

# European Union Agency for Fundamental Rights

## ANNUAL REPORT

### Summary



**2008**



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## Foreword

The Annual Report 2008 is the first Annual Report to be produced under the legal basis and mandate of the European Union Agency for Fundamental Rights (FRA), and the first which is published under the directorship of Morten Kjærum, who joined the FRA as Director on 1 June 2008.

The EU Agency for Fundamental Rights was built on the former European Monitoring Centre on Racism and Xenophobia (EUMC). It continues the work of the EUMC in the area of racism, xenophobia and related intolerances, but in the context of the much broader mandate of the FRA. The new thematic areas of operation of the FRA have been set out in the Agency's Multi-annual Framework (MAF), adopted by the Justice and Home Affairs Council of the European Union on 28 February 2008. The Council's Decision means that the Agency will now work in the following areas:

- a) racism, xenophobia and related intolerance;
- b) discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination);
- c) compensation of victims;
- d) the rights of the child, including the protection of children;
- e) asylum, immigration and integration of migrants;
- f) visa and border control;
- g) participation of the EU citizens in the Union's democratic functioning;
- h) information society and, in particular, respect for private life and protection of personal data; and
- i) access to efficient and independent justice.

Therefore, this year's Annual Report is the last one which will focus only on the thematic area of racism, xenophobia and related intolerance, drawing on information provided by the reporting structures set up by the EUMC. Next years' Annual Report will have a much broader scope, drawing on new reporting structures and covering the range of fundamental rights issues which fall into the various areas of activity of the FRA.

At the same time the FRA will continue the work of the EUMC in providing support to the European Union and its Member States in their efforts to fight racism, xenophobia and discrimination.

The Annual Report 2008 first examines legal developments and institutional initiatives against racism and discrimination in Europe, focussing on the application in practice of the Racial Equality Directive. Next it covers developments in the area of racist violence and crime in the EU Member States, and this is followed by a focus on racism and discrimination issues in four areas of social life: employment, housing, education and health care. The final thematic chapter covers developments at an EU level relevant to combating racism, xenophobia and discrimination in the Member States of the EU.

We would like to thank the Management Board of the FRA for their support in the production of the Annual Report, and the staff of the FRA and the Acting Director for the past year, Constantinos Manolopoulos, for their commitment and their hard work over a difficult year of transition.

Anastasia Crickley  
Chairperson of the  
Management Board

Morten Kjærøum  
Director of the FRA

# Table of Contents

<b>Foreword</b>	<b>3</b>
<b>1. Introduction</b>	<b>6</b>
The inclusion of health care	7
Clarification of terms	7
<b>2. Legal and institutional initiatives against racism and discrimination</b>	<b>8</b>
<b>3. Racist violence and crime</b>	<b>10</b>
<b>4. Racism and discrimination in areas of social life and initiatives on how to prevent it</b>	<b>12</b>
4.1 Employment	12
4.2 Housing	12
4.3 Education	13
4.4 Health	14
<b>5. Conclusions</b>	<b>16</b>
The Racial Equality Directive	16
Evidence for discrimination	18
Member State differences	20
Health and discrimination	21
Examples of trends and developments	22
Data collection and research by the FRA	23
<b>6. Opinions</b>	<b>25</b>
The Racial Equality Directive	25
Racist violence and crime	25
Research and awareness-raising	26
Sanctions and complaints	26
Anti-discrimination training	26
Housing	27
Education	27
Data collection in education	28
Data collection in health care	28
Migrant and minority-sensitive health care	28

# 1. Introduction

The Annual Report 2008 of the European Union Agency for Fundamental Rights (FRA) covers information, events and developments in issues of racism and xenophobia in the EU for the year 2007. The Council Regulation establishing the Fundamental Rights Agency as successor to the European Monitoring Centre on Racism and Xenophobia (EUMC) came into effect on 1 March 2007. Therefore, it is the first Annual Report to be produced on the basis of the FRA legal base and mandate.<sup>1</sup> The report covers similar areas as earlier EUMC Annual Reports, but with a slightly different structure, and with one new thematic area, health care.

The report begins with an overview of legal and institutional initiatives against racism and discrimination. The next chapter covers racist violence and crime, and this is followed by four chapters covering different areas of social life – employment, housing, education, and health care. The final thematic chapter looks at developments in policy and legislation relevant to combating racism and xenophobia at the level of the European Union rather than at Member State level.

During the reporting period, no Multi-annual Framework<sup>2</sup> for the Agency was adopted by the Council of the European Union. Therefore, according to Article 29/5 of Council Regulation 168/2007 of 15 February 2007, the Agency continued to carry out its tasks in the thematic areas of the fight against racism, xenophobia and related intolerance, until the adoption of the first Multi-annual Framework of the FRA in February 2008.

The main EU legislation addressing discrimination on the grounds of racism and xenophobia is the Racial Equality Directive. Thus, the application in practice of the Racial Equality Directive on the ground forms one of the main themes for the whole Annual Report, with various chapters providing details of its impact, information on how and why it is used or not used, as well as new examples and cases of problems of discrimination in various areas of social life which serve to demonstrate the continuing need for the directive.

Beyond the areas specified by the Multi-annual Framework, according to Article 5.3 of the Regulation, the Agency is also required to respond to: 'requests from the European Parliament, the Council or the Commission under Article 4(1)(c) and (d) outside these thematic areas, provided its financial and human resources so permit.' In reference to this article the European Parliament asked the Agency in June 2007 to develop a comprehensive report on homophobia and discrimination based on sexual orientation in the Member States of the European Union. Furthermore, the European Commission asked the Agency in July 2007 to develop indicators for measuring how the rights of the child are implemented, protected, respected and promoted in the Member States of the EU, and to map the available data resources at national and EU level. Both of these projects began at the end of 2007 and will be reported on in future FRA reports.

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1 The 2007 FRA report, although published towards the end of 2007 under the logo of the FRA, was in fact was not an FRA Annual Report but was produced on the basis of the EUMC legal base and mandate.

