

# Racism and Racial Discrimination

Racism and discrimination towards migrants in the areas of employment, education and health continues to be worrying in Europe.

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In the words of the European Commission against Racism and Intolerance, “the situation continues to be worrying” in Europe (ECRI, 2009, p.7).

There has been a continuous increase in racially motivated incidents and crimes in Europe, including violent attacks, against visible minorities, namely people of African and Asian descent. The Roma people also face widespread negative attitudes and prejudice as well as discrimination and exclusion in all areas of life. Religious discrimination is a daily experience for minorities and faith-based groups, particularly Muslim and Jewish communities. Immigrants, both documented and undocumented, are vulnerable to various contemporary forms of racism, including slavery and various forms of institutionalised/legalised discrimination. There is also evidence of manifestations of racism and xenophobia against EU citizens – particularly against nationals of Bulgaria and Romania.

Although situations vary from country to country, surveys conducted in 2008 show the persistence of racism and racial discrimination in a number of areas, including housing, employment, education, health, policing and racial profiling, violence and crime, access to goods and services, and in the media and political discourse<sup>1</sup>. Ethnic and religious minorities are more likely to be homeless or live in poor quality housing. Racial discrimination in employment remains a major barrier to the economic and social inclusion of minorities, and immigrants and refugees are particularly vulnerable to the effects of the current global economic crisis. Unequal access, unequal outcomes and unequal attainment mark the participation of minorities in the educational field, due to direct and indirect barriers to access, segregation provisions and the lower quality of education granted. Access to available health care is limited by legal status as well as by factors such as habitat segregation, employment, mechanisms of social insurance and poverty. Law enforcement agencies reportedly do not respond appropriately to racist crime and are even perpetrators of racist practices and abuse against ethnic and religious minorities; racial and ethnic profiling is increasingly used as an accepted method in the fight against both crime and terrorism, despite it proving ineffec-

tive and even counterproductive. Racist crime and the mistreatment of ethnic and religious minorities is gaining more and more public acceptance. An increase in racist violence and crime is reported in Bulgaria and Cyprus, while a decrease is noted only in Belgium, France, Germany and Slovenia.

Members of ethnic minorities, including immigrants, have difficulty accessing crucial mechanisms. Recourse to legal remedies is often prevented by lack of information and basic instruments (mandatory by law), like judicial interpreters and translated documents. Financial services, including insurance, are generally more expensive for non-nationals; furthermore, there are very few examples of targeted services, even at the minimum level of providing information in different languages. A significant increase in racism in the media is also noticeable, as well as an increase in support for racist and xenophobic political parties. Xenophobic attitudes have also become normal in the positions taken by mainstream parties.

### Antidiscrimination policies

Almost all European countries have adopted legal provisions against racial discrimination. Nevertheless, there are still important gaps to be filled, the most important being the distance and inconsistency between legislation and its implementation. Furthermore, some countries are weakening equality legislation through non-specific provisions contained in other laws (such as immigration laws) and through security and antiterrorism measures<sup>2</sup>. Legal remedies are often barely accessible to members of vulnerable groups; specialised bodies are limited in power and scope and under-resourced; and law enforcement agencies are neither specifically trained nor monitored for discriminatory behaviour.

At the EU level, a positive development is the adoption by the European Council (seven years after the original Commission proposal) of the Framework decision on combating racism and xenophobia (2008). Although watered down during the inter-governmental negotiations, it may prove to be an important instrument, but needs to be consistently implemented by Member States, which does not seem to be a priority for any of the European governments.

As regards antidiscrimination legislation, the

EU claims that the so-called ‘Race Directive’ (EC, 2000) is the most advanced legislation in the world. Unfortunately, the Race Directive has serious limitations: Article 2 excludes “any treatment which arises from the legal status of the third country nationals”, thus allowing Member States to adopt discriminatory immigration laws and creating a de facto barrier to access by immigrants to legal remedies against racial and multiple discriminations. Furthermore, implementation in Member States is far from in full compliance with the EU legislation, a distance that has forced the European Commission to initiate infringement procedures against several Member States.

The same gap can be noticed in relation to the implementation of other policies, particularly migration, integration and social inclusion.

### Migration policies

Racism and racial discrimination can, but should not, be confused with the unequal treatment of third country nationals. Nevertheless, over-restrictive migration policies can undermine the principle of non-discrimination as well as the EU’s commitment to fight racism. Drawing a line between racial discrimination and discrimination on grounds of nationality is difficult: third country nationals are, to a large extent, members of Europe’s ethnic and religious minorities. As a consequence, those minorities are disproportionately affected by discrimination, including lawful and structural discrimination on the grounds of nationality. Racist crime, including violence, is often caused or aggravated by negative narratives and perceptions about migrants and asylum seekers.

EU and Member States’ policies are often based solely on a utilitarian approach, focusing on the economic role of migrants, rather than on respect for their fundamental rights. The European Commission recently confirmed this approach, stating that “promoting further channels for legal immigration should match the skills of immigrants against national labour market needs” (SEC, 2009). While it seems reasonable to take into account the labour market dynamics, making it the main approach can endanger fundamental rights. In the words of UNESCO:

*There is no guarantee that the logic of economics and that of human rights will lead to exactly the same protections and to exactly the same degree; indeed, where one is systematically subordinated to the other, such convergence seems unlikely. Perhaps*

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<sup>1</sup> For a detailed description and analysis of the situation in the EU 27, see the ENAR Shadow reports, available on the ENAR website ([www.enar-eu.org](http://www.enar-eu.org)).

