on the condition of foreigners)	The decree prohibits discrimination on the grounds of race, colour, ancestry, national or ethnic origin, and religious beliefs or practices.
Measures in the Criminal code <sup>1140</sup>	The criminal code, through the introductions brought about by Act 205/1993 (the Mancino Law) and Act 85/2006 includes the concept of aggravating circumstances under which a sentence can be increased by half for offences committed with the purpose of discrimination or hatred based on ethnic, national, racial or religious grounds. It also criminalises the incitement to violence and discrimination.
LEGGE 1 dicembre 2018, n. 132 <sup>1141</sup>	The law, converting a decree taken by the government a few months before restricts certain rights of migrants (including the repeal of humanitarian protection in some cases, the extension of immigration detention, the withdrawal of citizenship for certain crimes etc.)

Source: Asterisk Research and Analysis research.

In addition to these pieces of legislation, a number of observatories, and bodies relating to equality, racism and non-discrimination are in operation in the country. They include the following.

**UNAR** (Ufficio Nazionale Antidiscriminazioni Razziali) is Italy's National Equality Body. Its role is to monitor the causes of and phenomena related to all types of discrimination, study possible solutions, promote a culture of respect for human rights and equal opportunities and provide concrete assistance to victims of discrimination. ECRI considers that UNAR does not comply with the principle of

<sup>1140</sup> Legge 25 giugno 1993, n. 205 - Conversione in legge, con modificazioni, del decreto-legge 26 aprile 1993, n. 122, recante misure urgenti in materia di discriminazione razziale, etnica e religiosa Legge 24 febbraio 2006, n. 85 "Modifiche al codice penale in materia di reati di opinione"

<sup>1141</sup> Conversione in legge, con modificazioni, del decreto-legge 4 ottobre 2018, n. 113, recante disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'Interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata. Delega al Governo in materia di riordino dei ruoli e delle carriere del personale delle Forze di polizia e delle Forze armate

independence and that its powers provided for by law are incomplete.<sup>1142</sup> This was confirmed by the OHCHR's regular report, which identified UNAR's lack of independence as a factor that impedes its ability to adequately perform its role and could contribute to 'underreporting of human rights violations, discourage engagement with victims and civil society and endanger trust and cooperation'.<sup>1143</sup>

**OSCAD** (Osservatorio per la sicurezza contro gli atti discriminatori) is an agency set up within the Public Security Department of the Ministry of the Interior, combining the Police (Polizia di Stato) and the Carabinieri. Its role is to tackle the issue of hate speech and hate crimes. The Observatory's objectives is to identify the emerge of hate speech by providing a point of contact for the reporting of such instances, monitoring the phenomenon, as well as training forces to identify hate crime<sup>1144</sup>. While the existence of OSCAD is important for training purposes, its role in collecting and reporting data on discrimination is also impeded by its lack of independence. OSCAD is staffed with police officers and placed under the authority of the Ministry of Interior, raising fears of underreporting of discriminatory acts and the effectiveness of the follow up of complaints against police officers.<sup>1145</sup>

To date, Italy lacks a National Human Right Institution. According to both the FRA and the OHCHR, the country is in the process of passing legislation to establish or accredit and NHRI. This may explain why the FRA found that only 14% of Muslims in the country were aware of at least one equality body in Italy (compared to an average of 35% across the EU).<sup>1146</sup>

In terms of **criminal law**, hate crime and hate speech, have not been defined yet by the Italian legislation. Also, the European Commission against Racism and Intolerance (ECRI) has recommended the addition of the public dissemination, distribution, production or storage of material with a racist aim or inciting to racial discrimination to the Criminal Code.<sup>1147</sup> Despite these deficiencies, over the recent years the Italian judiciary has affirmed the protection of minorities through landmark decisions. For instance, in 2018 the Court of Milan sanctioned the mayor of Albettona, a municipality in the Veneto region, for incitement to racial hatred following xenophobic statements against migrants, Roma and Muslims.<sup>1148</sup>

Furthermore, the Italian Chamber of Deputies has discussed a legislative proposal to establish a National Human Rights Institute (NHRI) which it has not yet been established. The NHRI would provide a broader human rights mandate and ensure the monitoring of the Paris Principles in the country.<sup>1149</sup> Currently, the UNAR has a double function as an equality body and an implementing body for national anti-discrimination measures. Its collaboration with local authorities ensures points of contact across the country. It also develops responses to hate speech. For example, in July 2020, the Italian Journalists'

<sup>1142</sup> ECRI conclusions on the implementation of the recommendations in respect of Italy subject to interim follow-up Adopted on 3 April 2019, published on 6 June 2019, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-italy-5th-monitoring-cycle-/168094ce16>.

<sup>1143</sup> OHCHR, Report of mission to Italy on racial discrimination, with a focus on incitement to racial hatred and discrimination 28 January-1 February 2019, pp. 6-7.

<sup>1144</sup> OSCAD presentation of activities, available at <https://www.interno.gov.it/it/ministero/osservatori-commissioni-e-centri-coordinamento/osservatorio-sicurezza-contro-atti-discriminatori-oscad> .

<sup>1145</sup> Opt. cit. OHCHR, p7.

<sup>1146</sup> FRA Second European Union Minorities and Discrimination Survey Muslims – Selected findings, September 2017, p 38.

<sup>1147</sup> ECRI. 2016. "Fifth report on Italy (adopted on 18 March 2016)". [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/Italy\\_CBC\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/Italy_CBC_en.asp).

<sup>1148</sup> Alietti, Alfredo and Dario Padovan. 2020. "Islamophobia in Italia: Rapporto Nazionale 2018". SETA. <https://seta.org/en/assets/uploads/2020/04/R156lt.pdf>

<sup>1149</sup> European Network of National Human Rights Institutions (ENNHRI). "Relevant developments towards the establishment of a National Human Rights Institution". 26 June 2020. <http://ennhri.org/rule-of-law-report/italy/>.

Professional Association and the organisation Carta di Roma agreed to implement training for journalists on racism, xenophobia and discrimination.<sup>1150</sup> The ECRI and the Council of Europe (CoE) recommend sufficient funding for UNAR in accordance with the Paris Principles and the strengthening of its competencies.<sup>1151</sup>

While Italy had adopted a National Action Plan against racism and xenophobia in the past, there is currently none in place.

### G.3 Statistics on racism, xenophobia and racial discrimination

Similar to what is observed in other EU Member States, data on the ethnic composition of Italy is not readily available. This is mainly due to the country's approach to statistics and constitutional provisions. Under Italian law, it is only possible to collect data on a person's nationality and migration status.

FRA's EU MIDIS II survey provides interesting insights into some minorities' experience of racism, discrimination and xenophobia. The table below shows that over one third (37%<sup>o</sup>) of immigrants from Sub-Saharan Africa and descendants of such immigrants respondents (SSAFR), have experiences discrimination on the basis of their skin colour in previous five years (the third worst score of reporting countries (after LU and AT and equal to DE). Furthermore 40% of immigrants and descendants of immigrants from North Africa (NOAFR) responding to the survey experienced discrimination on the basis of their ethnic origin.

**Table 10: Grounds of discrimination experienced in four areas of daily life in 5 years before the survey, by target group and Member State - Italy**

	skin colour	ethnic origin	religion
SSAFR	37	34	10
NOAFR	20	40	29

Source: FRA – EU MIDIS II.

The Osservatorio per la Sicurezza Contro gli Atti Discriminatori OSCAD) reported 805 crimes with a racial or xenophobic character to (the OSCE in 2019<sup>1152</sup>. Over one third of these (33.7%) were incitements to violence. While these figures provide some context and an idea of the type of reported crimes, the caveats mentioned above relating to under-reporting should be taken into consideration.

<sup>1150</sup> FRA. 2021. "Franet National contribution to the Fundamental Rights Report 2021." [https://fra.europa.eu/sites/default/files/fra\\_uploads/frr2021\\_italy-frr2021\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/frr2021_italy-frr2021_en.pdf).

<sup>1151</sup> COE. Advisory Committee on the Framework Convention for the Protection of National Minorities. 2016. "Fourth opinion on Italy, adopted on 19 November 2015", ACFC/OP/IV(2015)006. <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806959b9>.

<sup>1152</sup> Data available on the OSCE's Hate Crime Reporting website: <https://hatecrime.osce.org/italy?year=2019>

**Table 11: Hate crimes recorded by Police in Italy, 2019**

Type of Crime	Recorded by Police	Share of total
Physical assault	104	12.9%
Incitement to violence	271	33.7%
Theft/ robbery	36	4.5%
Damage to property	45	5.6%
Arson	1	0.1%
Desecration of graves	152	18.9%
Attacks against places of worship	42	5.2%
Disturbance of the peace	55	6.8%
Vandalism	11	1.4%
Threats/ threatening behaviour	79	9.8%
Unspecified	9	1.1%
<b>Total</b>	<b>805</b>	<b>100.0%</b>

Source: OSCE – ODIHR data reported by OSCAD.

## G.4 Evaluation of the antiracism and antiracial discrimination policies and legislation

The lack of independence of UNAR and OSCAD are clear problems in the effectiveness of the Italian legal framework. The Italian Chamber of Deputies has discussed a legislative proposal to establish a National Human Rights Institute (NHRI) which it has not yet been established. The NHRI would provide a broader human rights mandate and ensure the monitoring of the Paris Principles in the country.<sup>1153</sup> Currently, the UNAR has a double function as an equality body and an implementing body for national anti-discrimination measures. Its collaboration with local authorities ensures points of contact across the country. It also develops responses to hate speech. For example, in July 2020, the Italian Journalists' Professional Association and the organisation Carta di Roma agreed to implement training for journalists on racism, xenophobia and discrimination.<sup>1154</sup> The ECRI and the Council of Europe

<sup>1153</sup> European Network of National Human Rights Institutions (ENNHRI). "Relevant developments towards the establishment of a National Human Rights Institution". 26 June 2020. <http://ennhri.org/rule-of-law-report/italy/>.

<sup>1154</sup> FRA. 2021. "Franet National contribution to the Fundamental Rights Report 2021." [https://fra.europa.eu/sites/default/files/fra\\_uploads/frr2021\\_italy-frr2021\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/frr2021_italy-frr2021_en.pdf).

recommend sufficient funding for UNAR in accordance with the Paris Principles and the strengthening of its competencies.<sup>1155</sup>

As discussed in the previous sections, there is a view amongst large swathes of the population that race and nationality are closely linked factors in Italy. As such, one must be 'white' to be 'Italian'. According to Luciano Scagliotti, the government has not taken any action to address the long-standing systemic racial inequalities in the country. Furthermore, the conversation about racism in Italy has focused on migration rather than taking into account the country's colonial past. He further mentions that no Italian government (with one exception) considered racism as a priority and that there is a very weak understanding of racism amongst the main political forces.<sup>1156</sup>

ECRI has also listed the following as issues in the latest monitoring report:

- There is a need to assess the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit and the commission of discriminatory acts or acts motivated by hatred.
- While the country's criminal law covers a large number of offences that could be classed as racism or racial discrimination but does not include language nor colour as ground.
- Public insults and defamation or threats against a person or group of people are ordinary crimes and not separate criminal offences when committed against a person or group of people on the grounds of their race, colour, language, religion, nationality or national or ethnic origin.
- Political extremism in Italy with strong xenophobic and Islamophobic connotations has become a source of concern in the current migration context. Extreme right parties as Forza Nuova<sup>1157</sup> (New Force) and CasaPound Italia<sup>1158</sup> have in fact been embracing ultra-nationalist and conservative political campaigns,<sup>1159</sup> combined with strong xenophobic and anti-Semitic narratives, and ultra-religious ideologies with respect to abortion, euthanasia, and same sex marriages.<sup>1160</sup>

## G.5 Impact of the COVID-19 pandemic on racism

In light of the spread of the COVID-19 virus, a movement of fear with undertones of racism started spreading across Europe. Instances of anti-Asian discrimination were uncovered early in 2020. Asian students were suspended from participating in classes at the Santa Cecilia music conservatory in Rome

<sup>1155</sup> COE. Advisory Committee on the Framework Convention for the Protection of National Minorities. 2016. "Fourth opinion on Italy, adopted on 19 November 2015", ACFC/OP/IV(2015)006. <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806959b9>.

<sup>1156</sup> Luciano Scagliotti, interviewed in La Stampa, Experts and activists urge Italy to step up efforts to fight structural racism, 22 June 2020, available at: <https://www.lastampa.it/esteri/la-stampa-in-english/2020/06/22/news/experts-and-activists-urge-italy-to-step-up-efforts-to-fight-structural-racism-1.38997131> last accessed on 23 August 2021.

<sup>1157</sup> Recently reorganised within the broader political movement *Italia Libera* comprising yellow vests and the negationist no mask movement. For more information, see [https://www.repubblica.it/politica/2020/12/14/news/destra\\_forza\\_nuova\\_italia\\_libera-278346830/](https://www.repubblica.it/politica/2020/12/14/news/destra_forza_nuova_italia_libera-278346830/)

<sup>1158</sup> As of June 2019, the leader of *CasaPound Italia* announced the dissolution of the political party, with the group remaining active with the status of social movement.

<sup>1159</sup> Despite the intensive political campaign, at the last Italian political elections in 2018 these two extreme right parties did not achieve the minimum threshold of 3 per cent of the votes to be represented in the Italian Parliament. See [https://www.repubblica.it/speciali/politica/elezioni2018/2018/03/05/news/flop\\_neofascisti-190494095/](https://www.repubblica.it/speciali/politica/elezioni2018/2018/03/05/news/flop_neofascisti-190494095/)

<sup>1160</sup> Gattinara, Pietro Castelli. 2019. "Forza Nuova and the Security Walks: Squadristo and Extreme-Right Vigilantism in Italy." In *Vigilantism against Migrants and Minorities*, edited by Tore Bjørgo and Miroslav Mareš, 199-212. Routledge; see also Camilli, Annalisa. "The offensive of the far-right against abortion starts in Verona." *Internazionale*, 13 December 2018. <https://www.internazionale.it/reportage/annalisa-camilli/2018/12/13/far-right-against-abortion-verona>

in January 2020.<sup>1161</sup> Another example was the ban of customers from China in some bars and restaurants.<sup>1162</sup> These stories were soon replaced by reports of hate speech and violence against Asian communities and individuals of Asian descent in the country. Physical attacks were reported in Bologna, Cagliari and in the Veneto region. Boycott of Asian shops and calls for the population to 'buy Italian' were also reported. Attempted arson and attacks against a Chinese restaurant was also reported in Turin.<sup>1163</sup>

Moreover, the health crisis during the COVID-19 pandemic, the economic decline and the criticism about the perceived lack of support from the European Union have contributed to the appeal of disobbedienza (disobedience) against a perceived dittatura sanitaria ("health dictatorship"), despite of the general support for lockdown regulations among the population. Within this context, far-right groups and movements have been contributing to the spread of COVID-19 disinformation and fake news on social media.

