

# 6

## Racism and ethnic discrimination



***The prohibition of discrimination on the basis of race and ethnicity is well established in international and European law. At the same time, court cases and studies published in the European Union (EU) show that racism remains a significant problem in the areas of employment, healthcare, housing and education. Racially motivated crimes are committed every day on European soil. In order to fully understand the phenomenon of racism and ethnic discrimination, comprehensive and comparable data collection mechanisms would be helpful. However, overall progress in introducing such mechanisms remained slow, whereas at the same time efforts to promote equality with respect to racism and ethnic discrimination took place.***

This chapter covers developments in EU and Member State policies and practices in the area of discrimination on the grounds of race and ethnicity, including racially motivated crime. The chapter will address developments in the areas of employment, healthcare, housing and education. It will then examine the issue of data collection, before focusing on the specific issue of data surrounding racially motivated crime. For a comprehensive overview of the issue of discrimination and equality in general, this chapter should be read alongside Chapter 5 on equality and non-discrimination, which focuses on the other grounds protected by EU law such as sex, religion or belief, disability or sexual orientation. In particular, reference should also be made to Chapter 5 on equality and non-discrimination for information relating to cross-cutting issues in the area of discrimination and equality in general, namely: rights awareness; equality bodies, including statistics with regard to racial or ethnic discrimination complaints; and multiple discrimination.

### 6.1. Data collection

As noted in successive publications, including former annual reports of the FRA, the collection of reliable and comparable data is vital in order to formulate policies targeted at combating inequality, as well as for measuring the success of new measures. At the same time, the collection of racially or ethnically disaggregated data is particularly problematic in some Member States. The need for data relates not only to measuring levels of complaints of discrimination of discrimination, as discussed in Chapter 5 on equality and

#### Key developments in the area of racism and ethnic discrimination:

- discrimination in the area of employment remained prevalent, with cases relating to discrimination in job advertisements, recruitment processes, working conditions and dismissals;
- access to healthcare remained dependent on efforts to overcome language barriers and accommodate cultural diversity. In the case of irregular migrants, access hinged upon whether healthcare personnel were required to report undocumented persons to the authorities;
- although formal legal and administrative barriers to accessing social housing were present in only a few Member States, available evidence suggested that minorities continue to live in lower-quality housing resulting from both direct and indirect discrimination;
- segregation in education appeared to remain a problem affecting mainly Roma children in some Member States. Barriers to access to education remained for children of undocumented migrants in some Member States where school authorities are obliged to collect information and report on the legal status of students and their parents;
- a number of Member States were beginning to move towards the collection of data broken down by race or ethnicity, which is an important development in an effort to record and identify potentially discriminatory practices;
- most Member States that collect data on racially motivated crime showed an increase in recorded numbers.

non-discrimination, or crimes that are racially motivated, as per section 6.6, but more generally to areas such as employment, housing, education and healthcare.

Various developments in the area of data collection can be reported. For instance, in **Finland**, a specific monitoring group was formed in 2008 to support national data collection on discrimination. In 2010, the Group adopted a four-year action plan for 2010–2013. In 2010, the Group focused on developing data collection with regard to working life, especially in relation to Occupational Safety and Health Inspectorates.

**France** does not collect data on ethnicity. The census does not include any ethnic data, in spite of reiterated recommendations by the United Nations Committee on the Elimination of Racial Discrimination (CERD). In its Concluding Observations on France, issued as part of a state reporting procedure in August 2010, it requested the inclusion of a question related to ethnicity in the census, on “purely voluntary and anonymous” basis and according to self-identification.<sup>1</sup> In June 2010, the Council of Europe European Commission against Racism and Intolerance (ECRI) report on France, requested the French authorities to “envisage collecting data broken down according to categories such as ethnic or national origin, religion, language or nationality, so as to identify manifestations of discriminations [...]”<sup>2</sup>

*“Of the 23,500 respondents interviewed in the FRA EU-MIDIS survey, who had an ethnic minority/immigrant background – when asked about their willingness to provide data on their ethnicity and religion as part of a census on an anonymous basis if this could help combat discrimination – about three out of four respondents in Ireland (74%) and Sweden (72%) had no objection to providing information on their ethnicity for a census, and about three out of five in France (61%), Portugal (62%) and the Netherlands (62%) said the same.”*