<sup>2</sup> The most remarkable example is the recent legislation adopted in Italy under the so-called ‘Security Package’, which is expected to (and already has) negatively affect the fundamental rights of immigrants and asylum seekers as well as the public perception of ethnic and religious minorities, including the Roma people.

more importantly, however, the economic logic that is used to justify a set of rights in the context of legal migration pulls in largely the opposite direction when confronted with the issue of how to deal with irregular migrants; neither rights-as-incentive nor rights-as-just-deserts leave any conceptual space for a robust protection regime of that vulnerable group of people (as current EU legislation in this field amply demonstrates). (MacDonald & Cholewinski, 2007)

Additionally, the link established in public discourse, both by politicians and the media, between security issues (including terrorism), immigrants, and members of ethnic and religious minorities has fuelled and legitimised widespread racist and xenophobic attitudes, a trend confirmed by the success of extreme Right-wing parties supporting overtly racist and xenophobic positions in the last European Parliament elections. It cannot go unnoticed that the negative perception and representation of immigrants affects not only third country nationals, but EU citizens as well, particularly those who are citizens of the 'new' Member States or belong to certain ethnic, religious and linguistic minorities, namely Roma and Muslims.

### Integration policies

The Common Basic Principles (CBPs) for immigrant integration adopted by the Justice and Home Affairs Council of 19 November 2004 provide a very good basis for framing effective integration policies, with a strong link to respect for fundamental rights. Unfortunately, five years later, surveys show that few Member States have actually implemented these principles, and, those that have, to a very limited extent. Rather than mainstreaming the Common Basic Principles into other policies, EU governments have often mainstreamed security and control issues into integration. Provisions like language and integration tests have often been misinterpreted and misused to restrict immigrants' fundamental rights.

### Social inclusion

Antidiscrimination and social inclusion are linked by a direct and mutual relationship. Equal treatment and non-discrimination are a pre-requisite for successful inclusion into the host society; social and economic inclusion is an unavoidable step towards equality. Unfortunately, both at the EU and the national level, the link is often ignored. Social inclusion plans of action often mention discrimination as an issue to be addressed, but rarely include specific measures to deal with the disadvantages faced by ethnic and religious minorities. Antidiscrimination is too often limited to the legal protection of individuals, rather than actively promoting equality through social and educational provisions, including positive action. There are very few examples of a positive integration of antidiscrimination and social inclusion policies. The situation of the Roma people is a clear example

of the vicious cycle of racial discrimination and social exclusion. Roma in the EU suffer systematic and institutionalised social exclusion, which affects access to children's education, health care, employment and housing, and strengthens the discrimination against them as well as negative public perceptions.

### Challenges

Eradicating racial discrimination requires an integrated approach, based on respect for fundamental human rights.

As far as immigrants and asylum seekers are concerned, the European Network Against Racism has put forward 15 principles (2009) as the basis for a non-discriminatory approach:

1. **Promote positive values, conceptions and principles:** Public perceptions often become political assumptions and these are more often than not based on the premise that migrants should be restricted from fully exercising their human rights.
2. **Use positive terminology in political discourse:** Terminology must not perpetuate a negative image of migrants.
3. **Take a human rights-based approach:** The implementation of community law must be framed in conformity with international human rights obligations.
4. **Comply with human rights instruments:** The EU should ensure that all its actions, decisions, regulations, directives and measures are in line with international human rights standards.
5. **Make use of demographic data to challenge assumptions:** Demographic and other statistics should be used to publicise how much migrants contribute socially, economically and culturally.
6. **Ensure antidiscrimination for all:** Emphasis must be placed on antidiscrimination for all, irrespective of status or nationality.
7. **Respect the link between antidiscrimination, migration, integration and social inclusion:** Integration must not be used as a means of restricting the exercise of human rights of migrants and must not exclude or discriminate on any ground, whether on the basis of race or nationality or social or any other status.
8. **Enforce existing labour laws:** Strengthening the implementation and enforcement of existing labour laws under national and community law and under ILO conventions must be a priority.
9. **Protect workers' rights:** Fundamental human rights must cover all workers irrespective of legal status or skills and avoid direct or indirect penalisation of those who face exploitation, for example, through the application of detention and deportation policies.
10. **Ensure policy coherence:** Policy coherence with the EU employment and social policies,

the Lisbon Strategy and the fundamental rights agenda is an essential prerequisite for effective policy making.

11. **Promote gender sensitive and age sensitive policy making:** The specific needs of migrant women must be adequately addressed, as well as those of unaccompanied minors, young people, elderly people and specifically young people in employment.
12. **Ensure participation:** Migrants' voices must be heard in decision making on migration policy.
13. **Ensure equality in education:** It is important to pursue policies that promote the educational attainment of migrant children as well as the education needs of migrants more generally, including the second generation.
14. **Recognise the global context:** An effective approach must tackle poverty and social exclusion, especially within the context of the global economic crisis.
15. **Be proactive not reactive:** The achievement of a positive approach to migration requires policymakers and civil society to be proactive by pursuing a rights-based approach to migration.

The same principles, mutatis mutandis, should apply to policies concerning ethnic and religious minorities. The European Union and its Member States should actively combat negative associations that stigmatise specific groups, such as the Roma and Muslims, with particular attention to the language used by the media and political actors. Fundamental human rights, such as freedom of religion, freedom of movement and the right to family life, should not be jeopardised under any circumstances. Members of ethnic and religious minorities should be protected against discrimination in employment, housing, education and health care; this should include positive measures to deal with disadvantages and to accommodate cultural diversities. Minority communities should also have a say in the decision-making process and in policy making. ■

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