## G.6 Conclusion

Italy has limited public debate and thus awareness of forms of institutional or systemic racism. In terms of policing, there is no consistent analysis of racial profiling or police brutality. However, the number of people stopped as a result of racial profiling as well as some high-profile cases, appear to show that there is a problem that needs to be addressed. The legislative architecture of anti-racism and anti-discrimination in Italy still has gaps. The main identified ones are the lack of independence of the equality body and the lack of a NAPAR.

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<sup>1161</sup> La Repubblica, Roma, psicosi coronavirus. Il Conservatorio di Santa Cecilia impone: "Visita obbligatoria per tutti gli allievi orientali" 20 January 2020, available at [https://roma.repubblica.it/cronaca/2020/01/29/news/roma\\_conservatorio\\_di\\_santa\\_cecilia-247107490/](https://roma.repubblica.it/cronaca/2020/01/29/news/roma_conservatorio_di_santa_cecilia-247107490/)

<sup>1162</sup> BBC Coronavirus: Chinese targeted as Italians panic, 4 February 2020, available at: <https://www.bbc.com/news/world-europe-51370822>

<sup>1163</sup> See for instance Al Jazeera, Coronavirus prompts 'hysterical, shameful' Sinophobia in Italy, 18 February 2020, available at <https://www.aljazeera.com/news/2020/2/18/coronavirus-prompts-hysterical-shameful-sinophobia-in-italy> and Open, L'incubo di essere cinesi in Italia con il coronavirus: «Un ragazzo preso a bottigliate in Veneto», 25 February 2020, available at <https://www.open.online/2020/02/26/lincubo-di-essere-cinesi-in-italia-con-il-coronavirus-un-ragazzo-preso-a-bottigliate-in-veneto/>

## H. COUNTRY REPORT - LITHUANIA

### H.1 Causes of racism, xenophobia and racial discrimination

Even though racial discrimination and xenophobia are present in the Lithuanian society, Lithuanians perceive themselves as a racially tolerant and a collective denial of the existence of racism is common<sup>1164</sup>. For example, only 18% of Lithuanians think that discrimination based on ethnic origin or skin colour is widespread in their country, which is the lowest percentage of all EU countries.<sup>1165</sup> Similarly, the perception is held by some that the Office of the Equal Opportunities Ombudsperson was established to fulfil formal obligations stemming from EU law and international conventions rather than as a response to actual discrimination problems in Lithuania.<sup>1166</sup>

The myth of a tolerant society stems in part from the relative homogeneity of Lithuania's population.<sup>1167</sup> Unlike in Latvia and Estonia, Lithuania granted citizenship to all residents on its territory at the time of independence from the Soviet Union irrespective of national or ethnic origin. Ethnic Russians, Poles and Belarussians form a relatively small percentage of the population. Other ethnic minorities such as Roma, Jews or Tartars are similarly not of significant numbers. According to Special Eurobarometer 493, 10% of Lithuanians consider themselves belonging to a minority group, which is two percentage points below the EU average but one percentage point up compared to the previous Eurobarometer survey from 2015.<sup>1168</sup>

At the same time, the legacy of having been part of the Soviet Union has created the grounds for asserting national identity in the post-independence period. References to a unique language and national culture are used to foster nationalist sentiments.

### H.2 Dimensions of racism, xenophobia and racial discrimination

#### Anti-Gypsyism

Even though Lithuania has a relatively small Roma population, anti-Gypsyism appears to be the most common ground for discrimination. Forty-eight percent of Lithuanian respondents in the Special Eurobarometer 493 believe that anti-Roma discrimination is 'very' or 'fairly' widespread in their country (compared to 15% for religion or belief, 18% for ethnic origin, and 23% for skin colour).<sup>1169</sup>

One specific area in which anti-Roma discrimination plays out is housing. In its report on Lithuania as part of the fifth monitoring cycle, ECRI recommended that Lithuania take steps to resolve the difficult housing situation of Roma, in particular in the Kirtimai settlement, by either providing social housing or subsidies for the private rental market as well as working with private actors to overcome prejudices against renting properties to Roma people. In its follow-up to the recommendations, ECRI concludes that the recommendation has been only partially implemented and efforts need to be scaled up.<sup>1170</sup>

<sup>1164</sup> "Lithuania: Collective denial of racism, studies show" 3 April 2017. Website: <https://ec.europa.eu/migrant-integration/news/lithuania-collective-denial-of-racism> Last accessed on 23 August 2021.

<sup>1165</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 15.

<sup>1166</sup> European Commission. 2020. "Country Report. Non-discrimination. Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Lithuania."

<sup>1167</sup> Woolfson, Charles Alexander. 2010. The Race Equality Directive. *European Societies*, 12:4, 543-566.

<sup>1168</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 12.

<sup>1169</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 39.

<sup>1170</sup> ECRI. 2019. ECRI Conclusions on the implementation of the recommendations in respect of Lithuania subject to interim follow-up. CRI(2019)25.

At the same time, between 2015-2019 there has been no case law pertaining to discrimination against Roma and no complaints have been registered by Roma people with the Equal Opportunities Ombudsperson in 2019.<sup>1171</sup>

### Anti-Semitism

Lithuania ranks among the EU countries with lowest mean values of comfort with having a Jewish person as a neighbour or having someone from the family marry a Jewish person. The result for Lithuania is 4.73 for neighbour and 3.71 for married family member (on the scale from 1=totally uncomfortable to 7=totally comfortable).<sup>1172</sup> Four out of nine hate crimes recorded by the police in 2019 were with anti-Semitic motivation.<sup>1173</sup>

Anti-Semitic sentiments flared up and came to the fore in 2019 in relation to the re-evaluation of the legacy of certain historical figures who played a role in Lithuanian independence, in light of their anti-Jewish role during the Second World War.<sup>1174</sup> Initiatives by the municipality of Vilnius to re-name certain streets or remove memorial plaques were met with opposition, as well as a spike in incidents involving desecration of Jewish graves, places of worship and other places of symbolic importance to the Jewish community. However, the number of recorded antisemitic incidents is relatively low (three in 2020, five in 2019 and one in 2018).<sup>1175</sup>

### Racism against migrants

Anti-immigrant discrimination mostly affects people of colour, while ethnic Russian or Polish immigrants, for example, are not targeted as often. The 2015 immigration wave did not result in a large influx of refugees in Lithuania. Despite the reality on the ground, the discourse and perceptions of citizens were negatively affected and anti-migrant sentiments were also stirred by news and incidents in other EU countries. Most recently, due to geopolitical tensions with Belarus, a significant number of immigrants from Middle Eastern countries were encouraged to cross the border from Belarus to Lithuania and Poland.<sup>1176</sup> This has increased tensions in society, even including some discriminatory statements by politicians, high-profile figures and representatives of state institutions.<sup>1177</sup> According to the 2019 survey, even before the current migration crisis, Muslims and refugees were among the most unfavourably perceived groups in the country.<sup>1178</sup>

### Afrophobia

Discrimination against people of African descent is another dimension of racism in Lithuania. According to Eurobarometer, 21% of Lithuanian respondents report that they would feel

<sup>1171</sup> European Commission. 2020. "Country Report. Non-discrimination. Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Lithuania"

<sup>1172</sup> FRA. 2020. Antisemitism. Overview of Antisemitic Incidents Recorded in the European Union 2009-2019, p. 9.

<sup>1173</sup> OSCE. ODIHR Hate Crime Reporting. Source: <https://hatecrime.osce.org/lithuania> Last accessed on 22 August 2021.

<sup>1174</sup> *Deutsche Welle*, 'Holocaust haunts Lithuania as names are erased from capital's map', 14 August 2019, available at: <https://www.dw.com/en/holocaust-haunts-lithuania-as-names-are-erased-from-capitals-map/a-50020424>

<sup>1175</sup> FRA, *Antisemitism – Overview of antisemitic incidents recorded in the European Union 2010-2020*, p. 59, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

<sup>1176</sup> *Eurotopics*, 'Migrant crossings: escalation in Lithuania?', 5 August 2021, available at: <https://www.eurotopics.net/en/265406/migrant-crossings-escalation-in-lithuania>.

<sup>1177</sup> Examples of such statements can be found at <https://www.euronews.com/2021/10/01/in-lithuania-anti-migrant-rhetoric-hardens-as-europe-awaits-brussels-next-move>.

<sup>1178</sup> Thirty-nine percent of those surveyed would not want Muslims to live in their neighbourhood, and 27.4 % felt the same about refugees. See CES, *Lietuvos socialinių tyrimų centro etninių tyrimų instituto užsakymu atliktos visuomenės Nuostatų apklausos 2019 m. Rezultatai*, available at: [http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-apklausos-rezultatai\\_20191.pdf](http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-apklausos-rezultatai_20191.pdf).

uncomfortable working on a daily basis with a black person and 44% would feel uncomfortable if their child was in a love relationship with a black person.<sup>1179</sup> People of African descent/black Europeans in Lithuania report that they feel hesitant to raise anti-discrimination issues with their employers for fear of negative repercussions due to the complaint.<sup>1180</sup> Other areas of discrimination against people of African descent/black Europeans in Lithuania are education, housing, policing, negative portrayals and stereotyping by the media and some politicians, as well as hate speech and hate crimes against Black people.<sup>1181</sup> For example, with regard to education, black students report bullying incidents in places of education. In the area of policing, people of African descent/black Europeans are at greatest risk of being racially profiled and stopped and searched. Thirty per cent of Sub-Saharan survey respondents in Lithuania report being stopped by the police in the last five years.<sup>1182</sup>

In June 2020, youth activists organised a Black Lives Matter march to express solidarity with protesters in the United States and other countries who were shining a light on issues of institutional racism. The march was met with a strong backlash and denial that such issues exist or are relevant in the Lithuanian context.<sup>1183</sup>

### Institutional racism in policing

In addition to the above-mentioned **racial profiling** of people of African descent / black Europeans in police stops, institutional racism in policing against members of minority groups in general takes other forms as well. A widespread issue is **under-reporting** of hate crimes. Reasons include negative experiences in previous interaction with law enforcement, lack of sensitivity or training of law enforcement officials to deal with hate crimes as well as common belief that the complaint will not lead to redress or have any positive outcome for the victim.<sup>1184</sup>

Even when hate crimes are reported, a further issue is their **under-recording** as such by law enforcement. The racial bias in the perpetrators' motivation is often omitted and pre-trial information on that aspect is not collected.<sup>1185</sup> Furthermore, testimonies of victims and witnesses from minority groups alleging hate crimes are not perceived as credible and dismissed due to the pervasiveness of stereotypes linking minorities to dishonest, violent and criminal behaviour or simply not deemed important.<sup>1186</sup>

<sup>1179</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 28.

<sup>1180</sup> The number of people of African descent/black Europeans in Lithuania is small, with the migration department quoting the figure as under 300, see <https://www.delfi.lt/news/daily/lithuania/vilniuje-gyvenantis-afrikietis-lietuviams-reikia-pamirsti-okupacija-ir-mokytis-atvirumo.d?id=60500687>.

<sup>1181</sup> ENAR (2016), 'Fact sheet briefing – Afrophobia in Lithuania', available at: [https://www.enar.eu.org/IMG/pdf/lithuania\\_fact\\_sheet\\_briefing\\_final.pdf](https://www.enar.eu.org/IMG/pdf/lithuania_fact_sheet_briefing_final.pdf).

<sup>1182</sup> ENAR (2019), *Data-Driven Policing: The Hardwiring of Discriminatory Police Practices across Europe*, p. 8, available at: <https://www.statewatch.org/media/documents/news/2019/nov/data-driven-profiling-web-final.pdf>.

<sup>1183</sup> LRT.lt., 'Anti-racism rally bares divide between Lithuania's young and old', 11 June 2020, available at: <https://www.lrt.lt/en/news-in-english/19/1187544/anti-racism-rally-bares-divide-between-lithuania-s-young-and-old>.

<sup>1184</sup> Office of the Equal Opportunity Ombudsperson. 2021. Independent Ombudsperson's Review on Institutional Response to Hate Speech, p 15.

<sup>1185</sup> ENAR. 2019. Racist Crime & Institutional Racism in Europe. ENAR Shadow Report 2014-2018, p 19.

<sup>1186</sup> Ibid, p 19.

### H.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

The legislative framework on the types of non-discrimination within the scope of the study is composed of several elements:

- Constitutional provisions,
- Law on Equal Treatment,
- Provisions in the Criminal Code, and
- Provisions in the Labour Code.

Several provisions in the **Constitution of the Republic of Lithuania** address the protection against discrimination and the promotion of equality. Article 29, in specific, prohibits discrimination on the grounds of "gender, race, nationality, language, origin, social status, belief, convictions, or views." Chapter 2 of the Constitution provides an equality clause with regard to religious and other beliefs such as political and economic convictions or cultural disposition.

The **Law on Equal Treatment (LET)**<sup>1187</sup> is the main national law implementing Directive 2000/43/EC and Directive 2000/78/EC. The law prohibits direct and indirect discrimination, harassment and instruction to discriminate. LET covers the following grounds: gender, race, nationality (in terms of belonging to a national minority), citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. In terms of material scope, the law applies to private and public employment, access to goods or services (including housing) and education.

Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA) was transposed into the Lithuanian **Criminal Code (CC)** in 2009. Article 170 CC criminalizes incitement of hatred and is applied in cases of hate speech. Article 60 makes the motive of hatred an aggravating factor in the perpetration of other crimes whereas several other articles include qualifying characteristics of criminal acts such as murder and serious and non-serious bodily harm.<sup>1188</sup>

With respect to anti-discrimination issues, the **Labour Code (LC)** contains a general prohibition of discrimination in employment and contains provisions regulating the duties of employers. It covers the following grounds: gender, race, nationality, citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, family and marital status, membership of political parties or other organisations.

The Lithuanian Office of the Equal Opportunities Ombudsperson (OEEO) is the main national equality body<sup>1189</sup>. In its current form, it was formally established in 2005 with the entry into force of the Law on Equal Treatment and in order to fulfil the requirements of the EU Race Equality Directive (2000/43/EC). The Office succeeded its predecessor, the Ombudsperson for Equal Opportunities of Men and Women

<sup>1187</sup> Law on Equal Treatment, 18 November 2003. No IX-1826, available in English at: [https://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--ilo\\_aids/documents/legaldocument/wcms\\_127927.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_127927.pdf)

<sup>1188</sup> Article 170 of the criminal code criminalises incitement of hatred and is applied in cases of hate speech. Article 60 makes the motive of hatred an aggravating factor in the perpetration of other crimes whereas several other articles include qualifying characteristics of criminal acts such as murder and serious and non-serious bodily harm. The full text of the Criminal Code (law on the approval and entry into force of the criminal code) of the Republic of Lithuania is available at: [https://sherloc.unodc.org/cld/document/ltu/2000/criminal\\_code\\_of\\_lithuania.html](https://sherloc.unodc.org/cld/document/ltu/2000/criminal_code_of_lithuania.html)

<sup>1189</sup> See website at: <https://www.lyqybe.lt/en/>.

by expanding its mandate to cover all grounds of discrimination mentioned in Directives 2000/43/EC and 2000/78/EC. Most recently, its mandate was extended in relation to the UN Convention on the Rights of Persons with Disabilities. The Office is established as a separate legal entity with legal personality which contributes to its formal independence. The Ombudsperson is appointed by and accountable to the Parliament. The Office of the EOO functions as a quasi-judicial body which can investigate complaints and issue decisions.

The competences of the Ombudsperson include:

- investigation of anti-discrimination and harassment complaints and provision of impartial and objective advice,
- reporting on the implementation of the LET and providing proposals for improving current legislation as well as implementation recommendations to other state bodies and institutions,
- conducting independent research on complaints and drafting independent reports on anti-discrimination issues,
- conducting informational, educational and awareness-raising campaigns,
- information exchange with respective national bodies of EU Member States, EU institutions or international organisations, and
- monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.

#### H.4 Statistics on racism, xenophobia and racial discrimination

As a general note, statistics about racism, xenophobia and racial discrimination need to be interpreted with caution due to under-reporting of incidents by victims, under-recording by the police or other institutions as well as other issues with the classification of crimes and their transparent reporting.<sup>1190</sup>

In 2020, the Equal Opportunities Ombudsperson received a total of 187 complaints, 644 inquiries, 113 inquiries on Facebook. Of them 33 were inquiries about possible discrimination based on nationality, also origin (6), ethnic origin (9), language (11), citizenship (18), race (8), religion (8).<sup>1191</sup> The top three grounds for complaints received by the OEEO, consistently over the years, are gender, age, and disability.

Despite the existence of specialised units for the investigation and prosecution of hate crimes in Lithuania, the recorded cases remain low.<sup>1192</sup> According to official data submitted by Lithuania to the Office for Democratic Institutions and Human Rights (ODIHR), in 2019 there were nine hate crimes, of which one led to prosecution and none to sentencing.<sup>1193</sup> The bias motivation was as follows: anti-Semitism (4), racism and xenophobia (2), sexual orientation and gender identity (2), bias against Roma and Sinti (1). Other sources (Kantor Center and European Foundation of Human Rights) report 19 incidents, of which the highest numbers were on grounds of anti-Semitism (5) and on the basis of sexual orientation and gender identity (5).<sup>1194</sup>

<sup>1190</sup> ENAR. 2015. Shadow Report 2013/2014. Racist Crime in Lithuania. Research Briefing.

<sup>1191</sup> Interview with member of the Ombudsperson's office, September 2021.

<sup>1192</sup> ENAR. 2019. Racist Crime & Institutional Racism in Europe. ENAR Shadow Report 2014-2018, p. 23.

<sup>1193</sup> OSCE. ODIHR Hate Crime Reporting. Website: <https://hatecrime.osce.org/lithuania> Last accessed on 22 August 2021.

<sup>1194</sup> Ibid.

Another notable trend is the downward trend in recorded hate crimes between 2010 and 2020. For example, in 2011, 328 cases were recorded under Article 170 of the Criminal Code (hate speech) and only 28 in 2019.<sup>1195</sup> There are various explanations for this significant decrease. One is that the relatively high number of cases in 2010 is a reflection of the recent transposition of Council Framework Decision which led to greater awareness of criminal liability as well as more activity among law enforcement. That said, the number of registered cases of incitement to hatred under Article 170 of the CC (hate speech) has slightly increased in the last four years as follows: 2017 (17 cases), 2018 (21 cases), 2019 (28 cases) and up until November 2020 (42 cases).<sup>1196</sup> Most cases are recorded on grounds of nationality (38), sexual orientation (37) and race (14).

## H.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

Public opinion in Lithuania evaluates favourably the effectiveness of the efforts to fight discrimination with 24% of respondents finding the efforts “effective” and 40% “moderately effective.”<sup>1197</sup> In contrast 26% of respondents hold the measures for ineffective and 1% consider that no efforts are made. The trend over time, compared to the previous survey in 2015, is also positive. These statistics can also be interpreted as indicating that measures against racism and xenophobia are not a priority for the Lithuanian society. It has also been shown that people leaning politically to the right tend to consider existing anti-discrimination measures sufficient.<sup>1198</sup>

### Hate speech and hate crimes

Despite the positive perceptions among the population, some gaps or areas for improvement have been identified. For example, in June 2021 the European Commission issued a letter of formal notice to Lithuania regarding incorrect transposition of Council Framework Decision 2008/913/JHA.<sup>1199</sup> In specific, the European Commission has taken issue with the failure of Lithuania to criminalize hate speech and hate crime when based on grounds of ethnic origin or colour. Another instance of deviation from the Council Framework Decision according to the Commission’s notice is the criminalization of conduct of condoning, denial, and gross trivialisation of international crimes and the Holocaust only when public order is disrupted or only when perpetrated in Lithuania against Lithuanian citizens. The Equal Opportunities Ombudsperson has also issued recommendations to amend the Criminal Code to include “the motive of bias and add skin colour, citizenship, and gender identity as grounds of hate crime and hate speech.”<sup>1200</sup> In the current formulation of the law criminalizing hate crime and hate speech, the threshold for alleging those crimes is high as they have to be perpetrated explicitly with the goal to express hate whereas the Ombudsperson’s recommendation proposes including the lower threshold of hate-motivated actions.

A further area of improvement, as pointed out by the Ombudsperson, is in the area of provision of assistance to victims of hate crimes and hate speech. Currently, this is done on ad hoc basis by civil

<sup>1195</sup> MesVisi (EU project 848353 (REC)). 2018. Hate Crimes and Hate Speech: Overview of the Situation in Lithuania, p 16.

<sup>1196</sup> Office of the Equal Opportunity Ombudsperson. 2021. Independent Ombudsperson’s Review on Institutional Response to Hate Speech, p. 7.

<sup>1197</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 174.

<sup>1198</sup> Ibid.

<sup>1199</sup> [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_21\\_2743](https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_2743) Last accessed on 23 August 2021.

<sup>1200</sup> MesVisi (EU project 848353 (REC)). 2018. Hate Crimes and Hate Speech: Overview of the Situation in Lithuania, p 19.

society organisations, which are often underfunded and understaffed. It is recommended that the state establish structures which can offer systematically support services to victims.

Beyond under-reporting and under-recording, another major issue, especially with regard to hate crimes, is the collection and publication of relevant statistics. While some improvements have been made over time, it is still difficult to track down statistics on hate crimes, in part due to their complicated classification in the Criminal Code.<sup>1201</sup> For example, it is often the case that a single act is classified under disruption of public order rather than hate speech.

Mandatory and voluntary training to law enforcement and judicial system officials at various professional ranks can contribute to correcting institutional bias in handling cases as well as understanding better procedures and protocols to be followed. Building trust between law enforcement and vulnerable communities through mediation and other interactions is another way to address the under-reporting of hate crimes.

Furthermore, it has been argued that the criminalization of hate speech and its handling by law enforcement is only one reactive response to the problem. Another aspect is to proactively combat the causes of hate speech and focus on prevention through education and public awareness. In that respect, the Equal Opportunities Ombudsperson has recommended mainstreaming human rights topics in the school curriculum in order to tackle bias formation which later can lead to discriminating attitudes or behaviour. However, the Ministry of Education has not reacted to this recommendation so far.

The media have also an important role to play, especially with respect to online hate speech, through the formulation of clear policies and guidelines and moderation of comments sections. Furthermore, it is often the media that provides platforms and amplifies damaging negative stereotypes of minority groups. Civil society organisations can contribute to the prevention of hate speech, for example, through development of powerful counter-narratives and the media can assist in their dissemination.<sup>1202</sup>

The launch of a working group by the Ministry of the Interior has been deemed as a good practice.<sup>1203</sup> The group is tasked with increasing the effectiveness of the response to hate speech and hate crimes by discussing relevant issues and preparing proposals as well as monitoring the implementation of international commitments and publishing annual reports on the situation of hate speech and hate crimes in Lithuania. In 2020, the Ministry of Interior approved an “Action Plan of the Working Group for Promoting Effective Response to Hate Crimes and Hate Speech in Lithuania 2020-2022.”<sup>1204</sup>

### **Anti-Gypsyism**

Since 2000, Lithuania has adopted and implemented several strategic documents for Roma integration. The latest National Roma Integration Plan was extended by one year until the end of 2020. Lithuania currently does not have a strategic document on Roma integration which underscores the role of the EU in ensuring focus on Roma integration is kept. The Council of the EU adopted in March 2021 a new

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<sup>1201</sup> Ibid, 13.

<sup>1202</sup> Office of the Equal Opportunity Ombudsperson. 2021. Independent Ombudsperson’s Review on Institutional Response to Hate Speech, p 17-18.

<sup>1203</sup> MesVisi (EU project 848353 (REC)). 2018. Hate Crimes and Hate Speech: Overview of the Situation in Lithuania, p 18.

<sup>1204</sup> Office of the Equal Opportunity Ombudsperson. 2021. Independent Ombudsperson’s Review on Institutional Response to Hate Speech, p. 7-8.

strategic framework which entails an extended comprehensive three-pillar approach focussing on Roma equality, inclusion and participation.<sup>1205</sup>

Housing has been the area where most acute problems persist and this has been reflected in the last National Roma Integration Strategy. The main problems revolved around inadequate housing conditions, forced evictions and discrimination in the real estate market. International organisations have repeatedly condemned the practice of forced evictions and called on Lithuania to address the issue.<sup>1206</sup> The Roma settlement of Kirtimai in Vilnius has drawn most attention in the past due to efforts by the city to dismantle it, which is now completed.<sup>1207</sup> The relocation of the residents has been challenging. One difficulty was the unwillingness of private owners to rent to Roma. Moreover, due to the widespread practice of renting properties without contract for tax avoidance purposes, even when Roma find housing in the private market, they cannot claim housing subsidies.

In the area of employment a project-based approach has been adopted. EU-funded projects aim at improving access to the labour market by, among other things, providing information and consultations as well as trainings for specific targeted skills (e.g. Lithuanian language skills, driving skills, etc.). Some have noted that due to the relatively small Roma population in Lithuania, such an approach is sufficient and provides flexibility.<sup>1208</sup> On the other hand, it has been argued that a more systematic approach needs to be undertaken in order to achieve sustainable results. The 2019 Civil Society Monitoring Report states that very limited progress has been achieved in tackling the problem of low qualifications.<sup>1209</sup> Discrimination from employers, which is another main factor for the low employment rates among the Roma, was addressed to even lesser extent. Self-employment has been identified as preferred by Roma and some measures have focussed on supporting entrepreneurship. Individual consultations with career coaches from the Public Employment Services has yielded some positive results. It has been recommended to scale up these efforts and to build stronger ties to potential employers and partners who can offer employment, purchase services by self-employed Roma or banks which can provide credit for self-employment initiatives.<sup>1210</sup>

### **Strengthening the Office of the Equal Opportunities Ombudsperson**

The Equal Opportunities Ombudsperson considers as a good practice the work of the Office to establish direct links to minority groups. In understanding better their needs and the challenges they face, the OEOO can be more effective in formulating recommendations to other state institutions. Direct links also build trust and encourage victims of discrimination to take recourse to the services offered by the Office.

While prosecution of hate speech and hate crimes remains outside the mandate of the Office (as the Council Framework Decision is transposed in the Criminal Code and accordingly such incidents are investigated by law enforcement), the Office has been active in conducting information and education

<sup>1205</sup> Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation. OJ C 93, 19.3.2021, p. 1–14

<sup>1206</sup> ECRI. 2019. ECRI Conclusions on the implementation of the recommendations in respect of Lithuania subject to interim follow-up. CRI(2019)25.

<sup>1207</sup> LRT.lt. "The end of Vilnius' Roma settlement: discrimination hampers relocation, drug trade remains" 19 May 2020. Last accessed at <https://www.lrt.lt/en/news-in-english/19/1177610/the-end-of-vilnius-roma-settlement-discrimination-hampers-relocation-drug-trade-remains> on 2 September 2021.

<sup>1208</sup> European Commission. 2018. Civil Society Monitoring Report on Implementation of the national Roma Integration Strategy in Lithuania, p. 7.

<sup>1209</sup> European Commission. 2018. Civil Society Monitoring Report on Implementation of the national Roma Integration Strategy in Lithuania.

<sup>1210</sup> Ibid.

campaigns for the general public and targeted campaigns for police, as well as trainings for law enforcement officials.