EU-MIDIS Main Results Report pp. 85-86

In 2009, the French Commissioner for Diversity and Equal Opportunities (*Commissaire à la diversité et à l'égalité des chances*) established a Committee for Measuring and Evaluating Diversity and Discrimination (Comedd) to “give France the means to understand the current state of discrimination”. The committee published its findings in February 2010 making several recommendations, notably the inclusion in the annual census of a question on the birth country of the respondent’s parents. It also insisted on the necessity of fostering research and experimental surveys using alternative means to measure discrimination, such as relying on family names, on-site observations and possibly questions on self-identified ethnicity, as long as this information remained under the supervision of the competent institutions (such as the National Council for Statistical Informa-

1 United Nations, Committee on the Elimination of Racial Discrimination (CERD) (2010), p. 3.  
2 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2010a), p. 45.

tion (*Conseil national de l'information statistique, CNIS*) and the National Commission for Data Protection (*Commission nationale de l'informatique et des libertés, CNIL*)).<sup>3</sup>

In **Hungary**, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (Minority Ombudsman) (*Nemzeti és Etnikai Jogok Országgyűlési Biztos*) and the Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information (*Adatvédelmi Biztos*) published a joint report and a set of recommendations concerning data collection. The report discusses perceptions of ethnicity in discrimination and equality policies, options for establishing objective criteria for membership in minority groups for the purposes of political representation and minority rights, monitoring of racial profiling and racially motivated hate crimes, and guidelines for the media.<sup>4</sup>

### Promising practice

#### Monitoring racial discrimination through the media

The Italian Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali, UNAR*) has launched an initiative to monitor the activity of newspapers and websites, in order to find cases of racial discrimination reported by mass media that have not been reported to the police or judicial authorities.

UNAR (2010), Relazione al Presidente del Consiglio dei Ministri sull'attività svolta nel 2009, Rome, UNAR, p. 3.

In September 2010, the **Lithuanian** Parliament issued a decision<sup>5</sup> recommending that the government approve the Action Plan on National Statistics of Equality.<sup>6</sup> In **Poland**, calls for a system for gathering and analysing social and demographic data to monitor racism, racial discrimination and xenophobia has returned to the political agenda.<sup>7</sup>

## 6.2. Employment

As in previous years, complaints of ethnic discrimination were common in the area of employment. For **Belgium, France, Germany** and the **Netherlands** it was explicitly noted as the area where discrimination is reported most often.<sup>8</sup> In contrast, in several other Member States there remains an almost total absence of complaints, which typi-

3 Comedd (2010).  
4 Hungary, Parliamentary Commissioner's Office (*Országgyűlési Biztosok Hivatala*) (2009).  
5 Lithuania, Decision No. XI-1028 of the Lithuanian Parliament, 21 September 2010.  
6 Lithuania, The Office of Equal Opportunities Ombudsperson (*Lygių Galimybių Kontrolerius Tarnyba*) (2009).  
7 Klaus, W. and Frelak, J. (eds.) (2010). For the previous initiative, see Poland, Pełnomocnik Rządu ds. Równego Traktowania (2010).  
8 This fact was reported by the Antwerp reporting office for discrimination in Belgium, the HALDE in France, anti-discrimination agencies in the Netherlands and various civil society organisations or anti-discrimination offices in Cologne, Munich, Berlin and Hamburg, as noted in RAXEN reports to the FRA.

cally reflects challenges with respect to recording practices and public willingness to report. Evidence of discrimination continued to emerge regarding advertisements, recruitment processes and other practices. In some cases, this type of discrimination relates to particular characteristics that are associated with ethnicity, for example language. Furthermore, in Chapter 5 on equality and non-discrimination, religion is identified as a characteristic which is closely associated with ethnicity (cases dealing with the display of religious or cultural symbols at work are dealt with in that chapter).