2 The Multi-annual Framework specifies the work areas of the FRA for the next five years.



## The inclusion of health care

This is the first time that the subject of health care has been included in an Annual Report. Following information provided by the Agency's RAXEN National Focal Points, as well as from reports by international organisations, and from scientific research on discrimination on the grounds of race, ethnicity and religion in accessing and using health care facilities in the Member States, the Agency decided in 2007 to include this important area of social life in its data collection and reporting structures. Since this is the first time that this area has been examined, data and information from previous years has been included to allow a better context for understanding the information.

Article 152 (4) of the treaty establishing the European Communities declares that a high level of health protection shall be ensured in the definition and implementation of all Community policies and activities. The European Union has shared competence in the area of health. This means that while the EU can establish common objectives, Member States are free to achieve these objectives through policies of their own choice. In this respect a key value and goal of the EU is the reduction of health inequalities and, consequently, Member States are expected to introduce the necessary policies and measures to achieve this, on the basis of the principle of subsidiarity. In June 2006, the Ministers of Health of the EU Member States adopted common values and principles to guide EU health systems, emphasising that the reduction of health inequalities must be one of the aims of health systems.<sup>3</sup>

Consistent with the above, the FRA does not take a broad approach in covering the range of issues which relate to health, ethnicity and migration, but concentrates primarily on the problem of discrimination and exclusion, as part of its general mandate to focus on issues of racial and ethnic discrimination in EU Member States. In line with this, the new health care section in the Annual Report 2008 concerns itself mainly with issues such as barriers in access to health care for migrants and minorities, or discrimination in aspects of treatment. It also looks at examples of positive initiatives which aim to combat discrimination in access to and delivery of health care, including policies targeted at health care providers to actively promote cultural sensitivity in health service delivery.

## Clarification of terms

There is no official common definition for migrants or ethnic/national minorities in the European Union. Therefore, the term 'migrants and minorities' is used throughout the Annual Report as a short-hand term to refer to those social groups in the EU who are potentially vulnerable to experiences of racism, xenophobia, and racial/ethnic discrimination. In this context the term most commonly covers first-generation immigrants and refugees, as well as people of immigrant origin in subsequent generations, even if they hold the citizenship of their country of residence (also covered in some countries by the term 'ethnic minorities'), and groups such as Roma, Sinti and Travellers.

<sup>3</sup> Council of the European Union (2006) *Conclusions on Common values and principles in European Union Health Systems* (2006/C 146/01), available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_146/c\\_14620060622en00010003.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_146/c_14620060622en00010003.pdf) (06.01.2008).

## 2. Legal and institutional initiatives against racism and discrimination

The full implementation of the Racial Equality Directive in the Member States has still not been completed. In June 2007, the European Commission announced that it had sent formal requests to 14 Member States to fully implement the directive.<sup>4</sup> The countries concerned had two months to respond, failing which the Commission could take them to the European Court of Justice.

The Racial Equality Directive makes effective, dissuasive and proportionate sanctions as a response to ethnic or racial discrimination mandatory. Sanctions and/or awards related to cases of ethnic or racial discrimination could be detected during 2006-2007 in 15 Member States. The United Kingdom has the most effectively applied legislation fighting ethnic discrimination in the EU. Available statistics demonstrate that the United Kingdom leads both regarding the annual amount of sanctions and the range of sanctions issued in racial or ethnic discrimination cases. The United Kingdom has issued more sanctions in the relevant time period than all other Member States together. Other EU Member States which have more effectively applied their legislation fighting ethnic discrimination in the EU are: Bulgaria, France, Ireland, Italy, Hungary, Romania, Finland and Sweden. In these countries, sanctions are more frequent and/or dissuasive than in the rest of the EU, even though they remain relatively scarce compared to the United Kingdom.

No sanctions and/or awards related to cases of ethnic or racial discrimination could be detected during 2006-2007 in 12 Member States (Czech Republic, Denmark, Germany, Estonia, Greece, Spain, Cyprus, Lithuania, Luxembourg, Poland, Portugal, Slovenia). The absence of sanctions coincides in most cases with the absence of an effective equality body. Another reason for the absence of sanctions lies in the particular role of the equality bodies. Sanctions are absent or rare in countries in which the equality bodies do not support victims of discrimination in proceedings which lead to sanctions, or do not have the power to issue sanctions themselves, or do not use this power for some reason.

It is true that a low level of sanctions being applied does not necessarily reflect the fact that problems are not being addressed. For example, where there is more of a consensus tradition in industrial relations, cases might be more likely to be resolved before getting to the stage of a court case. However, one drawback with this approach is that the threat of sanctions is diminished, and these are normally seen as crucial to improve the bargaining position of victims of discrimination. There is also a loss of the educative function of awareness-raising in the general public and amongst employers that stems from the threat and application of credible and dissuasive sanctions.

<sup>4</sup> Press release IP/07/928 of 27 June 2007, [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/news/ip07\\_928\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/news/ip07_928_en.pdf) (12.11.2007).

In some countries, the relative scarcity of sanctions has structural reasons. This is often related to the limited role of the equality body in assisting and supporting victims in procedures which lead to sanctions. Another structural reason for the relative scarcity of sanctions is the role of criminal law in the fight against ethnic discrimination. Symbolically, criminal law is the most important instrument any state can use in the fight against ethnic discrimination. However, in practice, criminal law leads to less sanctions being applied: the shift of the burden of proof foreseen by the Racial Equality Directive does not apply, criminal responsibility in cases of discrimination mostly is dependent on discriminatory intention and the victim of discrimination has limited control over the criminal procedure, which usually lies in the hands of the prosecution services. Thus, states which rely mainly or exclusively on criminal law, in general, are characterised by no or few sanctions, even though these sanctions may be dissuasive.

In the following countries, the available evidence suggests that some equality bodies in the area of ethnic or racial discrimination do not have the desired effectiveness: Estonia, Poland, Portugal and Slovenia. In the Czech Republic, Spain and Luxembourg no operative equality body in the area of ethnic or racial discrimination could be detected.

