

## CERD and Discrimination Against Roma

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### Introduction

Recently while browsing at a used book store, I came upon a 1982 volume called *Extraordinary Groups: The Sociology of Unconventional Life-Styles*, by a certain William M. Kephart of the University of Pennsylvania, “University of Pennsylvania”. This included chapters on the “Old Order Amish”, the Oneida Community, the Father Divine Movement, the “Shakers”, the Mormons, and the Hutterites.

The book, however, opens with a chapter called “The Gypsies”. This began as follows: “The Gypsies are an incredible people; in fact, the more one studies them, the more incredible they become!”<sup>2</sup> Kephart then proceeds to summarize key features of conservative Romani culture, interspersed with comments such as “Gypsies have made a remarkable adaptation to their environment”; “Through it all, the Gypsies have survived. Gypsies always survive”; “Like so many aspects of Gypsy life, their origins are draped in mystery”.<sup>3</sup> Under the heading “Adaptability: The Gypsy Trademark”, Kephart asserts: “It is doubtful whether the Roma spend much time thinking about the causes of discrimination. Being realists, they expect it. And being Gypsies, they learn to live with it...”<sup>4</sup> It is a worthy thought experiment to substitute the word “Gypsies” with “Jews” or “African Americans” in these passages. It is more-or-less unimaginable that such superficial generalizations would be acceptable in mainstream discourse.

Why does the current essay begin with passages from a marginal pop/academic publication from 1982? To make the following observation: first of all, today, it is probably no longer conceivable that Roma or “Gypsies” would make an appearance in a series publication otherwise devoted to religious communities, as if the two might be elided under the general grouping of “unconventional lifestyles”. Secondly, and crucially, the general confusion surrounding Roma – lifestyle choice? “unconventional group”? collectivity of deviant behaviour? – has steadily given way to an understanding that the heterodox set of groups broadly identifying as Romani or Gypsy or Traveller are in fact to be understood as ethnic groups, one with a history of persecution and powerful contemporary discrimination, particularly, although not only, in Europe. The CERD Committee has played a central role in the developments which have brought about this fundamentally changed understanding. Unfortunately, these changes have been driven due to the CERD Committee’s growing awareness of and concern about the very palpable wave of anti-Romani sentiment and action in Europe following the major political changes following the collapse of Communism in 1989. Equally unfortunately, despite CERD’s best efforts, a fundamental change in the human rights situation of Roma, particularly in Europe, remains elusive.

### Roma in Europe and around the Globe

The Romani and related ethnic groups are a diverse set of peoples and communities living in Europe, the Americas and parts of Africa, related to similar groups in the Middle East and Central Asia, called ‘Lom’ and ‘Dom’. Roma are believed descended from groups of people who left India

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<sup>2</sup> Kephart, William M., *Extraordinary Groups: The Sociology of Unconventional Life-Styles*, New York: St. Martin’s Press, 1982, Second Edition, p.5.

<sup>3</sup> *Ibid.*, pp. 5-7.

<sup>4</sup> *Ibid.*, pp. 43-44.

approximately 1000 years ago and arrived in Europe in successive waves beginning in or around the 14<sup>th</sup> century. A lack of written community records makes Romani history an extremely difficult field, intensely reliant among other things on sources such as the historical imprint left on the various Romani dialects.<sup>5</sup> The history of Roma in Europe is not a happy one. Soon after their arrival in Europe Roma were excluded in Western Europe, and periodically subjected to raw persecution.<sup>6</sup> In the Ottoman Empire, Roma occupied a low status, even when members of the privileged Muslim community.<sup>7</sup> Roma were enslaved in the Romanian principalities.<sup>8</sup> From the beginning of the modern state, significant efforts were periodically undertaken – with mixed success – to assimilate Roma forcibly.<sup>9</sup> Roma were targeted for genocide during World War II.<sup>10</sup> The period since 1989 has seen a renewal of active anti-Romani antipathy throughout the European continent. Tens of thousands of Roma were ethnically cleansed from Kosovo in the period 1999-present.<sup>11</sup> Outbreaks of anti-Romani racism have plagued every European society without exception.