### 6.2.1. Prevalence of employment discrimination

In several Member States surveys of minorities were conducted in order to measure their experiences of perceived discrimination, particularly in relation to the frequency of such experiences. In **Germany**, the annual survey of 1,000 adults of Turkish origin in North Rhine-Westphalia<sup>9</sup> noted that the highest rates of perceived discrimination occur at the workplace or at school/university (50.6%) and when looking for a job (40.2%). In **Lithuania**,<sup>10</sup> 11% of Russians; 11% of Poles; and 14% of Belarusians indicated in a 2010 survey that they had felt discriminated against or harassed on the grounds of ethnic origin in the last 12 months, with the area of employment being mentioned most often. In a survey in the **Netherlands**, 71% of people from ethnic minorities reported rejections in relation to job opportunities, with just over a quarter of these believing that this was due to discrimination.<sup>11</sup> It should be noted that results from these surveys are not directly comparable as they use different methodologies. A survey of the majority population was carried out in **Romania** (*Institutul Român pentru Evaluare și Strategie IRES, Sondaj de opinie, Percepția publică a minorității române*), where only 54% of the respondents felt comfortable with the idea of having a Roma as a co-worker, compared to 69% and 84% regarding a Hungarian or German co-worker, respectively.

Statistical surveys from a range of Member States revealing higher unemployment rates or lower wages for migrants and minorities when compared with the majority population, even when their qualifications and experience are similar, have been reported in previous annual reports. In 2010, this body of evidence was added to by surveys from **Austria**,<sup>12</sup> **Belgium**<sup>13</sup> and **Italy**.<sup>14</sup>

### 6.2.2. Cases of employment discrimination

Evidence from these surveys can be read together with complaints and court cases relating to discrimination in the workplace. Cases of employment discrimination could be found relating to job advertisements, recruitment, experiences at the workplace and dismissal.

In relation to discriminatory job advertisements, the previous FRA Annual Report, which covered the main developments in the area of fundamental rights in the EU during 2009, noted such discriminatory advertisements in four Member States. In 2010, examples of such discrimination were to be found in France and Denmark. In **France**, an advertisement by a wine producer, which explicitly excluded Travellers and persons of North African origin, was ruled discriminatory by the country's equality body, the High Commission against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité, HALDE*).<sup>15</sup> In **Denmark**, the Documentary and Advisory Centre on Racial Discrimination (DACoRD) (*Dokumentations- og Rådgivningscenteret om Racediskrimination, DRC*) reported that despite registering many cases of discriminatory job advertisements, neither the Ministry of Labour nor the police seem to be taking any action against them.<sup>16</sup>

#### Promising practice

##### Diversity guidelines in the area of recruitment

In Finland in November 2009, the City of Helsinki released guidelines for managers to use when recruiting employees from other cultural backgrounds, containing information on equal treatment, language skills and cultural differences. The guidelines recommend that job applicants from an immigrant background should be recruited in those cases where they have the same level of qualification as other applicants. The City aims to improve the proportion of immigrants amongst city staff until it approaches 10%, the proportion of immigrants in the overall population in Helsinki.

*Finland, Positive Action in Recruitment (Maahanmuuttajien positiivinen erityiskohtelu työhönotossa). For more information, see [www.hel.fi](http://www.hel.fi).*

In relation to discriminatory recruitment practices, discrimination testing has proved particularly successful in exposing these. The results of the first systematic discrimination testing study in **Germany** since the mid-1990s were published in February 2010,<sup>17</sup> showing that applicants with a Turkish-sounding name face discriminatory barriers in access to the labour market. The researchers tested 528 publicly advertised student internships and discovered that the chances of applicants with a Turkish name receiving a call back by the employer were 14% lower than the chances of the 'German' testers, with the discrimination rate sig-