### 3. Racist violence and crime

The Annual Report 2008 paints a similar picture to previous years of an overall increasing trend in criminal justice recorded racist crime; namely:

- Of 11 Member States that collect sufficient data on racist crime to conduct a trend analysis,<sup>5</sup> the majority experienced a general upward trend in recorded racist crime in the period 2000-2006 (Denmark, Germany, France, Ireland, Austria [very slight], Slovakia, Finland, UK), and also between 2005 and 2006 (Germany, Ireland, Austria, Slovakia, Finland, Sweden, UK).
- Of four Member States that collect sufficient data on anti-Semitic crime to conduct a trend analysis (France, Germany, Sweden and UK), three experienced a general upward trend (France, Sweden and the UK) between 2001 and 2006.
- Of four Member States (Austria, France, Germany and Sweden) that collect sufficient data on crime with an extremist right-wing motive to conduct a trend analysis, two experienced a general upward trend (France and Germany) between 2000 and 2006.

By acknowledging and effectively addressing the problem of racist crime, EU Member States can demonstrate their condemnation of these acts and their solidarity with victims. However, it remains the case that there has been very little improvement in Member States' mechanisms for recording racist crime; namely:

- In 16 of the EU's 27 Member States there is simply a rather limited reporting on a few court cases, or there are general figures on discrimination that may contain incidents of racist crime within them, or there is a total absence of any publicly available official criminal justice data on racist crime. These Member States are: Belgium, Bulgaria, Estonia, Greece, Spain, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Portugal, Romania and Slovenia.
- The UK has the most comprehensive system for recording racist crime in the EU. It records more publicly reported incidents and criminal offences than the other 26 Member States combined in any 12-month period.

As a result of the continued lack of good data collection on racist crime in the majority of Member States, this year's report concludes that:

- Member States with either limited official reporting or no official reporting on racist crime are not in the best position to develop evidence-based policy responses to the problem.

Against this backdrop there are some encouraging developments with respect to Member States beginning to acknowledge the significance of racist crime as a social ill. To this end, the political agreement under the German EU- presi-

<sup>5</sup> Czech Republic, Denmark, Germany, France, Ireland, Austria, Poland, Slovakia, Finland, Sweden, UK.

dency concerning the Council Framework Decision on Combating Racism and Xenophobia is a positive development, which in turn needs to be complemented by improvements in data collection for evidence-based policy.

As in previous years, there is the continuing problem of reports of law enforcement abuses and violence against vulnerable minorities. The report highlights the fact that the majority of Member States have no specific independent police complaints authority for registering and responding to these abuses, other than offices that are directly connected to ministries or normal channels for registering complaints through the police or ombudsman offices. To this end there is considerable scope for developing police complaints mechanisms.

In a context of increasing trends in recorded crime, the report is able to highlight a number of new initiatives in some Member States with respect to multi-agency partnerships, involving the police and communities, which attempt to address the problem. Notable among these are initiatives that focus on racist crime within the broader scope of 'hate crime'.

## 4. Racism and discrimination in areas of social life and initiatives on how to prevent it

### 4.1 Employment

As with previous years, the data and information provided in 2007 demonstrated the operation of direct and indirect racial/ethnic discrimination in various arenas of employment, and indicated the various manifestations that it can take, such as discrimination in recruitment and redundancy practices, insults and physical harassment at the workplace, or incitement to discrimination by third parties. Whilst most discrimination operates invisibly and is only brought to light by investigation or research, in a few Member States some remains surprisingly open, such as discriminatory job advertisements stating, for example, that foreigners need not apply.

There were more developments in the issue of religious clothing or symbols at work, which were generally restrictive, including bans of the wearing of such items by civil servants in several cities in Belgium, and the refusal of the national police force in Ireland to allow Sikhs to wear turbans as part of the police uniform. However, there remains a wide variety in practice in this issue across Member States.

Previous FRA/EUMC reports had noted that an increasing number of research studies were being published which focused on the subjective experiences of discrimination of members of groups within minority populations. This year, in addition, there were several instances of research on groups within the *majority* population – such as employers – which focused on their attitudes and potential practices of discrimination against minorities.

Preventive initiatives covering a broad range of types were reported. There were programmes for training and counselling of excluded minorities to help them in the labour market, programmes for the majority population to combat discrimination or to raise cultural awareness, some examples of mentoring and of positive action in recruitment, and some more experiments with contract compliance and anonymous job applications. Finally there was again evidence that relatively ambitious diversity management policies were taking root, or being encouraged, in more Member States.

### 4.2 Housing

Most Member States still do not collect disaggregated data according to ethnicity in the area of housing. However, discrimination testing, which has been conducted in several EU countries, is a method which can provide data on discrimination in housing.

The disadvantageous position of immigrants and ethnic minorities regarding access to good quality, affordable housing accentuates their social exclusion. Public low-rent housing is one way to reverse this situation. However, the criteria used, at national, regional and local level, for the allocation of public housing can still contain provisions which discriminate against immigrants and ethnic minorities.

Roma, Sinti and Travellers are among the most vulnerable groups regarding housing conditions. Despite the measures taken to improve these conditions, overt discrimination, substandard housing and forced evictions are the salient characteristics of their situation across the EU. In addition, refusal or avoidance by state and other authorities to provide facilities to Roma settlements, a less direct form of discrimination, have been reported in several Member States.

Finally, some good practices are highlighted. In particular, policies to increase the stock of affordable housing for immigrants, Roma and other vulnerable groups through public funding constitute especially positive initiatives. Although anti-discrimination legislation is in place across the EU, a consistent effort to raise awareness of this legislation among tenants and market agents is needed. Such awareness-raising efforts are reflected in the examples of codes of conduct and information campaigns that are mentioned at the end of the housing section of the Annual Report.

### 4.3 Education

Previous FRA/EUMC reports have pointed to the fact that the availability of reliable information is an indispensable prerequisite for improving the situation of vulnerable and disadvantaged groups in education. This has recently been reconfirmed by the PISA 2006 education performance study. According to PISA 2006, there is a significant positive association between schools which monitor and evaluate achievement and make achievement data public, and students having better test performance. However, there are in most Member States insufficient or no monitoring and evaluation systems in place. It will be a major challenge for the future to overcome this obstacle that restrains the effective countering of inequality and discrimination.