### **The CERD Committee's Engagement with Discrimination Against Roma**

#### **Before 1992**

Rooker divides examination of the CERD Committee's engagement with Roma into the period before 1992 and the period after it, noting a shift in the internal *modus operandi* of CERD around 1992.<sup>12</sup> She notes that, as a rule, Communist states denied that racial discrimination existed under Communism, but observes that a different reality at times emerged from reporting by states: "... one member of CERD agreed with the Czechoslovak statement that 'the problem is to solve the contradiction between the historical backwardness of Gypsies on the one hand, and the level achieved by the rest of society and the need of its social development on the other hand'."<sup>13</sup> Some states – notably Bulgaria – told CERD in the 1980s that there was no Romani community in the country.<sup>14</sup>

With direct reference to Bulgaria's contentions before CERD – and in particular in light of systematic campaigns in Bulgaria during the 1970s and 1980s against Muslims (including Roma), Turks and Pomaks -- Rooker quotes Banton, then a member of CERD, to the effect that "up until 1988, CERD was in no position to act against any but a pariah state".<sup>15</sup> Rooker concludes that,

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<sup>5</sup> See especially Matras, Yaron, *Romani: A Linguistic Introduction*, Cambridge: Cambridge University Press, 2002.

<sup>6</sup> See Fraser, Sir Angus, *The Gypsies*, Oxford: Blackwell, 1992.

<sup>7</sup> See Marushiakova, Elena & Popov, Vesselin, *The Gypsies in the Ottoman Empire*, Hatfield: University of Hertfordshire Press, 2001. Roma in Europe tend to be Christian or Muslim, although in some cases religious practice involves particular Romani forms. There are major Romani evangelical movements, one centre of Romani empowerment movements, as well as a major source of written Romani.

<sup>8</sup> See Viorel, Achim, *The Roma in Romanian History*, Central European University Press, 2004, pp. 27-132.

<sup>9</sup> See Crowe, David & Kolsti (eds), *The Gypsies of Eastern Europe*, Arno, N.Y.: M.E. Sharp Inc., 1991.

<sup>10</sup> See inter alia Zimmermann, Michael, *Verfolgt, Vertrieben, Vernichtet: Die Nationalsozialistische Vernichtungspolitik gegen Sinti und Roma*, Essen: Klartext, 1989; Kenrick, Donald & Grattan, Puxon, *Gypsies under the Swastika*, Hertfordshire: University of Hertfordshire Press, 1995.

<sup>11</sup> See Cahn, Claude, 'Birth of a Nation: Kosovo and the Persecution of Pariah Minorities', *German Law Journal*, Vol. 8, No. 1, pp. 81-94.

<sup>12</sup> Rooker, Marcia, *The International Supervision of the Protection of Romany People in Europe*, Nijmegen: Nijmegen University Press, 2002, p.104.

<sup>13</sup> *Ibid.*, p.105.

<sup>14</sup> *Ibid.*, p.109.

<sup>15</sup> *Ibid.* p.109.

“until the end of the Cold War, members of CERD asked few critical questions and hardly reacted to discriminatory statements [by members of government delegations] with respect to Romany people. Some states submitted information on remedies for racial discrimination against Romany people, but it was totally up to States whether they chose to submit such information. ... The quality of the reports and of the dialogues with state representatives definitely changed in the 1990s.”<sup>16</sup>

### The 1990s

The extent to which racism returned as a dynamic force to the European continent was among factors which propelled the CERD Committee to much more engaged action than previously. Generally, the civil wars of the former Yugoslavia, the steady advance of the Front National in France, as well as the inclusion in the Austrian Government in 1999 of the Republicans, an openly racist party, heightened the view that ethnic hatred was among – if not the heart – of core human rights issues in Europe after the collapse of Communism. More specifically as concerns Roma, the eastern European post-Communist transition featured violent pogroms in Romania, Bulgaria and other places; neo-Nazi skinhead movements targeting Roma for attack in the Czech Republic, Slovakia, Hungary, Serbia, Croatia, Poland, Russia and Bulgaria; and near-constant reports of abuse by police officers in all of the countries of the region. In Western Europe, the early 1990s featured mobilized efforts by States such as Belgium, Italy, Austria and Germany to expel eastern European Roma. Following the withdrawal of Serbian forces from Kosovo in June 1999, Roma and the related groups Ashkalis and Egyptians were ethnically cleansed from the province.