9 Sauer, M. (2010).

10 Lithuania, *Lietuvos socialinių tyrimų centro Etninių tyrimų institutas* (2010).

11 Coenders, M., Boog, I. & Dinsbach, W. (2010).

12 Austria, Bundeskanzleramt Österreich, Bundesministerin für Frauen und Öffentlichen Dienst (2010).

13 Corluy, V., and Verbist, G. (2010).

14 Italy, IT Ismu, Censis, Ipsos (2010).

15 France, HALDE (2010), p. 39.

16 Denmark, DACoRD (2010), pp. 17-18.

17 Kaas, L. and Manger, C. (2010).

nificantly higher in small companies. In the **Netherlands**, a man of non-Dutch origin applied for the post of probation officer, but, although he had the desired qualifications and work experience, he was not invited for an interview. When he applied again with a different place of birth and a Dutch name, however, he was invited for an interview. The Equal Treatment Commission (ETC) ruled this to be a case of racial discrimination.<sup>18</sup> In **France**, a testing research exploring discrimination against young people living in the Paris area analysed three grounds of discrimination: gender, area of residence (privileged or under-privileged), and origin (French or Moroccan).<sup>19</sup> The researchers sent 3,864 CVs to 307 advertised jobs. As well as showing that Moroccans were less likely to receive a positive response, the research showed that exclusion by residential area affected women more than men, with Moroccan women from an under-privileged area experiencing the most discrimination. For information on the phenomenon of multiple discrimination, see Chapter 5 on equality and non-discrimination. For further examples of the use of discrimination testing, see section 6.4 on housing.

In relation to experiences at work, in October 2010, four Polish migrants working on an industrial site in **Ireland** were awarded compensation by the Equality Tribunal after suffering “deliberate, blatant and unfettered” racist abuse at work. The men had been told not to speak Polish to each other on their lunch breaks, were subjected to direct verbal abuse, and were told that the odour of Polish food and Polish people was unpleasant.<sup>20</sup>

### Promising practice

#### Municipalities engage in discrimination testing

In Belgium, the Government of the Brussels-Capital Region launched a pilot project to improve employment opportunities, particularly for people of migrant origin. Between August and December 2010, four municipalities of Brussels used anonymous CVs to test access to certain public vacancies. In January 2011, other Brussels municipalities will join the pilot project.

*Communication from the Office of the Minister Benoît Cerex, 6 September 2010.*

In the context of termination of working contracts, cases of discrimination were reported in several Member States. In **Finland**, a trainee of Roma origin was awarded compensation after his two-week work placement was terminated after the first day because the company claimed it had received negative feedback from customers.<sup>21</sup> In **France**, the Versailles Court of Appeal sentenced a bailiff to pay compensation to a former employee who had been dismissed

in a discriminatory fashion, after regularly being the target of racist remarks linking his North African origin to Islamic terrorism.<sup>22</sup> In **Germany**, an employer agreed to pay compensation to a trainee of Asian background who had been informed that his contract had not been extended because the company preferred ‘German employees’.<sup>23</sup> In **Ireland**, a complaint was upheld by the Equality Tribunal in relation to a Lithuanian claimant who had been subject to frequent verbal abuse, which later resulted in unfair dismissal.<sup>24</sup>

### 6.2.3. Language and accent

As with religion or belief, discussed in Chapter 5 on equality and non-discrimination, in certain circumstances it may not be possible to dissociate language and accent from ethnicity. In 2010, there were several cases reported where language or accent was used as grounds for discrimination. Even if these cases do not show a clear pattern, they illustrate how language can play a role in the context of discrimination and racism. In Hamburg, **Germany**, a man born in Ivory Coast was awarded compensation by the labour court for unlawful indirect discrimination on the grounds of ethnic origin after being rejected three times for a job as a postman, whilst the position remained vacant. He had been told that his command of German was not good enough even though he had successfully undertaken an apprenticeship in Germany and had worked in German offices.<sup>25</sup> Also in Germany, the state labour court in Bremen confirmed that the dismissal of an employee because of her Russian accent was a case of unlawful direct discrimination on the grounds of ethnic origin. The claimant had been dismissed by the new managing director of a small logistics company on the grounds that customers would react negatively to her Russian accent.<sup>26</sup> In contrast, in February 2010 the Supreme Court in **Denmark** decided that it was not a violation of the Law on Equal Treatment when a company selected four out of six employees for redundancy on the basis of their level of fluency in Danish.<sup>27</sup>

18 The Netherlands, Equal Treatment Commission (2010), *Opinion 2010-68*.

19 Duguet, E., L'Horty, Y., du Parquet, L., Petit, P., Sari, F. (2010).

20 Holland, K. (2010).

21 Finland, Vähemmistövaltuutettu (2010).

22 France, HALDE (2009).

23 Germany, *Antidiskriminierungsstelle des Bundes* (2010).

24 Ireland, Equality Tribunal (2010).

25 Germany, Labour Court (*Arbeitsgericht*) Hamburg/25 Ca 282/09, 26 January 2010; see also Germany, *Antidiskriminierungsstelle des Bundes* (2010), Newsletter ADS-aktuell No. 1/2010, 02 September 2010.