Vulnerable groups face many difficulties in accessing quality education. The main reasons are discriminatory enrolment procedures and access testing, unavailability or inaccessibility of pre-school facilities, long distances to schools, and fear of disclosing the non-legal status of residence. Particularly affected by practical barriers to education are children of Roma, Sinti and Travellers as well as children of asylum seekers and irregular migrants.

Available data points to the fact that across the European Union minority groups and third-country nationals are overrepresented in primary and secondary education special schooling, while they are underrepresented in higher education. In addition, minority groups and foreign nationals are in general more likely to

repeat classes and to drop-out from school early. Differences between migrants and minorities, on the one hand, and the majority population, on the other hand, are particularly striking in those countries where there is an early tracking school system in place. An explanation for this is provided in the PISA 2006 performance study. According to PISA 2006, early stratifying of students into separate institutions or programmes has a particular negative impact on the performance of socioeconomically or linguistically disadvantaged students. Such education systems contribute to widening the education gap between more privileged and less privileged population groups.

In 2007, the implementation of a number of programmes for improving the education of Roma children has continued. At the same time, however, discriminatory policies and practices against Roma remained at a very high level in the EU. Roma, Sinti and Travellers are still confronted with unfit education systems that cause segregation and unequal opportunities. However, in November 2007 the European Court of Human Rights delivered an important judgement condemning the Czech Republic for discrimination in its educational segregation of Roma children.

Despite laws granting the right to education, in practice, asylum seekers and irregular migrants are in many Member States at risk of being excluded from education. Yet most Member States lack initiatives to monitor and evaluate the situation of children of asylum seekers with regard to access to adequate education.

## 4.4 Health

Few Member States have relevant official or unofficial complaints data regarding racial/ethnic discrimination in the area of health, and even in those, very few complaints have been recorded. The main issue is indirect rather than direct discrimination, as medical staff applying professional codes and duties are less likely to discriminate or openly deny health care, whereas administrations are more likely to insist on strict adherence to formal complicated procedures that could hinder access to health care.

Problems of access to health services affect particularly illegally-resident third-country nationals, rejected asylum seekers, and members of Roma communities. Roma risk being excluded from public health insurance if they are long term unemployed, like in Bulgaria and Romania, or, if they lack the necessary identity papers, as in Romania and Slovenia. In many cases Roma also have problems accessing health care when they live in isolated rural areas, as is the case in Greece, Spain and Hungary or in encampments on the outskirts of cities with limited or non-existent public transport facilities, as in Greece, Spain, Italy and Hungary.

Illegally-resident immigrants and rejected asylum seekers often have access to emergency health care only, defined differently across the EU. They are also often unwilling to seek medical assistance if they fear that they might be reported to the police and consequently deported.



However, legally-resident immigrants could also be discouraged by cultural barriers, such as language or religion, from using health services. For example, Muslim women may not wish to allow physical examination by male medical staff; hospital food may not cater to the Muslim religious requirements, and so on.

A number of major transnational reports have provided additional information regarding the situation of immigrants, asylum seekers and minorities in EU health care systems, for example: identifying legal and practical barriers encountered by irregular immigrants trying to access health care; showing how migration can result in vulnerability to physical, mental and social health problems; documenting discrimination against Roma in health care and noting lack of rights awareness, or cases of refusal of treatment for irregular migrants. Other reports highlighted a lack of awareness of anti-discrimination legislation among health professionals, administrative staff, and patients, and noted the paucity of systematically collected data in this field.

Positive initiatives to improve the situation regarding inequalities in health care for migrants and minorities by both government and civil society are noted, with some important policies implemented by Member States throughout the EU.

## 5. Conclusions

### The Racial Equality Directive

One of the tasks of the FRA is to gather information about how the Racial Equality Directive is actually applied in the various Member States, and how the specialised bodies operate in practice. The first thing to note is that by the end of the reporting period, three Member States still had no specialised body in existence, and almost half of all Member States applied no sanctions at all in racial/ethnic discrimination cases. Amongst the remainder who did, there was an enormous variation in the level of fines handed out.

The scarcity of sanctions in most of the Member States is problematic because the Racial Equality Directive declares effective, proportionate and dissuasive sanctions to be mandatory. Effective sanctions are important to gain the trust of the victim population and to raise awareness about the legislation and its principles in the wider population. Without effective sanctions it is unlikely that large parts of the population, companies and also legal practitioners are going to take anti-discrimination legislation very seriously and make the effort to inform themselves about this legislation.

It is true that where there is a low level of cases going to court, and few sanctions being applied, this does not necessarily reflect that problems are not being addressed. For example, in some Member States there is more of a consensus tradition in industrial relations, where social partners and other bodies work together to try settle disagreements with mediation and negotiation, so that cases are more likely to be resolved before getting to the stage of a court case. In the case of the Netherlands, for example, the Equal Treatment Act is designed to encourage such pre-court settlement of disputes. However, one drawback with this approach is that the threat of sanctions is diminished, and these are normally seen as crucial to improve the bargaining position of victims of discrimination. There is also a loss of the educative function of awareness-raising in the general public and amongst employers that stems from the threat and application of credible and dissuasive sanctions.

In some cases there clearly are problems which lie behind the low figures. For example, in Slovenia, the *Human Rights Ombudsman* reported the problem to be the result of the opaque and unhelpful wording of the legislation; in Portugal the problem was reported to result from the slow and complex procedure for appraising complaints.

Another factor lies in the use of criminal law. In some Member States the criminal sanctions which in theory can be applied in discrimination cases look to be very dissuasive. However, when this exists in the context of criminal law rather than civil law, then such severe sanctions are unlikely to be applied in practice. In Member States which use civil law in the fight against ethnic discrimination, the burden of proof is much lower and sanctions are more likely to materialise.

In several Member States the powers which have been granted to the specialised body or bodies are too limited to contribute to effective sanctions being applied in practice. Some bodies have neither the power to issue sanctions themselves, nor do they assist victims in proceedings which lead to sanctions. Even when a specialised body has the power to issue sanctions, it may take the policy decision to avoid this strategy and concentrate instead on mediation, such as in the case of Cyprus.