By the second half of the decade, the CERD Committee began serious engagement with States on issues related to discrimination against Roma. This was particularly the case with countries where the Committee received credible information from civil society as to violations of the ICERD treaty. Insofar as information coming to the attention of the Committee came very heavily, during this period, from the European Roma Rights Centre (ERRC), the Committee’s efforts were very engaged with respect to countries with a strong ERRC research presence, such as the Czech Republic, Greece, Hungary, Slovakia, Romania, Bulgaria and Italy, as well as with countries where Roma were already at the centre of concerns relating to racial discrimination, such as Spain. In this period, the CERD Committee focussed heavily on several key thematic areas – matters such as racially motivated violence by racist skinheads or police, and the failure of the justice system to rectify these harms, as well as racial segregation in schooling and housing. The Committee also expressed concern at particular issues in given country contexts, such as the impact of the 1993 Czech citizenship law in rendering thousands of Roma de facto stateless. This focus was also strongly as a result of the kind of information brought to the attention of the Committee during this period.

Thus, for example, in its March 1998 review of the Czech Republic, the Committee expressed “concern ... at the persistence of racial hatred and acts of violence, particularly by skinheads and others, towards persons belonging to minority groups, especially Roma and people of African or Asian origin. ... Concern is expressed at information indicating that the number of charges and convictions, including those of skinheads, is low relative to the number of abuses reported. It is also noted with concern that perpetrators of racial crime are often lightly punished and that, in a number of cases, prosecutors have been reluctant to identify a racial motive. Moreover, in the light of

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<sup>16</sup> Ibid., pp.109-110.

evidence of unnecessarily long proceedings and slow investigations of acts of racial crime, concern is raised about judicial effectiveness in this respect.”<sup>17</sup>

In addition the Committee’s March 1998 concluding observations include the following: “In light of reports indicating discrimination against Roma in areas such as housing, transport and employment, it is noted with concern that the State party does not have civil or administrative law provisions expressly outlawing discrimination in employment, education, housing and health care and that there exists no administrative regulation explicitly prohibiting racial discrimination by public institutions and agencies. The denial of access to public places such as restaurants, pubs, discotheques and similar establishments by persons belonging to some ethnic minorities, especially Roma, is also noted with concern.”<sup>18</sup> However, the Committee during this period appears keen to agree with the Czech Government that it has no express policy of discriminating against Roma.

The Committee during this period begins a pre-occupation with the segregation of Roma in education which continues to the present day: “The marginalization of the Roma community in the field of education is noted with concern. Evidence that a disproportionately large number of Roma children are placed in special schools, leading to de facto racial segregation, and that they also have a considerably lower level of participation in secondary and higher education, raises doubts about whether article 5 of the Convention is being fully implemented.”<sup>19</sup> Also, as noted above, the Committee raised concerns with respect to the 1993 Czech citizenship law, adopted in the context of the break-up of Czechoslovakia: “It is noted that the 1993 law on the acquisition of Czech citizenship (Law No. 40/1990) has resulted in widespread criticism from a number of international institutions and non-governmental organizations for its discriminatory effects, especially vis-à-vis Roma. While it is noted that the State party has taken steps to mitigate the negative consequences of the law, it is stressed that the act of rendering people stateless entails the deprivation of fundamental rights linked to citizenship, as well as exposing them to the risk of expulsion. Concern is expressed that there remain groups of the population for whom the question of citizenship has not yet been addressed in a satisfactory manner. ... many of whom are of Roma origin.”<sup>20</sup>