The OEEO also works closely with employers to address discrimination in the workplace. It has developed a self-assessment tool that is used both by the employer and employees. Specific recommendations are issued after the results are submitted.<sup>1211</sup>

Some shortcomings have been pointed out with regard to the Office of the Equal Opportunities Ombudsperson. It has been noted that sanctions on complaints are ineffective or disproportionately small.<sup>1212</sup> For example, fines are very rarely levied. The Ombudsperson has noted that the Office is constrained by the sanctioning measures which are pre-defined in the Law on Equal Treatment. In many cases, putting public pressure is more effective than the sanctions which are currently available to the Office. At the same time, amending the law to expand the list of sanctions, e.g. making offenders temporarily ineligible to receive public funds, could improve the effectiveness of the Office.

The European Commission has recommended a set of standards for the national equality bodies.<sup>1213</sup> For example, one of the recommendations concerns the capacity of the equality body to provide assistance and actively intervene on behalf of victims by, inter alia, providing legal advice to victims and representing complainants in court. Currently, the Equal Opportunities Ombudsperson does not have such competence to intervene actively in support of victims. A legislative proposal to amend the competences of the OEEO has been stuck in Parliament since 2019 and it seems unlikely to be passed. The Equal Opportunity Ombudsperson welcomed such potential amendment to the competences of the Office, which would allow it to engage in strategic litigation on behalf of victims of discrimination. This is currently done only sporadically by NGOs who, however, do not have the financial and human resources to engage in lengthy and expensive litigation.

## H.6 Impact of the COVID-19 pandemic on racism in the country

The coronavirus pandemic has had a negative effect on the Roma communities across the EU.<sup>1214</sup> On the one hand, Roma were over-exposed due to often crowded living conditions while at the same time being less likely to have adequate access to healthcare. Roma also experienced disproportionately employment challenges as a result of lockdowns and travel restrictions due to the type of work they typically engage in (e.g. street vending, recycling, seasonal work abroad). On the other hand, anti-Roma sentiments in the public sphere increased with Roma people often being scapegoated for spreading infections and accused of disregarding pandemic restrictions.

Vaccination rates are also lower among certain minority groups (e.g. Belarusians, Russians) who are typically exposed to media outlets spreading disinformation and undermining confidence in vaccines approved by the European Medicine Agency. As a result, not only are people from these ethnic groups victims of disinformation and more likely to suffer a negative health outcome but they also become a target of negative discourse for perpetuating the pandemic.

<sup>1211</sup> Another example of good practice, not related to the work of the OEEO but still in the area of employment, is the establishment of dispute settlement commissions which are simplified, less formalized and more accessible.

<sup>1212</sup> European Commission. 2020. "Country Report. Non-discrimination. Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Lithuania"

<sup>1213</sup> Commission Recommendation of 22.6.2018 on standards for equality bodies. C(2018) 3850 final.

<sup>1214</sup> FRA. 2020. Coronavirus Pandemic in the EU – Impact on Roma and Travellers. Bulletin #5.

## **H.7 Conclusion**

Combating hate speech and hatecrimes is one of the main issues requiring greater attention in dealing with racism and xenophobia in Lithuania. In specific, the legislative framework needs to be amended to be brought in line with Council Framework Decision. Moreover, the problems of under-reporting and under-recording of incidents needs to be addressed as well as improving the collection and publication of relevant statistics. This requires closer work with law enforcement and justice system officials to overcome institutional bias and increase knowledge of existing guidelines and procedures.

The Roma continue to be a minority group which is systematically stereotyped and discriminated against. While housing, employment, healthcare and education have been singled out as focus areas in the latest National Roma Integration Strategy, planned measures and activities did not tackle core problems and progress has been slow. More efforts need to be devoted to addressing the underlying causes of unequal access to the above public and private services and exclusion from the labour market.

## I. COUNTRY REPORT – POLAND

### I.1 Causes of racism, xenophobia and racial discrimination

According to a number of surveys, Poland tends to be one of the less open and more intolerant Member States. For example, 66% of Poles have an unfavourable opinion of Muslims in their country, 31% have an unfavourable opinion of Jews and 51% an unfavourable opinion of Roma.<sup>1215</sup> The latest Eurobarometer query on antisemitism showed that 41% of Poles believe that “expressions of hostility and threats towards Jewish people in the street or other public places” are a problem.<sup>1216</sup> Furthermore, an OSCE/ODIHR project on criminal justice responses to hate crime found that in Poland, out of some 600 respondents, “18% of Ukrainians, 8% of Muslims and 43% of sub-Saharan Africans experienced incidents having features of a hate crime.”<sup>1217</sup>

Even though racial discrimination and xenophobia are present in Poland, only 34% of Polish people think that discrimination based on ethnic origin or skin colour is “widespread”, whereas 56% believe it is “rare”<sup>1218</sup>. The proportion of persons who think discrimination based on ethnic origin in their country has increased by 3 points since 2015<sup>1219</sup>.

As a country with no colonial history, and, until recently, no sizeable immigration movements, the national discourse in constructing the narrative of the Polish nation was built alongside suspicion of the “internal other”.<sup>1220</sup> As such, the main manifestations of racism in the country have targeted Roma and Jewish populations.

### I.2 Dimensions of racism, xenophobia and racial discrimination

#### Antigypsyism

According to Polish Law<sup>1221</sup>, since 2005 Roma are legally recognised as an ethnic minority. The number of Roma in Poland is estimated to be between 25-35 thousand people<sup>1222</sup>. Nevertheless, negative opinions about Roma persist, and Roma people are at risk of discrimination on the grounds of racial or ethnic origin and due to their social exclusion.

Antigypsyism is not recognised by the Polish state) as a specific form of racism, discrimination against Roma or as a root cause of their exclusion. In addition, the term ‘antigypsyism’ does not appear in Polish

<sup>1215</sup> Pew Research Centre, European Public Opinion Three Decades After the Fall of Communism Most embrace democracy and the EU, but many worry about the political and economic future, 2019, pp 80-86.

<sup>1216</sup> Eurobarometer (2019). “Perceptions of Antisemitism”. Available at: <https://europa.eu/eurobarometer/surveys/detail/2220>.

<sup>1217</sup> OSCE/ODIHR (2018). *Building a Comprehensive Criminal Justice Response to Hate Crime: Project Closing Conference Report*, p. 7. Available at: <https://www.osce.org/odihr/409563>.

<sup>1218</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 15.

<sup>1219</sup> Ibid.

<sup>1220</sup> Polynczuk-Alenius, Kinga, At the intersection of racism and nationalism: Theorising and contextualising the ‘anti-immigration’ discourse in Poland, in *Nations and Nationalism*, Volume 27, Issue 3, pp 766-782, 2020, pp 772-773.

<sup>1221</sup> Ministry of Internal Affairs and Administration (2005). The Act on National and Ethnic Minorities and Regional Language, available at: <http://mniejszosci.narodowe.mswia.gov.pl/mne/prawo/ustawa-o-mniejszosciac/6492.Ustawa-o-mniejszosciach-narodowych-i-etnicznych-oraz-o-jezyku-regionalnym.html> (accessed on 01.11.2021)

<sup>1222</sup> European Commission, DG Justice and Consumers (2018). Civil society monitoring report on implementation of the national Roma integration strategies in Poland, prepared by the Art Foundation Jaw Dikh, p. 9.

laws and regulations. As a consequence, there is no structure established by the government to monitor and analyse antigypsyism<sup>1223</sup>.

Forty percent of Polish respondents in the Special Eurobarometer 493 believe that anti-Roma discrimination is 'widespread' in their country, while 52% of Polish respondents believe it is 'rare'<sup>1224</sup>.

### **Anti-Semitism**

According to the FRA 2018 study on Experiences and perceptions of antisemitism/Second survey on discrimination and hate crime against Jews in the EU, antisemitism in Poland was identified as a "fairly big" or "very big" problem by 85% of respondents (placing Poland at the fourth place after France, Germany and Belgium); 61% reported that antisemitism had increased "a lot" in the past five years (second place after France, and before Belgium and Germany). A further 74% reported that intolerance towards Muslims had increased "a lot" (second place after Hungary, and before Austria and the UK); and 89% reported an increase in expressions of antisemitism online (second place after France, and before Italy and Belgium). The most commonly heard antisemitic statements were "Jews have too much power in Poland" (70%) and "Jews exploit Holocaust victimhood for their own purposes" (67%)<sup>1225</sup>.

Poland also ranks as the country with one of the lowest mean values of comfort with having a Jewish person as a neighbour or having someone from the family marry a Jewish person. The result for Poland is 4.74 for neighbour and 4.24 for married family member (on the scale from 1=totally uncomfortable to 7=totally comfortable)<sup>1226</sup>.

### **Anti-immigrant discrimination**

As a country of emigration for much of the 2000s, Poland was one of the European countries with the most positive attitudes towards migrants. This eroded during the 2015 influx of refugees in the EU. Poland resisted accepting refugees and agreed to accept only 1% of Middle Eastern migrants seeking asylum in Europe.<sup>1227</sup> A 2016 poll showed that 52% of the Polish population did not wish for any refugees to arrive in Poland, 40% approved only of temporary resettlement, and only 4% approve of permanent resettlement. In addition, Ukrainian migrants on whose labour the Polish economy depends and which have been the largest immigrant population in Poland have been victims of hate crimes<sup>1228</sup>.

### **Afrophobia**

In the past years, Poland attracted immigrants into the country. This included a number of sub-Saharan African citizens (students, tourists, diplomats, business workers, professionals and refugees), predominantly from Nigeria (34%), South Africa (9%) and Cameroon (8%). Together, they constitute a group of some 2 100 people<sup>1229</sup>. Despite this low figure, discrimination against people of African

<sup>1223</sup> Ibid., p. 10

<sup>1224</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 39.

<sup>1225</sup> FRA. 2018. Experiences and perceptions of antisemitism/Second survey on discrimination and hate crime against Jews in the EU (Report).

<sup>1226</sup> FRA. 2020. Antisemitism. Overview of Antisemitic Incidents Recorded in the European Union 2009-2019, p.9.

<sup>1227</sup> Migration Policy Institute (MPI), Diminishing Solidarity: Polish Attitudes toward the European Migration and Refugee Crisis, 2016, available at: <https://www.migrationpolicy.org/article/diminishing-solidarity-polish-attitudes-toward-european-migration-and-refugee-crisis>.

<sup>1228</sup> Genocide Watch. The Alliance against Genocide (2021). Country Report: Poland (June 2021), available at: [https://www.nigdywiecej.org/docstation/com\\_docstation/20/poland\\_country\\_report\\_june\\_2021.pdf](https://www.nigdywiecej.org/docstation/com_docstation/20/poland_country_report_june_2021.pdf).

<sup>1229</sup> Minority Rights Group International (2018). Minority and Indigenous Trends 2018. Focus on migration and displacement, p. 86.

descent / black Europeans is present in Poland. According to the Special Eurobarometer 493, 14% of Polish respondents reported that they would feel uncomfortable working on a daily basis with a black person<sup>1230</sup>, and 26% of Polish respondents would feel uncomfortable if their child was in a love relationship with a black person<sup>1231</sup>.

Areas of discrimination against people of African descent/black Europeans in Poland include display of slogans, hate speech and hate crimes. For example, in May 2019, a black student from the United States was attacked by two men in front of a hotel entrance in Warsaw.<sup>1232</sup>

The Black Lives Matter movement in Poland was relatively small compared to other countries, with 17 protests organised in 11 Polish cities. Accordingly, media coverage was also limited, but protests nevertheless seem to have sparked a debate on anti-black racism in Poland. However, the protests did not reach a large audience.<sup>1233</sup>

### I.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

The **Polish Constitution** contains a general prohibition against discrimination. Article 32 of the Constitution states that 'All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever'<sup>1234</sup>. However, this principle does not specify criteria for prohibited forms of discrimination.

Poland had transposed the equality directives, mainly in the employment field, by 2010. However, gaps existed, which had resulted in referrals to the Court of Justice of the European Union (CJEU). As a consequence, the Polish Government finally adopted the **Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (Equal Treatment Act – ETA)**<sup>1235</sup>. The Act entered into force on 1 January 2011. The ETA contains an exhaustive list of grounds of discrimination in the field of employment, including gender, race, ethnic origin, nationality (citizenship was added in 2016), religion, belief, political opinion, disability, age and sexual orientation. ETA introduced several legal definitions which were previously only included in the Labour Code and related only to the employment field. In all fields outside employment, the Act provides protection against discrimination in relation to race, ethnic origin and nationality. Gender is only covered in terms of access to social protection, goods and services, including housing, but not healthcare and

<sup>1230</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 25.

<sup>1231</sup> Special Eurobarometer 493. 2019. Discrimination in the European Union, p. 28.

<sup>1232</sup> "NEVER AGAIN" Association, A selection of racist, xenophobic and homophobic events which occurred in Poland in 2019 are monitored by the 'NEVER AGAIN' Association and documented in the 'Brown Book', available at: [https://www.nigdywiecej.org/docstacion/com\\_docstacion/172/brown\\_book\\_2019.pdf](https://www.nigdywiecej.org/docstacion/com_docstacion/172/brown_book_2019.pdf).

<sup>1233</sup> DeZIM (2021). op. cit., p. 29.

<sup>1234</sup> Constitution of the Republic of Poland, 2 April 1997, available at: <https://trybunal.gov.pl/en/about-the-tribunal/legal-basis/the-constitution-of-the-republic-of-poland/>

<sup>1235</sup> Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (referred to as the Equal Treatment Act – ETA) (Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania), 3 December 2010.

education.<sup>1236 1237</sup> The Act also designated the Ombudsperson's Office as the equality body. Poland had transposed the equality directives, mainly in the employment field, by 2010. However, gaps existed, which had resulted in referrals to the Court of Justice of the European Union ..

Although the 2010 ETA seems to fully implement Directives 2000/43/EC and 2000/78/EC, it raises some doubts and debate. Problematic issues include the compensation claim, which seems to only cover material damage and therefore limits protection; limits to the protection offered against discrimination in education; and failure to provide reasonable accommodation results in discrimination only in a situation where there is a 'traditional' labour contract<sup>1238</sup>.