### The low level of complaints

Reports describe a rather low level of complaints to specialised bodies and anti-racist NGOs in the first place. Of course, in theory a low level of complaints need not indicate that anything is wrong – it might be argued that this could reflect the reality of a genuinely low level of discrimination. However, the employment, housing and health sections of the Annual Report 2008, as well as the similar evidence of previous years, show clearly the existence of the problem of ethnic discrimination in its various manifestations, much of which would not have come to public notice without the findings of specific research. For years, various types of evidence and research have shown that most victims of discrimination who could complain, do not, the latest being the survey reported in the employment chapter that most victims of *inter alia* racial or sexual harassment at work in Slovenia did not report the incident.

Various examples in the employment and health sections of the Annual Report give some indication of the possible reasons for the failure or reluctance of victims of discrimination to make formal complaints. Some people may have no confidence in the law when it is perceived to be weak; some victims might be worried about the financial costs of court cases, or hold fears of other costs or repercussions; workers on restricted contracts and temporary work permits may feel too legally vulnerable to make a complaint. However, a scarcity of cases can also reflect other things, such as a lack of awareness in the general population about the possibilities of legal redress that are open to victims of discrimination (as shown in the health chapter of the Annual Report, where interviews with patients in Greece showed that they had no awareness of how to submit a complaint regarding discrimination in health treatment). For some Member States there has been little public debate in the area, and no evidence of any public campaigns to raise awareness of the national measures that were instituted following the transposition of the Racial Equality Directive. In the employment chapter it was noted that in one Member State a trade union organisation for handling complaints takes the deliberate decision *not* to refer cases to the national equality authority. Clearly there is a need for more targeted research here, to cast light on the various structural and social forces that go to determine whether and how ethnic discrimination cases get reported and handled in the 27 Member States.

A recent development providing an exception to this general picture is the case of France, where the official anti-discrimination body, the HALDE, has been receiving since 2006 a significant and increasing number of complaints. The

HALDE has developed a strong public image using information campaigns in order to raise public awareness of itself and of the issue of discrimination, and recent surveys have reflected a growing awareness of the French public about the problem.

## Evidence for discrimination

Whilst the chapter on legal issues in the Annual Report provides information on the operation of the Racial Equality Directive, the information in the subsequent chapters on the four areas of social life operates to confirm the original need for the directive in the first place, by giving examples and cases of direct and indirect discrimination in the fields of employment, housing, education and health. In all of these areas the kinds of deductions about the extent and form of discrimination that can be made from official statistics and court cases alone are rather shaky, and need to be complemented by the findings of research and investigation. As with previous EUMC Annual Reports, research examples in the employment chapter are grouped into three categories: discrimination testing, victim studies and research on the majority population.

Examples of discrimination testing, which identifies the operation of discrimination in access to housing and employment, have been reported increasingly each year. In the area of employment, the method was reported in several Member States (with a major employment testing project carried out in 2007 for the first time in Greece). The method was also reported in three Member States in 2007 to test access to housing, and in France there was a testing case reported in access to health care.

Previous FRA/EUMC reports have noted over recent years a growing number of studies of the subjective experiences of discrimination of minorities, or 'victim studies'. In this latest reporting period there were more than ever before, with examples of people's experiences of discrimination in employment reported in 11 Member States, with another carried out in one Member State to test the impact of national equal treatment acts and bodies, reported in the legal issues chapter. Also, for the first time, in the new area of health care, there were three surveys reported on the racism and discrimination subjectively experienced by health sector staff, covering five Member States. This type of study is useful for highlighting problems that may not otherwise come to notice, given the already demonstrated reluctance of victims to make formal complaints.

Generally less common are studies of the majority population in this field. It might be thought that such studies would be of limited use in exposing problems, since employers would not be expected to readily confess to a researcher his or her racist attitudes or unlawful practices. Nevertheless, the employment chapter notes surveys of employers in three Member States where a majority of respondents disclosed that they would refuse to recruit immigrants or Roma.

Again this year, the evidence shows that in all four areas of social life – employment, housing, education and health – it is the Roma and asylum seekers

who suffer the worst excesses of discriminatory treatment. Also, as previous Annual Reports have noted, migrant workers who are legally constrained, and therefore insecure, experience worse conditions of work than majority workers, and have less opportunity to defend themselves or to complain regarding their workplace exploitation. In one sense, such workers are not excluded from employment – instead they are disproportionately *included* in the least desirable jobs. The kind of exclusion that irregular migrants and asylum seekers suffer is illustrated in the chapters on education and health care. Asylum seekers are often in detention camps far away from educational facilities, and the children of irregular migrants may be deterred from school when authorities need to record and report their legal status. The same reason often keeps irregular migrants away from health care facilities if they think they may be reported to the police and deported.

### Countering discrimination with positive action

The Equality Directives explicitly allow for specific compensatory measures such as positive action to be introduced. Whilst positive action measures to counter the effects of discrimination are not particularly common across the EU, there are generally a few new examples reported each year. Following on from the example of the city of Berlin, described in last year's FRA report,<sup>6</sup> where positive action was introduced for the recruitment of minorities into the Berlin police force, there were similar examples reported in 2007, with Romania, Bulgaria and the Czech Republic all using a positive action approach to target the recruitment of members of minority groups into their police forces, and with France doing something similar for recruitment to the armed forces.

In 2007 there were developments at EU level which added to the debate on positive action: a European conference 'Equal Opportunities for all: What role for positive action?' held in Rome in April 2007, and a European publication 'Beyond Formal Equality: Positive Action under Directives 2000/43/EC and 2000/78/EC', published in 2007.<sup>7</sup> Both concluded that the EU's equality agenda is in need of positive action. Positive action aims to compensate for present and past discrimination, adding to the role of laws and complaints, which in themselves are not enough to combat discrimination and its effects. Regarding access to accommodation, the decision of the European Committee of Social Rights,<sup>8</sup> reported in the housing chapter of the Annual Report 2008, is significant in that, in the context of years of unequal treatment of Roma in Bulgaria in relation to their housing rights, the committee concluded that positive action measures were needed for the integration of Roma into mainstream society.