#### General Recommendation No. 27 on Discrimination Against Roma

On 16 August 2000, drawing together the Committee’s work in this areas up to that point, as well as recognizing the commonalities of issues faced by Roma in many countries – and in particular throughout the European continent – the CERD Committee issued General Recommendation 27 on Discrimination Against Roma.<sup>21</sup> General Recommendation 27 provides a comprehensive overview of the Committee’s approaches to Roma up to that time, and in many ways, they have not changed drastically since. It is organised into six subsections, reflecting the Committee’s thematic pre-occupations as of the end of the 1990s: (1) Measures of a General Nature; (2) Measures for Protections Against Racial Violence; (3) Measures in the Field of Education; (4) Measures to Improve Living Conditions; (5) Measures in the Field of the Media; and (6) Measures Concerning Participation in Public Life.

As concerns measures of a general nature, General Recommendation 27 (GR 27) starts by extending basic provisions of the ICERD treaty to explicit coverage of the situation of Roma. Thus,

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<sup>17</sup> CERD/C/304/Add.47, paras. 8-9.

<sup>18</sup> CERD/C/304/Add.47, para. 12.

<sup>19</sup> CERD/C/304/Add.47, para. 13.

<sup>20</sup> CERD/C/304/Add.47, para. 14.

<sup>21</sup> United Nations Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 27: Discrimination against Roma: 08/16/2000, contained in document A/55/18, annex V.

paragraph 1 calls on States: “To review and enact or amend legislation, as appropriate, in order to eliminate all forms of racial discrimination against Roma as against other persons or groups, in accordance with the Convention”.<sup>22</sup> Particular issues soon emerge however; GR 27 importantly recognizes the “deportation and extermination” harms suffered by Roma during World War II,<sup>23</sup> although as a result of internal community disputes over the name(s) of these events, it avoids using terms such as “Holocaust”. Similarly reflecting growing concerns within the diverse Romani and related communities, the Committee urges respect for “the wishes of Roma as to the designation they want to be given and the group to which they want to belong”.<sup>24</sup> Some issues, however, remain muted. Thus, although GR 27 recognizes that Romani women “are often victims of double discrimination”<sup>25</sup> and urges States to take into account Romani women when planning policies and programmes, GR 27 makes no mention of coercive sterilization, a matter with which the Committee was to become preoccupied during the 2000s, particularly in relation to the Czech Republic, Slovakia and Hungary. GR 27 is similarly muted as concerns the expulsion of Roma from Western Europe, preferring the abstract formulation that States should, “take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin”.<sup>26</sup>

The section of GR 27 on protection against “racial violence” covers important ground by highlighting the need for protection against both acts by racist vigilantes such as skinheads, as well as against such acts by police. The CERD Committee in this sense was ahead of the European Court of Human Rights, which only first found any State in violation of the European Convention’s discrimination provisions in a case concerning Roma in 2004.<sup>27</sup> GR 27 further calls on States “to encourage appropriate arrangements for communication and dialogue between the police and Roma communities and associations, with a view to preventing conflicts based on racial prejudice and combating acts of racially motivated violence against members of these communities”,<sup>28</sup> as well as “to encourage recruitment of members of Roma communities into the police and other law enforcement agencies.”<sup>29</sup> GR 27 further urges “action in post-conflict areas ... to prevent violence against and forced displacement of members of the Roma communities.”<sup>30</sup>

As concerns education, GR 27 includes some interesting moments, worthy of comment. In the first place, it stops short of condemning segregation in education absolutely, calling on States only “to prevent and avoid *as much as possible* the segregation of Roma students”<sup>31</sup> (emphasis added). It is unclear what motivated this approach, which is both at odds with Article 3 of the ICERD treaty, as well as with later approaches by the CERD Committee itself. The rest of the same

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<sup>22</sup> Ibid., para. 1.

<sup>23</sup> Ibid., para. 10.

<sup>24</sup> Ibid., para. 3.

<sup>25</sup> Ibid., para. 6.

<sup>26</sup> Ibid., para. 5.