### Criminal law

The Polish **Criminal Code**<sup>1239</sup> penalises crimes motivated by nationality, ethnicity, racism, politics, religion or worldview. Article 118 criminalises homicide, serious injury, creation of threatening living conditions and attacks against a national, ethnical, racial, political or religious group or a group with a different perspective of life. Article 119 criminalises violence or unlawful threats towards a person or group of persons on grounds of their national, ethnic, political or religious affiliation, or lack of religious beliefs. The incitement of others to commit the above-mentioned crimes or to hatred on the grounds of national, ethnic, race or religious affiliation, or lack of religious belief is also criminalised.<sup>1240</sup> In addition, Article 256 makes anyone found guilty of inciting hatred based on national, ethnic, racial, or religious differences, or for reason of the lack of any religious denomination, liable to a fine, restriction of liberty, or to imprisonment for a maximum of two years.<sup>1241</sup> Finally, Article 257 sets out the offence of publicly insulting a group of the population or a particular person on the same grounds or breaching the personal inviolability of a person on these grounds.<sup>1242</sup> However, 'colour' and 'descent' as grounds for inciting hatred are missing from the definition in the Criminal Code and the Criminal Code does not contain a provision that specifically establishes racist motives of a crime as an aggravating circumstance.<sup>1243</sup>

### Equality Bodies

After years of a lack of an equality body in Poland, the 2010 Equal Treatment Act designated the already existing **Ombud's Office** (the official name is the **Commissioner for Human Rights - Rzecznik Praw Obywatelskich**) as the equality body, granting the Ombud new competences (in addition to its human rights mandate)<sup>1244</sup>, starting on 1 January 2011. The Ombud is an independent body and is accountable

<sup>1236</sup> European network of legal experts in gender equality and non-discrimination (2021). *Country Report. Non-discrimination, Poland*, p. 6, available at: <https://www.equalitylaw.eu/downloads/5519-poland-country-report-non-discrimination-2021-1-91-mb>.

<sup>1237</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). *Country Report, Non-discrimination, Poland*, p. 6.

<sup>1238</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). *Country Report, Non-discrimination, Poland*, p. 113.

<sup>1239</sup> Sejm of the Republic of Poland (1997). *Kodeks Karny*. available at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>.

<sup>1240</sup> Ibid.

<sup>1241</sup> Ibid.

<sup>1242</sup> Ibid.

<sup>1243</sup> United Nations Office of the High Commissioner for Human Rights (2019). 'Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland', p. 4, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/POL/CERD\\_C\\_POL\\_CO\\_22-24\\_36935\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/POL/CERD_C_POL_CO_22-24_36935_E.pdf).

<sup>1244</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). *Country Report, Non-discrimination, Poland*, p. 10.

to the Parliament<sup>1245</sup>. The Ombud's Office is independent of other state administration bodies and in practice performs its duties independently.

No grounds of discrimination are listed in the Ombud's mandate, which means that it can deal with any ground, including (but not limited to) those listed in the Equal Treatment Act<sup>1246</sup>. In 2015, a new Equal Treatment Department was created, which includes units for anti-discrimination law and the rights of migrants and national minorities. Since 2011, the Ombud is also engaged in research activities as well as the compilation of existing data on some issues. It also formulates recommendations, both in the process of its daily work (usually within 'general statements') and in the annual reports<sup>1247</sup>. It has also launched a section of its website dedicated to equality issues; collected information on jurisprudence relating to discrimination; established thematic teams of external experts to support the Ombud; and set up a telephone hotline to deal with all cases, including discrimination cases.

After the Polish parliamentary elections in October 2015 and shifts within the Government in the years 2016-2019, the Ombud faced various political attacks. In addition, the general political environment around counteracting discrimination has become more hostile. In this context, every year, the proposed budget prepared by the Ombud has been cut by the Polish Parliament. The Ombud has argued that the resources provided for the Office are not adequate for the realisation of the Ombud's designated tasks.

In September 2020, the term of office of the incumbent ombudsman (Adam Bodnar) was supposed to expire, but the Polish Sejm and the Senate had not agreed on a successor. This meant that the incumbent Ombudsman remained in office, awaiting the appointment of a new one. However, despite several attempts, the two parliament chambers did not succeed to agree on a successor for five months. On 15 April 2021, the Polish Constitutional Tribunal, which is controlled by the governing Law and Justice party, decided that the extension was not compatible with the Constitution. Bodnar could stay in office as a temporary Ombudsman until a new one was elected, but must vacate the office after at most three further months<sup>1248</sup>. On the same day, the Sejm appointed government candidate Bartłomiej Wróblewski as new ombudsman. However, his appointment was rejected by the Senate in May 2021. The vote marked the fourth time the Parliament has failed to fill the position, leaving a question mark over what will happen if no replacement is found by the outgoing ombudsman's deadline to leave<sup>1249</sup>. In July 2021, Marcin Wiącek, lawyer and professor at the University of Warsaw, was elected by the Polish Senate to the post of ombudsman, representing a compromise candidate for the Sejm and the Senate<sup>1250</sup>.

Created in 2008, the **Government Plenipotentiary for Equal Treatment** is the second institution with a mandate to promote the equal treatment of everyone without discrimination based on racial or ethnic origin (among other grounds)<sup>1251</sup>. However, in January 2016, the organisation underwent serious

<sup>1245</sup> Act on the Commissioner for Human Rights, 15 July 1987, Articles 3, 5 and 7.

<sup>1246</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Poland, p. 92.

<sup>1247</sup> Ibid., p. 95.

<sup>1248</sup> Zalan, Eszter (16.04.2021). "Polish court pushes out critical ombudsman". EUobserver. Brussels, available at: <https://euobserver.com/democracy/151564>

<sup>1249</sup> Euractiv. Impasse deepens in Poland over new ombudsman. (14 May 2021), available at: <https://www.euractiv.com/section/justice-home-affairs/news/impasse-deepens-in-poland-over-new-ombudsman/>.

<sup>1250</sup> Euractiv. Poland elects new ombudsman in rule of law standoff. (22.07.2021), available at: [https://www.euractiv.com/section/politics/short\\_news/poland-elects-new-ombudsman-in-rule-of-law-standoff/](https://www.euractiv.com/section/politics/short_news/poland-elects-new-ombudsman-in-rule-of-law-standoff/).

<sup>1251</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Poland, p. 11.

structural changes: the Office of the Plenipotentiary was closed<sup>1252</sup>. A new Plenipotentiary was appointed to combine two positions – the newly created position of Government Plenipotentiary for Civil Society together with that of the Plenipotentiary for Equal Treatment. Since the merger of the two bodies, the role of the Plenipotentiary in discrimination issues has been minimalised, the office has been reduced and the remaining staff directed to focus on issues of civil society<sup>1253</sup>. In February 2020, the office of the Plenipotentiary for Equal Treatment was again separated and moved to the Ministry of Family and Social Policy. On 5 March 2020, the deputy minister was appointed to the function of the Plenipotentiary for Equal Treatment. Therefore, the position of the Plenipotentiary has been additionally weakened<sup>1254</sup>.

#### **I.4 Statistics on racism, xenophobia and racial discrimination**

Research commissioned by the Polish Ombudsman found that in 2020, 81% of people who believed that they had been discriminated against, did not inform any public body<sup>1255</sup>. These figures compare to 73% in 2018, 92% in 2016 and 85% in 2015.

In 2017, the University of Warsaw's Center for Research on Prejudice found an increase in antisemitic views in Poland, possibly due to growing anti-migrant sentiment and Islamophobia in Poland<sup>1256</sup>. Later that year, the European Jewish Congress accused the Polish government of "normalizing" the phenomenon in the country<sup>1257</sup>.

#### **I.5 Evaluation of the antiracism and antiracial discrimination policies and legislation**

In February 2021, the European Commission sent a letter of formal notice to Poland as its national laws do not fully or accurately transpose EU rules on combating racism and xenophobia by means of criminal law (Framework Decision 2008/913/JHA). The Framework Decision aims to ensure that serious manifestations of racism and xenophobia are punishable by effective, proportionate and dissuasive criminal penalties throughout the EU. The Polish criminal legal framework fails to transpose correctly hate speech inciting to racist and xenophobic violence and restricts the scope of the criminalisation of incitement to hatred. Additionally, the Commission argued that Poland has incorrectly transposed the criminalisation of specific forms of hate speech, by omitting the conduct of gross trivialisation of international crimes and the Holocaust and by restricting the criminalisation of the denial and condoning of those crimes only to cases where such crimes were committed against Polish citizens.<sup>1258</sup>

<sup>1252</sup> European Parliament (2016), Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, The Policy on Gender Equality in Poland – Update, p. 11.

<sup>1253</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Poland, p. 114.

<sup>1254</sup> European Commission, Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination (2021). Country Report, Non-discrimination, Poland, p. 11.

<sup>1255</sup> Ombud, research commissioned from Kantar Public on 'Legal awareness in the context of equal treatment', Kantar 2020, 2018, 2016, 2015.

<sup>1256</sup> AFP; AP; Gambrell, Jon; AFP; RANDOLPH, Eric; Noorani, Ali; Gross, Judah Ari (January 25, 2017). "Anti-Semitism seen on the rise in Poland". The Times of Israel. Retrieved January 2, 2018.

<sup>1257</sup> France-Presse, Agence (August 31, 2017). "Anti-Semitism being 'normalised' in Poland, Jewish Congress warns". The Telegraph. Retrieved January 2, 2018.

<sup>1258</sup> European Commission, February infringements package: key decisions, available at: [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_21\\_441](https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_441)

While there has been an increase in the number of complaints or hate crime and hate speech, this has not translated into an increased number of convictions. There were 1365 investigations concerning hate crimes in 2014 (including 1062 registered that year). This figure increased to 1449 in 2017. The largest group victim of these hate crimes were Muslims, followed by Ukrainians, Jews, and persons of African descent. Islamophobia as the cause of the largest number of hate crimes started in 2015, previously, bias-motivated acts usually were anti-Semitic in nature.<sup>1259</sup>

The Helsinki Foundation for Human Rights noted that the Polish Equality Law does not provide “a full protection from racial discrimination in public life. Although the Equality Law provides a complaint mechanism, it is not a fully effective and frequently used remedy”.<sup>1260</sup> The organisation further lamented the lack of a comprehensive system of monitoring and combating the incidents of racial discrimination.

## **I.6 Impact of the COVID-19 pandemic on racism in the country**

There have been few instances of Covid-19 related racist incidents targeting people perceived to be Asian. Increases in verbal and physical attacks have been reported, including incidents against a doctor in Poznan or an incident in Łuków, where young perpetrators attacked a Vietnamese woman, throwing stones and insulting her.<sup>1261</sup>

## **I.7 Conclusion**

The legislative framework in Poland has to be strengthened in order to effectively combat racism, xenophobia and discrimination. Without any history of colonialism, the Roma and Jewish populations were the traditional targets of racism. The 2015 influx of migrants changed this with a sharp increase in islamophobia and an anti-migrant racism in the country. The ongoing stand-off and blocking of migrants at the border between Poland and Belarus is likely to exacerbate the situation. In conjunction with the increasing interference of the government in the independence of the justice system, it is unlikely that the situation will improve soon.

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<sup>1259</sup> Helsinki Foundation for Human Rights, submission to the 99th session of the committee on the elimination of racial discrimination, 2019.

<sup>1260</sup> Ibid.

<sup>1261</sup> NIEM, Coronavirus-related incidents of xenophobia in Poland available at: <http://www.forintegration.eu/pl/coronavirus-related-incidents-of-xenophobia-in-poland> last accessed on 1 November 2021.

## J. COUNTRY REPORT - ROMANIA

### J.1 Causes of racism, xenophobia and racial discrimination

Throughout Romania's history, racial discrimination and xenophobia have been a systemic issue. The underlying causes are diverse, including historical revisionism, political exploitation of nationalism, and media manipulation. The notion of unity through Romanianhood, orthodoxy, and ethnicity has fabricated an environment prone to discrimination. Starting from the XIX century integral nationalism brought about the modus operandi to unify a dysfunctional emerging state through racism, ethnic exclusiveness, and an anti-Semitic discourse<sup>1262</sup>.

In 2020, there were 18 incidents of anti-Semitism registered in Romania compared to 16 such cases in 2019<sup>1263</sup>. Such incidence is not high when taken in the context of incidence numbers in other EU member states such as Germany, the Netherlands. However, anti-Semitism has been present in Romania "ever since the formation of the State"<sup>1264</sup>. Religious roots of anti-Semitism derive from the Jewish people's refusal to convert to Christianity. Jewish people were despised because of their role as intermediaries between peasants and elites, fuelling the supposition of blocking the emergence of a Romanian bourgeoisie. Racial anti-Semitism came later, along with political anti-Semitism, in the second half of the XIX century with the development of science, which associated a homogeneous ethnic population with a strong state<sup>1265</sup>. Shortly before the First World War, anti-Semitism in the country was mostly exhibited through discrimination against Jews in public life and anti-Jewish political statements, whereas the post-World War I period was marked by organised anti-Semitic violence and movements against Romanian Jews backed up by Romanian intellectuals and culminating in the Holocaust in Romania. During the Communist period Romanian Jews were perceived as victims of fascism and war crimes. However, antisemitism continued to exist in the country then albeit in a different expression through accusations by Romanian society against Jews that they had been responsible for the emergence of the Communist regime. Later on, during the Communist regime, anti-Semitism grew (e.g., through vandalism of Jewish temples) and after the end of Communism there was a continuation of anti-Semitism through anti-Semitic nationalism, a push towards Marshal Antonescu's rehabilitation as well as the emergence of political programs and radical organisational structures reminiscent of legionary movements of the interwar period<sup>1266</sup>.

The 2015 refugee crisis in the EU has been tied to increasing anti-refugee and anti-Muslim sentiments. In the case of Muslims, racism has been exacerbated by media manipulation and the alleged association of Muslims and migrants with terrorism. As a result of the politicisation of the immigration crisis, the right-wing political debate found fertile ground to exploit the social and economic problems of the population by portraying the 'other' as a scapegoat. The 2017 'I Get You' report by JRS Romania argues that public opinion is manipulated by political debate into thinking that 'immigration takes jobs

<sup>1262</sup> Brustein W. & King R. D., 'Balkan anti-Semitism: The cases of Bulgaria and Romania before the Holocaust', *East European Politics and Societies*, Vol. XVIII, No. 3, 2004, pp. 430–454, and Panu, M. A., 'The biopolitics of violence: Instances of anti-Semitism in interwar Romania'. *Journal of Education Culture and Society*, Vol. VI, No. 2, 2020, pp. 43-52.