However, the practice of positive action remains controversial for two main reasons: firstly, because it is often confused in the public mind with positive discrimination, quotas, or other devices perceived by some to be socially unjust,

<sup>6</sup> FRA (2007) *Report on Racism and Xenophobia in Member States of the EU*, p. 67.

<sup>7</sup> M. De Vos, *European Commission Brussels (2007) Beyond Formal Equality: Positive Action under Directives 2000/43/EC and 2000/78/EC*, available at [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/bfe07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/bfe07_en.pdf).

<sup>8</sup> Complaint no. 31/2005, *European Roma Rights Centre v. Bulgaria* – see section 4.2.3. of this report.

and secondly, it is controversial because a minimum requirement of effective positive action is to have accurate data on the minority populations concerned. This is necessary so as to be able to judge the initial need for the policy, and equally importantly, to be able to judge when the problem disappears, so the positive action measure can be stopped. Yet, as the Annual Report 2008 and others have noted, there is wide variation between Member States over the principle of 'ethnic statistics': in some countries they form part of the official census and are widely used, in others they are strongly in opposition to national norms, and in some they are banned by national laws. There would seem to be a need for further exploration of the extent to which the inability to produce accurate statistics of relevant populations within a Member State acts as a barrier to the adoption of positive action, or whether it modifies the form or the outcome of such measures within that country.

A sharper area of controversy thrown up by the Annual Report 2008 is a measure which goes further than positive action. In the housing chapter, it was reported that in at least one German city, foreigners and ethnic German immigrants are officially subject to fixed quotas in certain city districts, in order to maintain socially-balanced housing areas. The measure would seem to be contrary to certain basic principles of positive action – for example, it relies on fixed quotas, and it is presumably not a 'temporary special measure', but remains in place over many years. This policy has proven to be more controversial, with critics claiming that the quotas themselves constitute direct discrimination against members of minority groups. In return, supporters argue that the end justifies the means, that it is part of an initiative to combat discrimination and exclusion against minorities, and that it produces a fairer balance of residential communities than if the distribution was left to market forces. Clearly, policies such as these need to be exposed to a broader level of academic scrutiny and public debate.

## Member State differences

The 'ethnic statistics' question is not the only one which highlights clear contrasts in Member States' approaches to migrant-related issues. Previous Annual Reports have covered the debate on whether religious clothing can be worn by pupils in schools or by employees in various sectors of work, and have clearly demonstrated that across the EU there is an extremely wide variation in acceptability and practice regarding this subject. Differences are apparent even within one Member State: between Federal States in Germany, for example, or between the two main linguistic communities in Belgium. There are other differences in detail. The legal issues chapter of the Annual Report 2008 notes that in France, a legal ruling in 2007 made it clear that the principal of secularism, as a justification, for example, for excluding the wearing of a headscarf, only applies to public authorities and cannot be used by a private company in the provision of services. Consistent with this, in France (and Germany) there are cases which confirm that dismissal of an employee for wearing a headscarf is unlawful.<sup>9</sup> However, as stated in the 2006 EUMC Annual

<sup>9</sup> N. Nathwani (2007) *Islamic Headscarves and Human Rights: A Critical Analysis of the Relevant Case Law of the European Court of Human Rights Netherlands Quarterly of Human Rights* Vol.25 No.2, 2007, pp. 221-254.

Report, the Supreme Court in Denmark ruled that the dismissal of a supermarket employee for wearing a headscarf did not constitute discrimination.<sup>10</sup>

Usually this debate focuses on the wearing of headscarves by females. The education and employment chapters of the Annual Report 2008 describe new debates or cases concerning headscarves or veils in Belgium, Bulgaria, Denmark, Germany, Spain, France, the Netherlands and the UK. However, in 2007 the same issue emerged regarding the wearing of turbans by male Sikhs in Europe. In France in 2007 Sikh boys were reported to be appealing against expulsion from school for wearing turbans, and it was also noted that in France it is forbidden to wear a turban in photographs for driving licences. At the same time, it was reported that in Ireland the national police force banned the wearing of turbans as part of the police uniform. However, in some other Member States this is not a contentious issue. In the UK, for example, the wearing of turbans has long been allowed as a normal part of the uniform in the police and in the various armed services, and in Sweden, as reported in last year's FRA report, the police force has included in its diversity plan the right for police officers to wear a headscarf, a turban or a Jewish kippah while on duty.<sup>11</sup> The wide variation in public opinion on this issue between Member States was confirmed in 2007 with the publication of the findings of the European Commission's Special Eurobarometer on perceptions of discrimination. When EU citizens were asked if they agree with the statement 'The wearing of visible religious symbols in the workplace is acceptable', the level of agreement in different countries ranged from only 29 per cent (Lithuania) up to 79 per cent (Malta).<sup>12</sup>

## Health and discrimination

This is the first year that health care has been included in an Annual Report. An initial impression is that, compared to the three other areas of social life, information and data on ethnic discrimination in health care seem to be harder to find, and the general level of awareness of racism and discrimination issues seems to be lower. Nevertheless, there were cases reported in many Member States of migrants and minorities suffering different and worse treatment, or suffering abuse from medical staff, as well as the evidence from a range of academic or NGO reports on the various factors that reduce access to health care for minorities such as Roma, asylum seekers and irregular workers.

The research indicates that immigrants and ethnic minorities often face problems in accessing and using health care services. Even when access to these services is legally granted, such groups may often not use them, either because they are not aware of their rights, or because the administrative procedures are too complex, or because they object to the way they are treated because of their religious beliefs, or because of language barriers. As a result, they risk receiving inadequate service in medical diagnosis, care and prevention.

<sup>10</sup> EUMC (2006) *The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU*, p. 25.

<sup>11</sup> FRA (2007) *Report on Racism and Xenophobia in Member States of the EU*, p. 74.

<sup>12</sup> *Discrimination in the European Union* European Commission, Eurobarometer, 2007, p. 15, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_263\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf) (15.05.2008).