<sup>27</sup> *Nachova and Others v. Bulgaria* (Applications nos. 43577/98 and 43579/98), judgment (Grand Chamber) of 6 July 2005. On the development of the jurisprudence of the European Court of Human Rights in cases concerning Roma, as well as on the very troubled nature of the Court’s work on racial discrimination until the mid-2000s, see Cahn, Claude, “Roma and Racial Discrimination: The Jurisprudence of the European Court of Human Rights”, in Bigo, Didier; Carrera, Sergio; and Guild, Elspeth (eds.), *Foreigners, Refugees and Minorities? Rethinking People in the Context of Border Controls and Visas*, Farnham, Surrey, UK: Ashgate, 2013.

<sup>28</sup> United Nations Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 27: Discrimination against Roma: 08/16/2000, Op. cit., para 14.

<sup>29</sup> Ibid., para. 15.

<sup>30</sup> Ibid., para. 16.

<sup>31</sup> Ibid., para. 18.

paragraph of GR 27 urges “keeping open the possibility for bilingual or mother tongue tuition”.<sup>32</sup> At this juncture, the CERD Committee appeared unclear as to whether it might possibly favour education for Roma in Romani, potentially even in separate environments. This issue became more settled during the 2000s, with a number of key rulings by the European Court of Human Rights in education cases – including the rejection by the Court’s Grand Chamber of separation justified by language tuition<sup>33</sup> – as well as the increasingly clear calls coming from within the Roma movement on ending segregation of in education.

Also evident in the education section of GR 27 is the increasing need to manage tensions between issues relating to Roma on the one hand, and matters related to Travellers on the other.<sup>34</sup> Thus, GR 27 includes a recommendation, based in particular on the experience of States with developed Traveller outreach policies such as the United Kingdom, “To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education.”<sup>35</sup>

GR 27 similarly nods to Traveller issues when it urges States “to take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities”.<sup>36</sup> This recommendation is something of a digression from the rest of section 4 on improving living conditions, the rest of which are focussed predominantly if not exclusively on measures to bring Roma into situations equivalent to majority communities. GR 27 momentarily departs to some extent from the ICERD treaty when it treats the motivation for efforts to improve Roma access to health care as grounded not in the need to combat discrimination, but rather in “their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences”.<sup>37</sup>

The fact that GR 27 focusses on media as section 5, while only arriving at representation of Roma in public life in section 6 is itself noteworthy. The media section, in addition to provisions closely harmonized with the ICERD treaty on eliminating ideas of racial or ethnic superiority,<sup>38</sup> wanders far into territory in at least implicit tension with the Article 19 right to freedom of expression of the International Covenant on Civil and Political Rights (ICCPR) when it encourages

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<sup>32</sup> Ibid.

<sup>33</sup> Oršuš and Others v. Croatia (Application no. 15766/03), judgment (Grand Chamber) of 16 March 2010.

<sup>34</sup> The Council of Europe, Europe’s premiere human rights institution, treats Roma and Travellers within one policy cluster. The lead document of its human rights approach in this area is the 2011 report of the Council of Europe Human Rights Commissioner on the Human Rights of Roma and Travellers in Europe. This provides, *inter alia*: “The various Traveller minorities of Europe are primarily distinguished by their travelling lifestyle, although many members of this minority are nowadays semi-sedentary or completely sedentary. ... It is not always clear who should be included and who should be excluded from these categories. The minorities labelled “Roma”, “Gypsies” and “Travellers” in fact comprise a multitude of ethnicities and distinct linguistic communities, heterogeneous groups that are viewed as a unit primarily by outsiders. This report uses the term “Roma and Travellers”. This umbrella grouping is not intended to deny the self-identification of any person or group and is used solely for the purposes of not repeatedly using long chains of group and subgroup names.” (Council of Europe Human Rights Commissioner, *Human Rights of Roma and Travellers in Europe*, Strasbourg, 2011, pp.31-32).

<sup>35</sup> United Nations Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 27: Discrimination against Roma: 08/16/2000, Op. cit., para. 21.

<sup>36</sup> Ibid., para. 32.