<sup>1263</sup> FRA (European Union Agency for Fundamental Rights), *Antisemitism: Overview of anti-Semitic incidences recorded in the European Union, 2010 – 2020, 2021*, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-antisemitism-overview-2010-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-antisemitism-overview-2010-2020_en.pdf).

<sup>1264</sup> Carsocea R., 'Anti-Semitism in Romania: Historical legacies, contemporary challenges', Series ECMI Working Papers No 81, European Centre for Minority Issues (ECMI), 2014.

<sup>1265</sup> Op. Cit. Brustein & King, 2004.

<sup>1266</sup> Carsocea R., 'Anti-Semitism in Romania: Historical legacies, contemporary challenges', Series ECMI Working Papers No 81, European Centre for Minority Issues (ECMI), 2014.

from the local population, depresses wages, and puts pressure on public services' and that 'aid allowances received by asylum-seekers are higher than some local workers make'. The report attributes anti-migrant fears and concerns to the simple fact that the mainstream population still does not receive correct information on issues concerning forced migration and is influenced by mainstreamed hate speech.<sup>1267</sup> The aforementioned report cites a 2016 survey on Romanians' perception of the 2015 immigrant crisis. Fifty-four per cent (54 %) of the respondents disagreed with the presence of refugees in Romania for 'fear of outbreak of violence or social warfare, cultural differences and customs, possible economic instability at national or European level.'<sup>1268</sup> The report also notes the occurrence of racist attacks against Muslim refugees, especially during the most intense period of the refugee crisis. For instance, in 2016, two Syrian women were assaulted on the street in Bucharest because of wearing the hijab.<sup>1269</sup>

A strong legacy of stereotypes and social prejudice characterize discrimination against minorities, especially in the case of the Roma ethnic minority. One of the causes relates to the historical trend of Roma slavery. Some sources suggest that racism towards Roma came about at the times when they moved to Southeastern Europe around the XIII century. Some accounts argue that Roma were used as slaves by local landlords and later on by Turkish and Russian occupants<sup>1270</sup>. Around the times of the First World War, nationalism was predominant and minority groups overall were mistreated through excessive taxation. Roma were considered to not possess a culture or history defined in written terms – for this reason they were considered worse than other minorities in Romania<sup>1271</sup>. During the First and Second World Wars, driven by the stereotypes about the inferiority of certain minorities, such as the Roma and Jews, members of these minority groups were subjugated to ethnic cleansing acts<sup>1272</sup>. The communist ideology for a homogeneous Romanian society inspired national uniformity and pursued assimilationist policies towards minorities, particularly the Roma.

The Roma minority is in fact a victim of preconceptions which pass on to every generational turnover. These biases are rooted in media as well which represent and influence people through news and online blogs. The frequent media stereotypes towards Roma are that Roma are lazy, dirty, uneducated, and criminals<sup>1273</sup>.

## J.2 Dimensions of racism, xenophobia and racial discrimination

According to the most recent ECRI report, racist and intolerant hate speech in public discourse and in the online space are a problem in Romania<sup>1274</sup>. The main targets of acts of racism, xenophobia and discrimination are the Roma ethnic minority, the Hungarian minority, the Jewish community and LGBT people. Violent attacks against these groups also occur at times.

<sup>1267</sup> JRS Romania, *I get you – Promoting best practices to prevent racism and xenophobia towards forced migrants through community building*, JRS Europe, 2017, p. 4, available at: <https://jrseurope.org/wp-content/uploads/sites/19/2018/01/I-Get-You-Romanian-report.pdf>.

<sup>1268</sup> Ibid.

<sup>1269</sup> Ibid.

<sup>1270</sup> Magyari, N., Mark, L., Harbula, H., & Magyari-Vincze, E., 'Country report on ethnic relations: Romania', Edumigrom Background Papers, Center for Policy Studies, Central European University, 2008, pp. 3-46.

<sup>1271</sup> Crowe, D. A. *The Gypsy Historical Experience in Romania*, In Crowe, D.A. and Kolsti, John (eds.), *The Gypsies of Eastern Europe*. London: M.E. Sharpe, 1991.

<sup>1272</sup> Kelso, 2013; Kelso, 2007.

<sup>1273</sup> Andronechescu C., & Coman C., 'Discrimination of the Roma population in Romania', *Revista Universitară de Sociologie*, Vol. XVI, No 2, 2020.

<sup>1274</sup> ECRI report on Romania (fifth monitoring cycle), 2019, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

Most of the examples of racism and racial discrimination could be observed in the context of the Roma ethnic minority. Particularly in the case of Roma, long-lasting racist stereotypes affect everyday life in fields such as education, housing, labour and policing, thereby perpetuating structural inequality and institutional racism.

Among Roma, discrimination at the workplace limits Roma people's future potential, thereby contributing to their marginalisation.<sup>1275</sup> In this environment, Roma who have been pushed into racialised working-class conditions are considered inferior. Their marginalised status is conducive to their exploitation and the 'reproduction of cheap labour force'.<sup>1276</sup> This is compounded by blatant disdain for the inclusion of Roma's history in Romanian schools and textbooks.<sup>1277</sup> School segregation is another manifestation of institutionalised racism and discrimination. However, the situation seems to be improving (8% of Roma children study in segregated schools in Romania) and is not as bad as in EU Member States such as Bulgaria (60%), Slovakia (62%) and Hungary (61%).<sup>1278</sup>

Institutional racism towards Roma also occurs in the context of housing policy and takes the form of precarious housing conditions and evictions. For instance, the first case of a Roma housing rights violation occurred in 2001 in Piatra Neamt, when the city mayor removed 150 families and relocated them to unused commercial old buildings away from the city<sup>1279</sup>. Another example concerns a Roma district in Bucharest where utilities are much worse than the average for Bucharest<sup>1280</sup>. Another sign of racism has been housing-related issues such as local administrations' negligence in collecting garbage in Roma neighbourhoods as frequently<sup>1281</sup>.

Due to anti-Roma stereotypes, racism is institutionalized also when it comes to healthcare. Roma children and adults are less likely to be informed about the importance of seeking medical attention and medical advice more regularly. Health education in schools lacks the structure to explain to children the importance of physical, sexual, and psychological wellbeing, especially in remote Roma communities, where health care may be restricted or missing. Hence, Roma people have greater infant mortality rates and a shorter life expectancy at birth, as claimed by the World Health Organization<sup>1282</sup>. The unavailability of efficient responsiveness in terms of medical services and of medical mediators is

<sup>1275</sup> Militaru, E., Stanila, L., Vasilescu, M.D., 'Investigating labor market discrimination in Romania', *Sustainability*, Vol. 12, No. 4983, 2020, available at: <https://www.mdpi.com/2071-1050/12/12/4983>.

<sup>1276</sup> Vincze, E., 'Ghettoization: The production of marginal spaces of housing and the reproduction of racialized labour'; Petrovici, N., Picker, G., Rat, C., Vincze, E., *Racialized Labor in Romania: Spaces of Marginality at the Periphery of Global Capitalism*, Palgrave, 2019, pp. 63-95, p. 64, available at: [https://www.academia.edu/37060942/Spaces\\_of\\_Marginality\\_at\\_the\\_Periphery\\_of\\_Global\\_Capitalism\\_Racialized\\_labor\\_in\\_romania\\_neighborhoods\\_communities\\_and\\_urban\\_marginality\\_Palgrave\\_Macmillan\\_2018](https://www.academia.edu/37060942/Spaces_of_Marginality_at_the_Periphery_of_Global_Capitalism_Racialized_labor_in_romania_neighborhoods_communities_and_urban_marginality_Palgrave_Macmillan_2018).

<sup>1277</sup> End, M., 'History of antigypsyism in Europe: The social causes', in Kyuchokov Hristo (ed.), *New Faces of Antigypsyism in Modern Europe*, H-Soz-u-Kult, Prague, 2012, available at: <https://www.hsozkult.de/conferencereport/id/taunungsberichte-4466>.

<sup>1278</sup> FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – Selected findings*, 2018, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-eu-minorities-survey-roma-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf).

<sup>1279</sup> Mandache M., 'A brief insight into the systemic racism Roma face in accessing housing in Romania', FEANTSA, *Homeless in Europe : Roma Experiences of Homelessness in Europe*, 2020.

<sup>1280</sup> Abu – Hamed T., Negev M., Sinea A., Teschner N. & Vornicu A., 'Extreme energy poverty in the urban peripheries of Romania and Israel: Policy, planning and infrastructure', *Energy Research & Social Science*, Vol. 66, No. 101502, 2020.

<sup>1281</sup> The Guardian, 'Roma suffer under EU's environmental racism', report concludes, 6 April 2020, available at <https://www.theguardian.com/world/2020/apr/06/roma-suffer-under-eus-environmental-racism-report-concludes>.

<sup>1282</sup> Abu – Hamed T., Negev M., Sinea A., Teschner N. & Vornicu A., 'Extreme energy poverty in the urban peripheries of Romania and Israel: Policy, planning and infrastructure', *Energy Research & Social Science*, Vol. 66, No. 101502, 2020.

yet another obstacle. For instance, because of the potentially unsafe environment, ambulance services have refused to treat and transport patients<sup>1283</sup>.

Racism has been institutionalized also in the area of policing. Strategic documents regarding Roma inclusion are shaped in ambiguous language which frames and justifies their discrimination, based on ethnicity and its apparent connection to criminality. The absence of any mentioning of anti-Roma prejudice or hate crimes in such documents, as well as the dismissal of Roma people as victims diminishes the likelihood of future favourable turnouts<sup>1284</sup>. There have been multiple accounts of cases of racial discrimination, particularly against Roma, but in some cases against Muslims (women wearing headscarves), in the form of police misconduct and racial profiling<sup>1285</sup>. COVID-19 has worsened this situation. In the context of the pandemic, the police authorities have enforced disproportionate and militarized tactics targeting Roma neighbourhoods/towns. Some of these measures have been justified by racist media narratives portraying Roma as public threat to health and safety.

Cases of alleged anti-black and anti-Asian racism have been present, though not as widespread and as institutionalized as those related to Roma. When it comes to anti-black and anti-Asian racism, it is mainly in the context of Romanian football and in the employment sphere.

In 2020 a Romanian referee used the insulting N-word during a football match between Paris Saint Germain and Istanbul Basaksehir, following claims by the National Council for Combatting Discrimination that he used racist expressions during the match. This case is one example of the racism existing in Romanian football. For decades, football fan chanting against “gypsies” and “Hungarians out of the country” have been present in Romanian football. Racial abuse has been reported even among members of the Romanian national team (against members of colour in the Swedish national team). Importantly, among racist football fans have been members of ultra-nationalist groups who would propagate messages with political, Islamophobic and anti-refugee messages<sup>1286</sup>. Some sources claim that racism and xenophobia are “ingrained” among the high-ranking circles of Romanian football. Among prominent Romanian football coaches or mayors of famous football towns racism is particularly strong against football players of African origin who play in Romania.

Anti-Asian racism became apparent in 2020 in Ditrau, a small Romanian village, where the local community organized protests against a bakery ownership which had hired Sri Lankan employees. In this case, the bakery owner refused to fulfil local residents’ fearful anti-immigrant claims to let go of the workers<sup>1287</sup>.

### J.3 Legislative framework including relevant case law and architecture of the equality bodies, its scope and powers

Overall, the anti-racism national law can be grouped into two broader categories: criminal legislation, and civil and administrative legislation.

<sup>1283</sup> Muncan B., ‘Eastern European Roma: Ethnic discrimination in the public healthcare system’, *Journal of Global Health Reports*, Vol. 2, 2018.

<sup>1284</sup> Popoviciu S., & Tileaga C., ‘Subtle forms of racism in strategy documents concerning Roma inclusion’, *Journal of Community & Applied Social Psychology*, Vol. 30, No. 1, 2019, pp. 85-102.

<sup>1285</sup> Op. Cit. ECRI, 2019.

<sup>1286</sup> Stefanescu, C., Does Romanian football have a racism problem?, 2020, <https://www.dw.com/en/does-romanian-football-have-a-racism-problem/a-55897738> .

<sup>1287</sup> Radio Free Europe, Romanian village bakes up a racism storm over Asian employees, 2020, <https://www.rferl.org/a/romanian-bakery-breaks-with-village-over-asian-employees/30415029.html> .

## Constitutional Law

The Romanian Constitution, amended in 2003, proclaims non-discrimination according to “race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin” (Art. 4(2)). Article 6 guarantees the right to identity belonging to national minorities in equal and non-discriminatory ways. Article 16 proclaims equality of all citizens before the law and public authority without discrimination. The text complies with Directive 2000/78/EC as it protects against discrimination on the grounds of language, opinion, political adherence, property and social origin. The Constitution covers all areas of the EU directives, but the Constitution’s scope is broader than that of the directives. The provisions are not directly applicable as they cannot be enforced against private individuals.

## Criminal Law

Government Emergency Ordinance No. 31/2002 (GEO No. 31/2002) aims to prohibit fascist, racist and xenophobic organisations. GEO No. 31/2002 was amended in 2015 and its scope was extended to the prohibition of legionary symbols and acts related to the Holocaust in Romania.<sup>1288</sup> In the Romanian Criminal Code, Article 369 criminalises the instigation of hatred or discrimination and makes it punishable by fines and imprisonment. Article 77 of the Criminal Code specifies grounds for aggravating circumstances with respect to the punishment, including race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion, social origin or similar. However, the 2019 ECRI report indicated that the Criminal Code does not include important grounds such as national origin, colour, and citizenship. No reference is contained within the Criminal Code regarding threats on the grounds of race, colour, language, religion, citizenship or national/ethnic origin.<sup>1289</sup>

## Civil and Administrative Law

- The Romanian Anti-discrimination Law, Governmental Ordinance 137/2000<sup>1290</sup> - the Ordinance was adopted in 2000, but was amended several times. The amendments of 2013 were made in the framework of the CJEU proceedings in the case C-81/12 *ACCEPT vs NCCD*<sup>1291</sup>, the so-called Becali case, which concerned discrimination on the grounds of sexual orientation<sup>1292</sup>. The content of this law covers race, nationality, ethnic origin, language, religion, HIV positive status, social status, belonging to a disadvantaged group or any other criterion (EU Commission, 2020). The last three criteria are not included in the EU-anti-discrimination directives (2000/43/EC and 2000/78/EC) and in this sense Ordinance 137/2000 goes beyond the directives. The material scope of the legislation also goes beyond the EU directives in that it provides protection in the freedom of movement and right to dignity.
- Law to Prevent and Combat Antigypsyism – in January 2021, the Romanian President promulgated a law adopted by Parliament in December 2020 which aims to punish anti-Roma verbal and physical hatred and actions, including hate crimes against Roma places of worship, traditions and the Roma language<sup>1293</sup>. According to the new legislation, offenders can be imprisoned for hate

<sup>1288</sup> ECRI (2019), *Report on Romania (fifth monitoring cycle)*, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

<sup>1289</sup> ECRI, *Report on Romania*, op. cit.