Whilst there were many reported instances of positive initiatives for improving and extending health care to migrants and minorities, it was more difficult to find any with elements specifically aimed at addressing and combating discrimination. Furthermore, there were just a few reports covering the problem of the racism or discrimination experienced by minority staff employed within the health sector, yet these few reports each exposed a serious problem. It seems likely that this problem is more widespread than people are aware of. The research gave an insight into some of the reasons why health care staff are reluctant to complain individually. Therefore, if the problem is not exposed through complaints, it will need to be exposed by research, so that health care organisations can be encouraged to introduce policies to combat it. It is clearly not acceptable for it to be left to individual groups of staff to decide on a case-by-case basis what the appropriate response is to, for example, a racist patient who abuses or refuses to be treated by an ethnic minority nurse.

## Examples of trends and developments

There are relatively few opportunities to make reliable generalisations about trends over several years in issues relevant to racism and xenophobia in the EU, because of the general weaknesses in statistics for this purpose. Thus many of the observations about developments over time are inevitably rather impressionistic, and tend to be qualitative rather than statistical. An exception to this statement can be found in the chapter on racist violence and crime, which identifies the 11 Member States which collect adequate data to provide a trend analysis. Of these, we can say that a majority, eight, recorded an upward trend in recorded racist crime over the period 2000-2006. Similarly, of four Member States which collect sufficient data on anti-Semitic crime we can say that three experienced a general upward trend between 2001-2006, and of the four Member States which collect adequate data on right-wing extremist crime, two experienced a general upward trend between 2000-2006. On a smaller scale, as shown in the education chapter of the Annual Report 2008, one German Federal State, Brandenburg, which collects incidents with a right-wing extremist background in its schools, has been able to identify a steady decline in such recorded incidents since registration of such crimes began in the school year 2000/2001. The racist violence chapter also provides examples of some more qualitative judgements – for example, it seems that over the last few years various Member States have become more positive in paying necessary attention to racist crimes, in responding to hate crimes, and in introducing measures to encourage the recruitment of minorities into the ranks of the police.

Another ‘good practice’ trend can be noticed in the field of employment. Since the first case studies of good practice began to be reported to the EUMC, following the creation of the RAXEN network in 2000/2001, there have clearly been reported each year more policies which fall under the heading of ‘diversity policy’ or ‘diversity management’ in both public and private sector organisations. There has also been a noticeable growth each year in what might be called ‘encouragement measures’ for diversity management, organised by government authorities, employers, NGOs, or combinations of these, running campaigns and training courses and



offering advice and incentives for organisations to adopt diversity policies. (Only selected examples of both of these have been able to be printed in the Agency's Annual Reports in any one year – more can be seen on the FRA InfoBase.<sup>13</sup>) It also seems that diversity policies are reaching into a broader spread of Member States, many for the first time. In 2005, the European Commission published the findings of a major survey of diversity management practices in the then 25 countries of the EU,<sup>14</sup> and one of the conclusions was that at that time there was very little (or no) evidence for diversity management to be found in countries of southern Europe, and in those Member States which joined the EU in 2004. This conclusion may now need to be modified, as in the last FRA report diversity management activity was noted in Italy,<sup>15</sup> and in 2007, as the employment chapter of the current report shows, evidence of diversity management activities could be found in Cyprus, Malta, Portugal and Romania.

## Data collection and research by the FRA

Data and information collected by the FRA complement data collected elsewhere. They can be drawn on by policy makers and legal authorities, and can also be useful in identifying areas where new research needs to be initiated.

### Complementing legal data

The socio-legal data and information collected by the FRA in this field complement the more formal material gathered by other bodies. A relevant example here is the Migrant Integration Policy Index (MIPEX), created in 2007, which is used to measure policies to integrate migrants in 25 EU Member States (plus three non-EU countries), using over 100 policy indicators.<sup>16</sup> The index compares the performance of Member States along a number of dimensions relevant to the integration of migrants. One of these comparisons is how Member States perform according to the range of sanctions available in the enforcement of anti-discrimination legislation, and in this evaluation, for example, Greece, Poland and Portugal are rated highest in terms of 'best practice'. The problem here is that this evaluation is based on a consideration of what sanctions are available in theory, but this may have little relationship to actual practice. In complete contrast to the MIPEX rating, in the FRA's own evaluation of EU Member States, Greece, Poland and Portugal are rated low in terms of performance, because in reality they applied no sanctions at all during the reporting period (see section 2.1.1. of the Annual Report 2008), and also Poland and Portugal are categorised as having ineffective equality bodies (section 2.1.3.). Thus the socio-legal data collected by the FRA can be useful in highlighting the differences which often exist between legal arrangements in theory and social reality in practice.

<sup>13</sup> <http://infobase.fra.europa.eu> (28.01.2008).

<sup>14</sup> European Commission (2005) *The Business Case for Diversity: Good Practices in the Workplace* Office for Official Publications of the European Communities.

<sup>15</sup> FRA (2007) *Report on Racism and Xenophobia in Member States of the EU*, pp. 71-72

<sup>16</sup> <http://www.integrationindex.eu/> (09.04.2008).

## **Informing court decisions**

Another practical value of the statistics and information provided by the FRA is that they are available to be drawn on in legal decisions. An illustration of this is referred to in the Annual Report 2008, namely in the case of the European Court of Human Rights which in 2007 delivered a judgement against the Czech Republic, and in coming to this decision, referred to information collected by the EUMC, the predecessor of the FRA, on the educational situation of Roma.

## **Primary research by the FRA**

One result of the FRA/EUMC's collection of data and information across the EU over several years is the highlighting of the near impossibility of finding secondary data in this field which would allow a meaningful comparison between Member States. For example, in the area of racist crimes, as chapter three in the Annual Report 2008 makes clear, statistics on racist crimes can be compared over time within one Member State, but not *between* Member States. For this reason, the FRA has now started to design and carry out its own research, which is designed with comparability built into the methodology, and aims to produce data on important problem areas which are directly comparable between Member States. One of the first of these is under way in 2008: a 'victim survey' of migrants and minorities' experiences of discrimination, racist crime and policing in all 27 EU Member States. The findings from this and other similar research by the Agency will be described in future FRA Annual Reports.