<sup>37</sup> Ibid., para. 34.

<sup>38</sup> Ibid., para. 36.

“methods of self-monitoring by the media, through a code of conduct for media organizations, in order to avoid racial, discriminatory or biased language”.<sup>39</sup>

Focus on improving the representation of Roma in public life was to grow stronger during the 2000s. It included efforts such as the now-failed (or at least much-diminished) Council of Europe endeavour, the European Roma and Travellers Forum.<sup>40</sup> GR 27 was adopted at a time when there was some attention to the possibility of Roma parties as a mode for securing Roma inclusion, and this is visible in the text.<sup>41</sup> Nevertheless, GR 27 covers broadly the need to strengthen Roma representation and inclusion, noting the very extreme paucity of involvement of Roma in public life throughout Europe; at the time of the adoption of GR 27, the number of Roma in elected positions anywhere in Europe was in the tens, with literally only 2 or 3 Roma in elected positions anywhere in western Europe, including a councillor in the Vienna local government, as well as – sporadically – Roma MEPs from Spain.

Finally, GR 27 concludes with a recommendation that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in September 2001, “give due consideration to the above recommendations, taking into account the place of the Roma communities among those most disadvantaged and most subject to discrimination in the contemporary world.”<sup>42</sup>

### 2000s and Beyond

In the fifteen years since the adoption of General Recommendation 27, the CERD Committee has not fundamentally changed any of the basic aspects of its approach toward Roma. There is little question, however, that the Committee’s work has been enriched both by its own deepening expertise in the factual matters of Roma exclusion in various particular countries, as well as by the broadening range of civil society actors intervening, and by the growth of state policies and expertise in this area. Thus, Concluding Observations vis-à-vis States have become more detailed and concrete, as well as in some cases more bold in the expression of discontent with States’ actions. In addition, new issues have emerged in the review of States. Also, the Committee has found States in violation of the ICERD treaty within the complaints procedure set out under Article 14. Finally, the Committee has expanded the geographic range of its concerns beyond Europe.

In thematic terms, the 2000s brought issues to the Committee which it had not previously examined. Major new areas included the coercive sterilisation of Romani women – a matter of increasing urgency throughout the 2000s in relation to the Czech Republic, Hungary and Slovakia. Thus, for example, in its 2013 concluding observations following review of Slovakia, the Committee stated: “While noting three judgments of the European Court of Human Rights against Slovakia on forced sterilization of Roma women, the Committee draws the attention to the lack of effective investigation by the State party regarding this practice throughout the country and the lack of compensation to the victims (arts. 2, 5 and 6). The Committee recommends that the State party implement fully recent decisions of the European Court of Human Rights and ensure full reparation and compensation for all victims of these practices. The Committee urges the State party to thoroughly investigate all incidents of forced sterilization of Roma women and prosecute those

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<sup>39</sup> Ibid., para. 40.

<sup>40</sup> www.ertf.org.

<sup>41</sup> United Nations Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 27: Discrimination against Roma: 08/16/2000, Op. cit., para. 42.

<sup>42</sup> Ibid., para. 49.

responsible. Bearing in mind its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee encourages the State party to adopt appropriate measures, including the implementation of the 2012 Decree related to the cases of illegal sterilization of women and the organization of special training for all medical staff on how to obtain informed consent before carrying out sterilization, on sensitization of medical staff on respecting diversity of members of the Roma community.”<sup>43</sup>

Another area raised for the first time during the 2000s was the right to vote for thousands of Travellers in France, a matter to which the Committee returned repeatedly throughout the decade. Thus, for example, during regular review of France’s ICERD compliance in 2010, the Committee stated that it “remains very concerned at the difficulties faced by travellers, particularly regarding their freedom of movement, exercise of the right to vote and access to education and decent housing. In this respect, the Committee notes with concern that, despite the recommendations formulated in its previous concluding observations, the State party has still not provided travellers with the necessary number of encampment areas...”<sup>44</sup>