<sup>1290</sup> Romanian Government, *Ordinance on preventing and punishing all forms of discrimination*, 2000, <https://www.legislationline.org/documents/id/16606>.

<sup>1291</sup> CJEU, *Case C-81/12 Accept v NCCD*, 2013, <https://eu.vlex.com/vid/judgment-of-the-court-838610281>.

<sup>1292</sup> European Commission, *Country report Non-discrimination, Romania 2020*, 2020, <https://www.equalitylaw.eu/downloads/5229-romania-country-report-non-discrimination-2020-1-56-mb>.

<sup>1293</sup> Barbera, M., *Romania to punish anti-Roma acts with up to 10 years in jail*, *BalkanInsight*, 2020, <https://balkaninsight.com/2020/12/16/romania-to-punish-anti-roma-acts-with-up-to-10-years-in-jail/>, and Euronews,

crimes against Roma<sup>1294</sup>. Some experts claim that the bill is aimed to educate the Romanian public about the issue of racism in the country and they also claim that it may have a limited impact granted the unsuccessful investigation and sanctioning of crimes in this area more generally<sup>1295</sup>.

The Romanian state has signed the major European and international human rights documents except for the Additional Protocol of the European Social Charter (EU Commission, 2020). The Constitution solidifies the country's conformity to the Universal Declaration of Human Rights. The Constitution also recognizes that international human rights law is primary unless national human rights law gives more favour to human rights.

Some major examples of relevant case law relate to: alleged racism against Roma, violence between Roma and the Romanian police, as well as challenges which certain national minorities have been facing in running for political office:

- Case of *Boaca and Others v. Romania*<sup>1296</sup>, Application no. 40355/11 (decision from 2016) – the case reached the ECtHR and concerned violent treatment and excessive police violence against a Roma man and his family.
- Case of *Ciorcan and Others v. Romania*<sup>1297</sup>, Application no. 40355/11, (decision from 2015) – this case also reached the ECtHR and concerned a conflict between inhabitants of a Roma neighbourhood and the Mures County Police at which special police forces entered the neighbourhood and engaged in violence against the inhabitants. The case raised the question of racism as a motive for police action.
- Case of *Lacatus and Others v. Romania*<sup>1298</sup>, Application no. 12694/04, (decision from 2013) – this case reached the ECtHR and involved a conflict between Roma in the village of Hadareni (Mures County) and Romanian locals who burned Roma property in response to a spat between three Roma men and a non-Roma man. Allegedly, the police was observing the mobbing of Roma property without taking action to prevent such destruction, which also caused the death of several Roma men.
- Case of *Danis and Association of Ethnic Turks v. Romania*<sup>1299</sup>, Application no. 16632/09 (decision from 2015) – in this case, before the 2008 parliamentary elections, Mr. Sabit Danis wanted to run for membership in the Romanian parliament on behalf of the Turkish minority through the Association of Person of Turkish Origin (Asociația etnicilor turci). The applicant argued that he had been placed at a disadvantage by the Romanian state as shortly before the elections, the government changed the electoral law which technically created obstacles related to the public utility status of such associations. The Constitutional Court rejected Mr. Danis's claim whereas the ECHR proclaimed that introducing new status criteria shortly before an election is incompatible with democratic principles.

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Romania to introduce law against anti-Roma hate speech, 2021, <https://www.euronews.com/2021/01/06/romania-to-introduce-law-against-anti-roma-hate-speech> .

<sup>1294</sup> Ibid.

<sup>1295</sup> Iordache, R., Flash report: Anti-gypsyism law adopted by Romanian Parliament, 2021, <https://www.equalitylaw.eu/downloads/5328-romania-anti-gypsyism-law-adopted-by-romanian-parliament-81-kb> .

<sup>1296</sup> ECtHR, *Case of Boaca and Others v. Romania*, 2016, <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-159914%22>].

<sup>1297</sup> ECtHR, *Case of Ciocan and Others v. Romania*, 2015, <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/29414-09-ciorcan-i-inni-v-rumunia-wyrok-europejskiego-521715377>

<sup>1298</sup> ECtHR, *Case of Lacatus and Others v. Romania*, 2013, <https://www.refworld.org/cases,ECHR,50a2893d2.html>

<sup>1299</sup> ECtHR, *Affair danis el l'association des personnes d'origine Turque c. Roumanie*, 2015, <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-153920%22>].

- Case of *Cegolea v. Romania*<sup>1300</sup>, *Application no. 25560/13* (decision from 2020) – this case concerns Ms. Cegolea, the president of the national Italian minority foundation “Vox Mentis.” In the 2012 parliamentary elections she wanted to run for candidacy in the Romanian parliament on behalf of the Italian minority in Romania. Similarly to the case with the Turkish minority, shortly before the election day, the Romanian government amended legislation on the registration of associations and foundations. This sudden change prevented “Vox Mentis” from being eligible to run in the elections. The ECtHR proclaimed that there has been violation of Article 14 of the European Convention on Human Rights.

The National Council for Combatting Discrimination (NCCD) is the national equality body of Romania set up to supervise national compliance with the EU anti-discrimination legislation. Although it is under parliamentary oversight, the NCCD is autonomous, encompasses 14 discrimination criteria<sup>1301</sup> and possesses sanctioning powers<sup>1302</sup>. The establishment of the NCCD in 2002 represented the transposition of the EU anti-discrimination legislation to the national level.

The NCCD is a quasi-judicial body similar to a tribunal with litigation powers including: the capacity to decide on complaints through recommendations, monitor discrimination cases before the court, provide expert interventions before court cases of discrimination, mediate discrimination cases, investigate and sanction discriminatory acts. It has the right to intervene before the court in legally binding formal decisions on complaints. The institution has the mandate to manage issues related to hate speech and the UN Convention on the Rights of Persons with Disabilities<sup>1303</sup>. NCCD can also draft laws regarding combatting discrimination as well as draft other opinions to monitor the harmonization of legal provisions in the Romanian legislation with the non-discrimination principles established by the EU<sup>1304</sup>.

The NCCD is led by a president who can delegate authority to a vice-president. The president and vice-president are members of the Steering Board – the NCCD deliberative body which enforces the legal mandate of the NCCD. The Steering Board is comprised of 9 members each of whom has the rank of a Secretary of State and who is nominated by members of the Romanian Parliament, and eventually interviewed and appointed at a plenary session by the two chambers of the Romanian Parliament. As of the end of 2020, 68 employees occupied positions in the NCCD<sup>1305</sup>.

The Council can exercise its powers in the following issue areas: finding and investigating acts of discrimination, prevention of discrimination, mediation of discrimination, monitoring of discrimination, and providing specialized assistance to victims of discrimination<sup>1306</sup>. Among the activities of the NCCD have been: activities aimed at supporting vulnerable groups (in the form of trainings), activities supporting duty bearers and service providers (through trainings, practical support, etc.), communication activities, recommendations on discrimination, the publication of reports, research reports (e.g., surveys).

<sup>1300</sup> ECtHR, *Cegolea v. Romania*, 2020, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-12774%22%7D>.

<sup>1301</sup> The discrimination criteria include: non-contagious chronic disease, sexual orientation, HIV infection, language, political, religion, disadvantaged group, age, gender, nationality, disability, ethnicity, race, other.

<sup>1302</sup> Consiliul National pentru Combaterea Discriminarii, Activity report 2020, 2021a, p. 6, <https://www.cncd.ro/wp-content/uploads/2021/06/Raport-de-activitate-CNCD-2020-EN.pdf>.

<sup>1303</sup> Equinet, European Network of Equality Bodies, National Council for Combatting Discrimination, 2019, [https://equineteurope.org/author/romania\\_nccd/](https://equineteurope.org/author/romania_nccd/).

<sup>1304</sup> Op. Cit. ECRI, 2019.

<sup>1305</sup> Op. Cit. Consiliul National pentru Combaterea Discriminarii, 2021a.

<sup>1306</sup> Consiliul National pentru Combaterea Discriminarii, About CNCD, 2021b, <https://www.cncd.ro/despre-cncd-prezentare-general/>.

The People's Advocate (the Ombudsperson) was set up in 1991 as an independent public authority and alongside the NCCD, it has some impact on anti-discrimination policy. However, it does not have a mandate to combat racism, racial discrimination, xenophobia and intolerance. It only issues recommendations, notifies public authorities of their discriminatory actions, but cannot issue sanctions similar to the NCCD<sup>1307</sup>.

Both the Ombudsman and the NCCD have been criticized for having limited financial and human resources to fulfil their tasks<sup>1308</sup>. ECRI has noted that the two institutions have overlapping functions without effective inter-coordination. NCCD has been criticized for being politicized<sup>1309</sup>.

#### J.4 Statistics on racism, xenophobia and racial discrimination

According to the latest ECRI report on Romania, hate crimes related to racism are underreported as victims often lack trust in the Romanian authorities to address such crimes impartially and effectively. Although the Romanian authorities have been reporting numbers on racism to the OSCE, different national institutions have been doing this in their own way and the data reports have lacked comprehensiveness<sup>1310</sup>. Similarly to the previous ECRI report, the latest one argues that there are no systemic data collection efforts and numbers on incidents of racist hate crime, hate speech, racist crime investigations, prosecutions and sentencing are not sufficient.

Available racist violence data is also limited and dates back a few years ago. Thirty-three anti-Semitic criminal cases occurred between 2014-2016<sup>1311</sup>. Vandalism cases against the Jewish community occurred a few times in 2017 and 2018<sup>1312</sup>. Rarely have refugees been targets of violence, with an attack reported on refugees speaking Arabic<sup>1313</sup>. There have been assaults on Muslim women wearing headscarves in public<sup>1314</sup>.

These cases of violence have been little compared to the situation with Roma who continue to be targets of racially-motivated violence, particularly when it comes to policing<sup>1315</sup>. As reported by FRA and the UN Committee against Torture, police and law enforcement stops of Roma continue to be prevalent, but official numbers of such acts are lacking. There have been recent cases of police brutalities against Roma which are not sanctioned by a Romanian court system highly biased in favour of law enforcement authorities<sup>1316</sup>.

<sup>1307</sup> Op. Cit. ECRI, 2019.

<sup>1308</sup> Ibid.

<sup>1309</sup> European Commission, Country report Non-discrimination, Romania 2020, 2020, <https://www.equalitylaw.eu/downloads/5229-romania-country-report-non-discrimination-2020-1-56-mb>, and U.S. Department of State, 2020 country reports on human rights practices: Romania, Bureau of democracy, human rights, and labor, 2021, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/romania/>

<sup>1310</sup> Op. Cit. ECRI, 2019.

<sup>1311</sup> FRA, (2017), Antisemitism- Overview of data available in the European Union 2006–2016, 2017.

<sup>1312</sup> The New York Times, *Antisemitic Graffiti Scrawled on Childhood Home of Elie Wiesel in Romania*, 2018, available at: <https://www.nytimes.com/2018/08/05/world/europe/elie-wiesel-house-romania.html> last accessed on 19 August 2021.

<sup>1313</sup> UNHCR (United Nations High Commissioner for Refugees, Submission to the OSCE-ODIHR Hate Crime reporting: Romania, 2016.

<sup>1314</sup> Op. Cit. ECRI, 2019.

<sup>1315</sup> Ibid.

<sup>1316</sup> Petre, A., Racism, police brutality and online hate: Why Romania's Roma are no nearer their Black Lives Matter movement, BalkanInsight, 2021, <https://balkaninsight.com/2021/03/31/racism-police-brutality-and-online-hate-why-romania-s-roma-are-no-nearer-their-black-lives-matter-moment/> last accessed 17 August 2021.

One proxy way to receive an idea of statistics on racism, xenophobia and racial discrimination trends is through tracking down petitions received and processed by the NCCD<sup>1317</sup>. As noted above, though, such data may underreport the actual prevalence of racism, xenophobia and racial discrimination. Between 2002-2020, the NCCD received a total of 11 676 petitions for discrimination, out of which 1 039 were received in 2020 (this is the greatest annual petition number since 2002). Out of all petitions for 2020, the distribution for each of the NCCD criteria/reasons is the following: non-contagious disease (8), sexual orientation (11), HIV infection (7), language (26), political (24), religion (138), disadvantaged group (13), age (38), gender (30), nationality (83), disability (90), ethnicity (92), others (220), race (1), social category (258).<sup>1318</sup>

## J.5 Evaluation of the antiracism and antiracial discrimination policies and legislation

The 2019 report by the European Commission against Racism and Intolerance (ECRI) outlines positive developments since the previous ECRI report (2014) as well as remaining issues of concern and areas where Romania needs to take further action.

Since the publication of the 2014 ECRI report, Romania has taken a number of progress steps in the area of antiracism and antiracial discrimination policies. One such sign of progress has been the 2015 amendment to the GEO No. 31/2002 on the prohibition of fascist, xenophobic and racist organisations so as to include also the prohibition of legionary symbols and actions related to the Holocaust. Another success has been the 2018 adoption of specific criminal legislation and measures against antisemitism.