## 6. Opinions

### The Racial Equality Directive

Effective and dissuasive sanctions are crucial to fight ethnic and racial discrimination. Without these, discriminatory attitudes and behavioural patterns are unlikely to change and victims remain defenceless. Also settlements depend on the availability of sanctions to strengthen the negotiation position of victims. No sanctions and/or awards related to cases of ethnic or racial discrimination could be detected during 2006-2007 in 12 Member States. The absence of sanctions coincides in some cases with the absence of an effective equality body. This observation stresses the central importance and role of equality bodies.

- Member States should ensure that equality bodies are well resourced to perform their important function. They need to be accorded sufficient independence so as to invite trust by the victims.

Another reason for the absence of sanctions lies in the role of the equality bodies. Sanctions are absent or rare in countries in which the equality bodies do not support victims of discrimination in proceedings which lead to sanctions, or do not have the power to issue sanctions themselves or do not use this power for some reason.

- Member States should ensure that equality bodies are empowered to assist victims in proceedings which lead to sanctions. Equality bodies should have the ability to function both as low threshold access points for victims and as bodies which support victims to obtain real redress and full compensation.

In some countries, the relative scarcity of sanctions has structural reasons related to the role of criminal law in the fight against ethnic discrimination. Symbolically, criminal law certainly is the most important instrument any state can use in the fight against ethnic discrimination. However, in practice, criminal law does have its disadvantages: the shift of the burden of proof foreseen by the Racial Equality Directive does not apply and the victim of discrimination often has limited control of the criminal procedure, which usually lies in the hands of the prosecution services.

- Member States which rely mainly or exclusively on criminal law should create complementary civil and administrative procedures for victims of ethnic or racial discrimination to obtain real redress and full compensation.

### Racist violence and crime

Member States should acknowledge that data collection on racist crime is essential for the development of evidence-based policies that can address and prevent the problem, and in turn can indicate whether legislation on racist crime is effectively targeted where it is most needed.

- Where Member States have no or limited data collection on racist crime, they should establish comprehensive data collection mechanisms that encourage public reporting and accurate recording. To this end, Member States can learn lessons from those Member States that have established good data-collection practices.

As in previous Annual Reports, the problem has been noted of abuses by law enforcement officers against vulnerable minorities. Public trust in the police is an important factor in democratic societies.

- Member States should ensure that the public can report incidents of racist police abuse and violence to an independent police complaints authority. These authorities should be functionally external to ministries and other government offices.

## Research and awareness-raising

New examples in the reporting period of discrimination testing experiments in access to employment, housing and health care confirm that the method plays a unique and valuable role in bringing unseen problems to public attention.

- Member States are called upon to consider implementing more widespread and systematic discrimination testing ('situation testing') in order to facilitate a clearer assessment of the magnitude and mechanisms of discrimination in employment, housing and health provision, and to provide evidence with which to supplement official data.

## Sanctions and complaints

Several chapters of the Annual Report 2008 have noted evidence that victims of discrimination who might be expected to complain do not do so.

- Research should be carried out on the operation and impact of the Racial Equality Directive, so as to shed light on the forces that predispose victims of discrimination to complain or constrain them not to complain, and the reasons why sanctions are applied or not applied by specialised bodies or courts.

## Anti-discrimination training

Evidence in both the employment and health care sections of the Annual Report suggests that there is a need for anti-discrimination training for employees in work organisations.

- Governments and employers should make available anti-discrimination and diversity training for employees in the public and private sector.

- Health sector employers should conduct on a regular basis anti-discrimination training of public and private health care providers. Anti-discrimination training subjects should be included in the curricula of medical universities and colleges.

## Housing

Access to low-rent, publicly funded housing is one of the most important means of improving the generally bad housing conditions experienced by immigrants, Roma, and other ethnic minorities.

- Member States are called upon to increase the stock of low rent, publicly funded housing, to ensure, and if necessary to enforce, the application of equitable criteria in the allocation of affordable public housing. In particular, they should take every necessary measure to ensure that these criteria do not discriminate against immigrants, Roma and other ethnic minorities.

## Education

Inequality in access to and performance in education for migrants and minorities, compared to the majority population, are particularly striking in those countries where there is an early tracking school system in place. According to PISA 2006 performance, early stratifying of students into separate institutions or programmes has a particular negative impact on the performance of socioeconomically or linguistically disadvantaged students.

- Member States should consider adopting more integrative school systems in order to reduce inequality in education.
- Access to education for all population groups, including asylum seekers and irregular migrants, needs to be established in firm legal and practical terms. Practical barriers such as discriminatory enrolment procedures and access testing, unavailability or inaccessibility of pre-school facilities, or unreasonably long distances to schools, should be removed.
- Segregated forms of education should be either completely abolished or reduced to short-term preparatory classes leading to the integration of migrant and minority children into regular schooling. Member States should draw lessons from the judgement of the European Court of Human Rights against the practice of segregating Roma children into special schools.

## Data collection in education

The collection, evaluation and public discussion of reliable information is an indispensable prerequisite for improving the situation of vulnerable and disadvantaged groups in education. This has recently been reconfirmed by the PISA 2006 education performance study, which points to the significant positive association between schools who monitor and evaluate achievement and make achievement data public and students having better test performance. In most Member States there is insufficient monitoring and evaluation systems in place, or none at all.

- Member States should consider installing systems to allow the monitoring of migrants and minority ethnic pupils in terms of educational achievement.

## Data collection in health care

More knowledge is required in the EU about the dynamics of health and well-being of immigrants and ethnic minorities. To this end Member States should take steps to collect data systematically, providing the basis of evidence that policy-makers and planners can use in defining national and EU-wide strategies.

- Member States should develop and implement mechanisms for collecting publicly available data on inequality and discrimination in health care. Data on health status and access to health services should be disaggregated by ethnicity in health surveys, registers and public information systems and made available to the public when national statistical confidentiality rules permit this disaggregation.

## Migrant and minority-sensitive health care

Health care services are called for to not only recognise the role of cultural, social, linguistic and health background, but also the role of the difficult and ill-defined settings in which migrants often live and work.

- Member States and the EU should encourage culturally sensitive training of the health workforce. Staff development and training programmes in the health care system should include components related to Roma-specific needs in health status.

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