Slovakia is a particularly extreme case, but it is worth examining the Committee’s 2013 concluding observations on Slovakia to see how far it has come in terms of the depth, breadth and detail of concerns and recommendations raised. The section on “Stigmatization of and discrimination against minorities, in particular Roma” in the 2013 Slovakia concluding observations runs to multiple full pages, not including the section on coercive sterilization noted above. These address, among other things, “the continued stigmatization of, and discrimination against Roma and their ongoing precarious socio-economic situation”, including their absence from police and local government; the “continued de facto segregation in the education system”; “Limited measures have been undertaken towards promoting Roma’s right to adequate housing and ending spatial segregation”; “lack of basic facilities such as sanitation, electricity, drinking water, sewage system and waste disposal”; “Walls and barriers ... in some areas including Prešov, Michalovce, Partizánske or Trebišov, to segregate Roma from the rest of the population”; “forced evictions and demolitions of Roma settlements are taking place without alternatives for Roma”; “persistent negative perception of the majority population towards the minorities, particularly Roma”; as well as “limited effectiveness of the State party’s reaction to some of the decisions of local bodies in denying Roma access to housing and in other cases financing the construction of walls to separate Roma settlements from the rest of the population”.<sup>45</sup> The Committee does not hesitate to go into the details of issues in particular localities, requesting that the Government “include in its next periodic report any measures taken to address the situation of Roma in Plavecky Stvrtok”, having been alerted to forced eviction issues in that community.<sup>46</sup>

During the 2000s, the Committee also for the first time raised concerns about the treatment of Roma outside Europe. Thus, for example, in its 2004 review of Brazil, the Committee expressed “allegations concerning discrimination faced by Gypsies with regard to birth registration and access to schools for their children.”<sup>47</sup>

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<sup>43</sup> CERD/C/ SVK/CO/9-10, para. 13.

<sup>44</sup> CERD/C/FRA/CO/17-19, para. 16.

<sup>45</sup> CERD/C/ SVK/CO/9-10, paras. 10-12, 14 and 16.

<sup>46</sup> Ibid., para. 12.

<sup>47</sup> CERD/C/64/CO/2, para. 17.



A significant development in the 2000s is the adjudication by the CERD Committee of cases brought by Roma under the ICERD Article 14 individual complaints procedure. Although a number of cases were submitted in the 1990s, the Committee only began examining these cases from the year 2000. The Committee's first finding of a violation came on 8 August 2000, in the case of *Anna Koptova v. Slovakia*. Ms. Koptova alleged that the adoption of a ban on the entry of Roma into two towns in eastern Slovakia violated her rights under the ICERD treaty. The CERD Committee agreed, finding a violation of article 5 (d) (i) of the Convention.<sup>48</sup> The Committee again found Slovakia in violation of ICERD provisions in March 2005, in the case of *L.R. et al. v. Slovakia*.<sup>49</sup> The case concerned the actions of the municipality of Dobsina, which agreed to cancel a social housing project which would have benefited Roma in the town. The cancellation followed a petition campaign against Roma receiving such housing, mounted by local non-Roma, and ultimately garnering some 2,700 signatures locally.

The CERD Committee did not find Slovakia in violation of ICERD in August 2001 in the case of *Miroslav Lacko*, in which the Committee held that Slovakia's failure at that time to provide remedy to a Romani man refused service in a restaurant did not violate the treaty. The Committee considered in that case that fact that the perpetrator had been sentenced to pay a fine of 5000 Slovak Crowns for the crime of incitement to ethnic hatred was sufficient to avoid a violation of the ICERD treaty.<sup>50</sup> The Committee did however find Serbia and Montenegro in violation of the treaty in 2006, in a similar case concerning a ban on access to public services, inter alia as a result of "the State party's failure to investigate and adjudicate the case effectively".<sup>51</sup>

The Committee did not find Germany in violation of the treaty in a 2008 case concerning a publication by a police union, involving derogatory and demeaning statements against Roma. The Committee grounded its decision inter alia in its view that the publication at issue was not a State organ, as well as the fact that the publication "has carried consequences for its author, as disciplinary measures were taken against him."<sup>52</sup> In 2011, the Committee deemed inadmissible a complaint against the Russian Federation concerning leaflets appealing to expel Roma from the town of Pskov, on grounds that the petitioners lacked standing to file the complaint.<sup>53</sup>