Another sign of progress is the current possibility to reach out to data on racially motivated crimes published by the Ministry of Justice's tool for court statistics – ECRIS<sup>1319</sup>. Along these lines, in 2015 the Office of the General Prosecutor implemented a strategy to strengthen the effectiveness of criminal investigations related to ill-treatment of minority groups by law enforcement<sup>1320</sup>. Furthermore, individuals who have received refuge and subsidiary protection statuses have been given the right to work, access to health care, education and social housing, equally as Romanian citizens. There has been an integration program for asylum seekers which provides them with Romanian language and culture courses, as well as with assistance to apply for financial support.

ECRI also recognizes some progress related to Roma. In 2016, the government issued a Ministerial Order for the prevention of school segregation aiming to avoid early school leaving and provide access to quality education to Roma. Additionally, free transportation and scholarships have been introduced for Roma students of secondary and professional schools.

The EU Commission also indicates that the role of the NCCD in litigation before the Romanian Constitutional Court and the CJEU in some cases, as well as the NCCD involvement in drafting and supporting bills is a positive development<sup>1321</sup>.

However, the latest ECRI report indicates that there are still issues of concern. First, ECRI argues that the Romanian Criminal Code is still not completely aligned with ECRI's General Policy Recommendation

<sup>1317</sup> Op. Cit. Consiliul National pentru Combaterea Discriminarii, 2021a.

<sup>1318</sup> The NCCD report does not clarify what is included within the "other," "social category," and "disadvantaged group."

<sup>1319</sup> This report does not include ECRIS statistics as access to them is paid.

<sup>1320</sup> ECRI report on Romania (fifth monitoring cycle), 2019, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

<sup>1321</sup> European Commission, 2020.

No. 7<sup>1322</sup> on an adequate national legislation to combat racism and racial discrimination. Inadequacies continue to exist also with regard to civil and administrative laws.

Such inadequacies continue to be contextualized by racist and intolerant hate speech in public discourse and also on the Internet. Some of the main target groups of such discourse are the Roma, the Hungarian minority and the Jewish community.

Another major issue is the lack of an independent body investigating cases of law enforcement misconduct in regard to minority groups as well as a generally inadequate response of the Romanian authorities to address such misconduct. Alleged cases of racial discrimination, racial profiling and other types of improper behaviour by the police against Roma are an ongoing issue.

Another challenge is the lack of a comprehensive and systematic data collection effort on hate crimes. There has been a failure to make sure that all court and NCCD decisions are published<sup>1323</sup>. When it comes to racial motivation behind hate speech and other types of hate crimes, anti-criminal prosecution action is rarely taken. This potentially further increases the extent of underreporting of crimes and acts with an racial motives. ECRI reports that there is insufficient knowledge and expertise among law enforcement bodies and the judiciary in recognizing and addressing hate crimes on racist grounds.

When it comes to Roma, Romania's National Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority is considered to have little impact, likely due to financial constraints in its implementation. Roma continue to be the most disadvantaged minority on the labour market. Forced evictions from Roma settlements continue without guarantees for proper alternatives.

Another major legislative challenge outlined in the 2019 ECRI report is the undeveloped status of the National Strategy on Equality, Inclusion, Diversity (2018 – 2022) drafted by the NCCD which has not been adopted<sup>1324</sup>. This coincides with generally low levels of general public awareness on equality and non-discrimination, rights and access to justice.

To address such gaps, ECRI has propounded a number of recommendations to Romanian national authorities:

- To amend the Criminal Code to include the following: offences of incitement to violence and public insults and defamation of racist nature applied to both individuals and groups.
- Allocate to the NCCD and the national Ombudsman sufficient financial and human resources and address overlapping jurisdictions of the two institutions, and enhance cooperation between them.
- To design and implement a solid and coherent data collection system to track down hate crimes which go through the courts and the information about them is public (**ECRI defined this as a priority recommendation**).
- To define and prohibit racial profiling by law.
- To ensure that an independent body is created to investigate cases of racial discrimination by the police.

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<sup>1322</sup> Council of Europe, *ECRI general policy recommendation No. 7: On national legislation to combat racism and racial discrimination*, 2018, <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>.

<sup>1323</sup> European Commission, 2020.

<sup>1324</sup> ECRI report on Romania (fifth monitoring cycle), 2019, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

- To take urgent steps to ensure that anyone who engages in hate speech is covered by the Criminal Code and prosecuted and punished for their actions. Elected bodies and political parties should self-regulate on matters of hate speech through the adoption and implementation of proper codes of conduct which provide conditions for penalties of breaches of conduct, drawing on the principles behind General Policy Recommendation No. 15<sup>1325</sup>. The cybercrime unit should intensify its work and be provided with the technical and human resources to tackle online hate speech.
- To train law enforcement authorities, including police, prosecutors and judges on how to deal with racially motivated violence (**ECRI defined this as a priority recommendation**)
- To provide sufficient funding for implementing the Strategy of Inclusion of Roma and ensure greater institutional accountability between local and central authorities.
- To ensure effective implementation of Ministerial Order no. 6134/2016 which prohibits school segregation, to set up a monitoring procedure.
- Amend the Law on Housing so that it prioritizes social housing for vulnerable groups, including ethnic minority groups.
- Adopt the National Strategy on Equality, Inclusion, Diversity.

## J.6 Impact of the COVID-19 pandemic on racism in the country

When it comes to the impacts of the COVID-19 pandemic, most sources speak to the impacts on the Roma minority as a scapegoat of the pandemic. Some sources have claimed that the pandemic has led to an increase in antigypsyism in the country<sup>1326</sup>. The COVID-19 pandemic provoked loss of income and access to basic services to some minority groups in Romania, particularly among the Roma community<sup>1327</sup>. Together with such losses, the Roma community has experienced increased stigmatization and discrimination in relation to the pandemic.

On the one hand, there has been evidence that the Romanian state has engaged in actions guided by allegedly racist motives and with implications for racism in the country. Reports have shown that in the context of the pandemic the state has implemented militarized measures in Roma neighbourhoods and towns, unjustified sanctions through large fines or unjustified force, creating states of panic among the Roma community<sup>1328</sup>. For instance, police abuse and restrictions have been imposed on Roma in some cities, such as Ponorata. Authority figures have also been caught in inappropriate anti-Roma discourse related to COVID-19. One such example involved the prefect of one of the biggest counties

<sup>1325</sup> Council of Europe, *ECRI general policy recommendation No. 15: On combatting hate speech*, 2016, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>.

<sup>1326</sup> Szakacs, J. & Bognar, E., *The impact of disinformation campaigns about migrants and minority groups in the EU*, European Parliament, 2021, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653641/EXPO\\_IDA\(2021\)653641\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653641/EXPO_IDA(2021)653641_EN.pdf)

<sup>1327</sup> Proskuryakova, T., *Roma experience can inform Romania's post-COVID-19 successful recovery*, World Bank, 2021, <https://www.worldbank.org/en/news/opinion/2021/03/24/roma-experience-can-inform-romania-s-post-covid-19-successful-recovery>.

<sup>1328</sup> FRA (European Union Agency for Fundamental Rights), *Implications of COVID-19 pandemic on Roma and travellers communities*, 2020, [https://webcache.googleusercontent.com/search?q=cache:VMkN8tRDO7EJ:https://fra.europa.eu/sites/default/files/fra\\_uploads/ro\\_report\\_-\\_covid-19\\_impact\\_on\\_roma\\_en.pdf+&cd=2&hl=en&ct=clnk&gl=bq.](https://webcache.googleusercontent.com/search?q=cache:VMkN8tRDO7EJ:https://fra.europa.eu/sites/default/files/fra_uploads/ro_report_-_covid-19_impact_on_roma_en.pdf+&cd=2&hl=en&ct=clnk&gl=bq.), Matache & Bhabha, 2021.

in Romania, Timis, who has hinted that a local Roma student who was infected with COVID-19 spread the virus within the classroom due to belonging to a Roma family<sup>1329</sup>.

Media have also played a role in aggravating the situation with racism in Romania at the time of COVID-19. In this regard, the National Agency for Roma has reported an extreme situation in terms of a heightened risk of racial hatred in media and the Internet<sup>1330</sup>. Racism, particularly against Roma, has exploded in media through negative and misleading narratives, and fake news. One instance has been a racist media narrative talking about the large number of contaminated deaths in Tandarei, a small town, and this narrative has inspired fear and hatred against local Roma. On the basis of racist assumptions about Roma genetic qualities, a national newspaper also misinformed the Romanian public by suggesting that the Roma are immune to the virus<sup>1331</sup>. At this backdrop, there were attempts by various pro-Roma NGOs and public persons, including the Romanian President and Prime Minister who broadcasted pro-Roma statements. However, such messages of support did not become popular<sup>1332</sup>.

Roma have been largely blamed for disseminating the virus – the case of the town of Tandarei, where Roma returning from abroad were blamed for the spread of the virus locally, is indicative. In this regard, the National Agency for Roma reported about a public narrative claiming that Roma returning from abroad are to blame for the increasing cases of COVID-19 infections as they allegedly did not respect isolation and quarantine rules. Such a narrative was adopted by the mass media, television and social media which presented the narrative in racial terms<sup>1333</sup>.

## J.7 Conclusion

Facets of racism, xenophobia and anti-Semitism have well-established roots in Romania. This report suggests that a number of root causes are responsible for such current trends, including historically-motivated stereotypes about certain groups (e.g., the Roma ethnic minority), historical revisionism, media manipulation and political nationalist agenda. The most frequent targets to racism, xenophobia, anti-Semitism and racial discrimination in Romania have been the Roma ethnic minority, the Hungarian minority, LGBTI people, the Jewish community, and at times Muslims. The Roma ethnic minority suffers most severely from racist trends – discrimination and racism manifest and in some cases have been institutionalized in the areas of employment, housing, healthcare, as well as in policing. Instances of anti-Asian and anti-black racism have been reported though not as extensively.

The Romanian state has signed the major international and European human rights laws. On the national level, it is mainly the criminal, and the civil and administrative laws which regulate issues related to racism, xenophobia and discrimination. The main piece of legislation regulating anti-racism policy is the Romanian Anti-Discrimination Law, Governmental Ordinance (GEO) 136/2000 which

<sup>1329</sup> Neascu, B., Prefectul de Timiș, despre eleva cu coronavirus: „Putea să fie pozitivă și din alt mediu. Înțeleg că este tot dintr-o familie de romi (The Prefect of Timiș, about a female school pupil with coronavirus: “She could be positive from another environment. I understand that she belongs to a Roma family,” 2020, [https://www.libertatea.ro/stiri/prefectul-de-timis-despre-eleva-cu-coronavirus-putea-sa-fie-pozitiva-si-din-alt-mediu-inteleg-ca-este-tot-dintr-o-familie-de-romi-2906704?fbclid=IwAR0o438oYL2v6JbLtI2\\_8dpIIUcb5t7\\_Q3C9PM4adVEwYy2jkSVV1c7OhTs](https://www.libertatea.ro/stiri/prefectul-de-timis-despre-eleva-cu-coronavirus-putea-sa-fie-pozitiva-si-din-alt-mediu-inteleg-ca-este-tot-dintr-o-familie-de-romi-2906704?fbclid=IwAR0o438oYL2v6JbLtI2_8dpIIUcb5t7_Q3C9PM4adVEwYy2jkSVV1c7OhTs)

<sup>1330</sup> Op. Cit. FRA, 2020.

<sup>1331</sup> Zilei, E., Anticorpii țigănești au învins „Eurovirusul” în cartierul „La Capace” din Jilava (Gypsy anti-bodies defeated the “Eurovirus” in “La Capace” neighborhood of Jilava), 2020, [https://evz.ro/anticorpii-tiganesti-au-invins-eurovirusul-in-cartierul-la-capace-din-jilava.html?fbclid=IwAR0DJK9oztGdSpEvyV\\_tZujGVewxYk-k9IqKlctYArAk\\_1hojSb7dkknRd4](https://evz.ro/anticorpii-tiganesti-au-invins-eurovirusul-in-cartierul-la-capace-din-jilava.html?fbclid=IwAR0DJK9oztGdSpEvyV_tZujGVewxYk-k9IqKlctYArAk_1hojSb7dkknRd4).

<sup>1332</sup> Op. Cit. FRA, 2020.

<sup>1333</sup> Op. Cit. FRA, 2020.

transposes the EU anti-discrimination directives 2000/44/EC and 2000/78/EC and goes beyond the directives when it comes to some of the grounds of discrimination and the material scope of the directives. In 2021, Romania passed a Law to Prevent and Combat Antigypsyism, which is considered to have only educational functions and thus only a limited impact. The National Council for Combatting Discrimination is the national equality body of Romania responsible for supervising anti-racism and anti-discrimination policy in Romania.

Some positive aspects of the implementation of national anti-racism and anti-discrimination legislation concern: the 2015 amendment to the GEO No. 31/2002 including the prohibition of any symbol or act related to the Holocaust; the 2018 criminal legislation against antisemitism; the action of the NCCD before the Court and on advancing anti-discrimination bills; the 2016 ministerial order on prevention of school segregation and early school leaving; the strengthening of criminal investigations regarding mistreatment of minorities; the increased availability of data on racial crimes through the ECRIS system; the implementation of programs aiming at the right to work, access to healthcare, social housing, education and integration for refugees and people under subsidiary protection.

However, there are remaining legislative and policy gaps, including: an ongoing lack of alignment between the Romanian Criminal Code and some of ECRI's policy recommendations; the ongoing presence of racist speech in public discourse; the lack of an independent body which investigates cases of police misconduct and institutionalized racism; the ongoing lack of a national systematic data collection and national data on hate crimes; lack of expertise to address racial crimes; poor effect of the Romania's National Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority; and non-adoption of the National Strategy on Equality, Inclusion, Diversity (2018-2022).

Reports show that the COVID-19 pandemic has deepened and further institutionalized racism (particularly in the area of policing), especially when it comes to the Roma ethnic minority.

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This study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the LIBE Committee, provides an analysis of the distinctive features of racism, xenophobia and racial discrimination in the EU and selected EU Member States. It further examines various forms of racism, xenophobia and racial discrimination, their target groups and the impact of the COVID-19 pandemic. The study assesses anti-racism policies and legislation to determine effectiveness of the national and EU legislation and measures envisaged in the EU Anti-racism Action Plan on eradication of racism, xenophobia and racial discrimination. The study identifies gaps that need to be filled and provides recommendations on how to create engagement at all levels to achieve meaningful change and equality.

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