26 Germany, State Labour Court (*Landesarbeitsgericht*) Bremen, 1 Sa 29/10, 29 June 2010; Labour Court (*Arbeitsgericht*) Bremen-Bremerhaven Bremen/8 Ca 8322/09, 25 November 2009.

27 Sø-8 Handelsretten, SHR af. 12/04-07 *Funktionærforhold – Usaglig opsigelse – Ligestilling og ligebehandling*, Sag F-43-06.

## FRA ACTIVITY

## Shedding light on racism in sport

According to a FRA report on racism in sport which was published in 2010, persons belonging to minority groups are often discriminated against in terms of their employment conditions. In several Member States, foreign professional football players, mainly from African countries, can face precarious employment conditions and are treated differently by their clubs in comparison with domestic players. The report identifies both problematic instances as well as promising practices.

*FRA (2010), Racism, ethnic discrimination and exclusion of ethnic minorities in sport: a comparative view of the situation in the European Union, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm).*

## 6.3. Healthcare

This section addresses discrimination in healthcare on the grounds of race or ethnicity. It will begin by discussing patterns of health inequality as noted in recent studies, and then move on to developments relating to the position of undocumented migrants and provision for diversity in healthcare, including mental health provision.

### 6.3.1. Health inequalities

Evidence suggests that socioeconomic factors, such as education, income, gender, but also ethnicity and race, have an impact on individuals health status and health outcomes. Therefore, the World Health Organization (WHO) Regional Office for Europe commissioned a review of the health divide and inequalities in health from July 2010 to 2012 in order to inform the development of a new health policy for the region. The first phase of the review assesses levels of inequalities in health across Europe and identifies the barriers to and opportunities for reducing these. It is argued in the draft report that unequal distribution of power as well as unequal access to resources, capabilities and rights, lead to health inequalities. In its interim report, the WHO Regional Office emphasises that political empowerment and the full realisation of human rights are also critical in improving health and reducing inequality.<sup>28</sup>

Following the European Commission Communication on *Solidarity in health, reducing health inequalities*, which was published in October 2009,<sup>29</sup> a strong political commitment to address socioeconomic determinants of health has developed. Both the Spanish and Belgian Presidencies of the Council of the European Union had made health inequalities a priority theme.<sup>30</sup> In its opinion on the above mentioned health inequalities communication in May 2010, the Social Protection Committee (SPC, in charge of coordination of

the Open method of coordination for social protection and social inclusion) advised taking extra measures to improve health among vulnerable groups, including people from some migrant or ethnic minority backgrounds.<sup>31</sup>

Also at national level, policy developments can be noted in relation to three Member States in this area. The results of the Tackling health inequality in **Belgium** (TAHIB) research project show that ethnic minorities have a significantly higher risk of reporting worse states of health, explained by their statistically lower socioeconomic status and poorer living environment. Better monitoring was proposed as a means of addressing this.<sup>32</sup> Similarly, the All **Ireland** Traveller Health Study (2010),<sup>33</sup> covering both Ireland and Northern Ireland, points to great health disparities between the Traveller and the settled population, with a difference in life expectancy of 11 years. Substantial health inequalities exist between Roma and non-Roma populations – a fact that is stressed by this report in the focus section on the Roma. Finally, in its monitoring report adopted in December 2009, ECRI has strongly encouraged the **United Kingdom (UK)** to pursue efforts to eliminate inequalities in health status and access to health services experienced by members of black and minority ethnic groups.<sup>34</sup> This message was also echoed in *Fair Society, Healthy lives*, published in February 2010,<sup>35</sup> as a result of a two-year long investigation by an independent commission, which looked into the Strategic Review of Health Inequalities in England.