Finally, Roma and Traveller issues now feature regularly among issues the Committee has included among matters for which it requested information within one year of review, in accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure.<sup>54</sup> Discrimination against Roma also features to a certain extent among issues raised under the early warning and urgent action procedures. Although the Committee's website indicates that it has not to date taken any decisions under the early warning and urgent action procedure, it has sent letters to the governments of the Czech Republic, Italy, Slovakia and the United Kingdom in cases concerning Roma.<sup>55</sup>

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<sup>48</sup> *Anna Koptova v. Slovakia*, Communication No. 13/1998, decision of 8 August 2000.

<sup>49</sup> *L.R. et al. v. Slovakia*, Communication No. 31/2003, decision of 10 March 2005.

<sup>50</sup> *Miroslav Lacko v. Slovakia*, Communication No. 11/1998, decision of 9 August 2001.

<sup>51</sup> *Dragan Durmic v. Serbia and Montenegro*, Communication No. 29/2003, decision of 6 March 2006.

<sup>52</sup> *Zentralrat Deutscher Sinti und Roma et al. v. Germany*, Communication No. 38/2006, decision of 22 February 2008.

<sup>53</sup> *A.S. v. Russian Federation*, Communication No. 45/2009, decision of 26 August 2011.

<sup>54</sup> See for example CERD/C/SVK/CO/9-10 and CERD/C/FRA/CO/17-19.

<sup>55</sup> <http://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx>

## Conclusion

The work of the CERD Committee has been very important for moving forward the understanding that anti-Romani sentiment is racism and anti-Romani action is racial discrimination in the sense of the ICERD treaty. It has also been instrumental in moving forward – in concert with other international actors such as the Council of Europe, the European Union, and the OSCE – policy and action by governments and States to strengthen Roma inclusion. In the two and a half decades since the fall of the Berlin wall, CERD can be proud of its record in supporting broadly civic movements aiming to end Romani racism and finally to tackle the severe forms of exclusion resulting from anti-Gypsyism.

There are good examples of States acting on CERD’s recommendations. A recent review of Moldova’s implementation of the 2011 CERD concluding observations<sup>56</sup> indicated relatively strong compliance, including on the Roma recommendations, which were by far the most far-reaching within the given review. That said, there are still ample examples of Governments flouting the CERD Committee’s recommendations concerning Roma. One particularly glaring recent example has been the French Government’s flouting of the CERD Committee recommendations concerning stopping the forced eviction of Roma. CERD has repeatedly engaged in this area, most recently in its June 2015 concluding observations concerning France, in which it expressed concern at “repeated breaches” of the right of Roma to housing, “many of which take the form of forced evacuations of Roma from their camps without, in many cases, any alternative type of lodging being offered”.<sup>57</sup> Utterly disregarding this recommendation, as well as the efforts of a range of French civic organisations, French Ombudsperson Jacques Toubon, and international organisations, French authorities in late August 2015 dismantled the shantytown known as “Samaritain” in the town of La Courneuve – a municipality in Ile-de-France (i.e., greater Paris), and forcibly evicted the circa 150-300 Roma living there, primarily persons from Romania. The settlement was reportedly the oldest existing Roma migrant slum in France, having been in place since 2008. Ample other examples can be brought of States disregarding CERD’s recommendations.

It will thus take further work by many actors to render CERD’s work on the human rights of Roma effective. This can only be done by concerted efforts by States, civil society actors and others to strengthen attention to and action on the concerns raised by authoritative human rights bodies, the CERD Committee among them. It will also require serious attention to the continuing role played by anti-Romani sentiment – anti-Gypsyism – in shaping the societies in which we live.

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<sup>56</sup> CERD/C/MDA/CO/8-9.

<sup>57</sup> CERD/C/FRA/CO/20-21, para. 9.