*“The more a group is marginalised, the more vulnerable it is. Nevertheless, being a migrant, from a certain ethnic group or a person with a disability does not make a person inherently more vulnerable or at increased risk. Rather, it is the interaction between several factors that creates increased vulnerability. These factors include poverty, inequality, discrimination, exposure to various threats (such as sexual abuse), the prevailing incidence or prevalence of disease (such as HIV) and the possibilities of epidemics (such as influenza).”*

*WHO Regional Office for Europe (2010) Interim first report on social determinants of health and the health divide in the WHO European Region*

### 6.3.2. Irregular migrants

The EU Member States have undertaken to guarantee the right to health of every person within their jurisdiction in a number of international treaties, including the International Covenant on Economic Social and Cultural Rights (ICESCR) which guarantees in its Article 12 (1) the right “to the enjoyment of the highest attainable standard of physical and mental health”. For more on international obligations, see Chapter 10. In 2010, the Recommendation of the Committee of Ministers of the Council of Europe on Good governance

28 WHO (2010).

29 European Commission (2009a).

30 Council of the European Union (2010a). For a summary of the Belgian Presidency Conference on health inequalities, see: [www.eutrio.be/pressrelease/integrated-approach-required-deal-health-inequalities](http://www.eutrio.be/pressrelease/integrated-approach-required-deal-health-inequalities).

31 Council of the European Union (2010b).

32 More information about the project is accessible at: [www.belspo.be/belspo/fedra/proj.asp?fr&COD=TA/00/15](http://www.belspo.be/belspo/fedra/proj.asp?fr&COD=TA/00/15).

33 Ireland, Pavee point (2010).

34 Council of Europe, ECRI (2010b), p. 33.

35 Marmot, M. (2010), *Fair Society, Health Lives*, available at: [www.marmotreview.org](http://www.marmotreview.org).

in healthcare emphasised that healthcare systems should be based on the principles of universality, solidarity and access.<sup>36</sup> However, as shown in a forthcoming report of the FRA on irregular migrants, practices in offering treatment to undocumented migrants vary widely among Member States and are often in contradiction with international standards.<sup>37</sup>

In some Member States, reporting duties were introduced, obliging health professionals to report undocumented migrants they treat. In **Germany**, the Ministry of Interior (*Bundesministerium des Innern*, BMI) recently clarified that the duty of professional secrecy outweighs the duty to report.<sup>38</sup> As a result, health staff and hospital accountancy units are exempt from reporting the undocumented migrants they treat to the immigration authorities. Irregular migrants, thus, may access all care provisions, with respect to immediate medical attention.<sup>39</sup> However, a reporting duty continues to exist for social welfare offices.<sup>40</sup> Even when no such strict duties are in place, service providers may be asked to cooperate with immigration authorities or the police, either in general or with regard to individual cases. This may lead to fear of approaching healthcare providers, as developments in **Italy** have illustrated: a proposal to introduce a reporting obligation for health staff was hotly debated in 2009, but was not introduced in the end.<sup>41</sup> However, the adopted amendments criminalised illegal entry and residence of third-country nationals.<sup>42</sup> The public debate around this issue created fears among the irregular migrant community and discouraged many of them to access healthcare services.<sup>43</sup>

In contrast to the stance adopted by the law in **Italy**, a survey carried out by Censis, suggests that over 80% of Italians think that irregular immigrants should have access to public health services.<sup>44</sup> About 65% of respondents believe that health is an 'inviolable right' and 'healthcare is an essential act of solidarity'. Less than 20% of interviewees are against granting access to the National Health Service to irregular immigrants. Further analysis of the situation of irregular migrants can be found in Chapter 2 on border control and visa policy.

36 Council of Europe (2010).

37 FRA (2011) (forthcoming). For a more in-depth discussion on access to healthcare for undocumented migrants, see also the forthcoming FRA report on access to healthcare – a case study of 10 EU Member States.

38 Germany, Ministry of Interior, Administrative Decree on the Residence Act, 26 October 2009.

39 FRA (2011) (forthcoming).

40 Katholisches Forum, 'Leben in der Illegalität' (2010).

41 See the national campaign "Divieto di segnalazione" (Forbidden to denounce) in Italy, available at: [www.immigrazioneoggi.it/documentazione/divieto\\_di\\_segnalazione-analisi.pdf](http://www.immigrazioneoggi.it/documentazione/divieto_di_segnalazione-analisi.pdf).

42 Italy, Law No. 94/09 on provisions in matters of public safety, 15 July 2009.

43 For more information on the law and its effect on irregular migrants and accessing healthcare in Italy, see Platform for International Cooperation on Undocumented Migrants (PICUM) (2010), p. 9, and LeVoy, M. and Geddie, E. (2009).

44 La Repubblica, 'Si alle cure per gli immigrati irregolari Censis, favorevoli otto italiani su dieci', 5 February 2010.

## FRA ACTIVITY

### Irregular migrants and healthcare: interviews in 10 EU Member States

For an upcoming report on access to healthcare for irregular migrants, in 2010 the Agency conducted interviews in **Belgium, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Spain** and **Sweden**. These countries were selected to cover a broad variety of different situations across the EU so that the results could also be relevant for countries and cities not covered by the research. Altogether, the fieldwork involved 221 qualitative interviews in 23 big cities: 36 with public authorities, 43 with civil society representatives, 67 interviews with health staff and 75 with irregular migrants.

### 6.3.3. Diversity in health service provision

Similar to the situation in 2009, obstacles remain in 2010 in some EU Member States in relation to accessing culturally adequate healthcare services. In some Member States, it has been reported that people who do not speak the respective majority languages face problems in accessing healthcare. For instance, a study on third-country nationals, undertaken in Poznań, one of **Poland's** larger cities, pointed to the fact that no information on the Polish health system was available in foreign languages. In this study, the researchers also identified factors hindering integration, including discrimination and prejudice based on a persons' origin or appearance (namely, race and skin colour). Discrimination on the basis of appearance was especially significant in the context of education and healthcare.<sup>45</sup>

As highlighted in the previous FRA Annual Report, in **Denmark** the provision of cultural mediators and interpreters will be reduced following legislation that will enter into force in 2011. This legislation will require those who have lived in Denmark for over seven years to cover the costs of translation themselves.

### 6.3.4. Mental health

Diversity in the provision of services is of particular importance in the context of crucial delivery of mental healthcare. The ways in which patients describe their symptoms vary between cultures; in some cases, somatic symptoms, that is those related to physical health, can constitute a manifestation of psychological ill health.

45 Bloch N. *et al* (2010).

## Promising practice

## Transcultural psychiatry: raising awareness on transcultural sensitivities

In Rekem, **Belgium**, the Public Psychiatric Care Centre (*Openbaar Psychiatrisch Zorgcentrum, OPZC*) introduced a working group on 'transcultural psychiatry'. In collaboration with the provincial integration centre (*Provinciale Integratiecentrum, PRIC*) in Limburg and the intercultural mediation service of the hospital ZOL in Genk, the working group has the task of developing, in cooperation with the province, a policy concept for ensuring continued awareness-raising of transcultural sensitivities in mental healthcare delivery among staff involved in social work and care services.

For more information, see: [www.opzrekem.be](http://www.opzrekem.be).

The 2010 ECRI report on the **UK** noted that, as regards mental health, some black and minority ethnic groups were significantly more likely to experience forms of mental health problems than others.<sup>46</sup> This situation does not appear to have improved in recent years, although research is being conducted into the causes of this and understanding has improved. This resonates with the findings of the Care Quality Commission's 'Count Me In' 2009 census, published in January 2010, which monitors the ethnicity of people detained and treated in mental health hospitals against their will under the Mental Health Act 1983, which was last modified on 15 October 2009. The report shows that people from black and white/black mixed groups are three times more likely to be detained under the legislation than the average person, which can reflect wider disadvantage but may also indicate racism in the mental health system. In addition, the findings of an AESOP (Aetiology and ethnicity in schizophrenia and other psychoses) study found high rates of psychosis among the African-Caribbean population in the **UK**.<sup>47</sup> The study prompted a discussion in the pages of *The Guardian* newspaper between the study's authors and mental health activists.<sup>48</sup> The activists oppose the view presented in the AESOP study, which states that schizophrenia had reached "epidemic" proportions among the African-Caribbean community in the UK. In the words of the Director of Black Mental Health UK (BMHUK): "We know from a number of reports that rather than being a reflection of the true incidence of mental illness, it is the result of medicalising cultural differences, social problems and institutional racism."<sup>49</sup>

Levels of poor mental health could result from discrimination or social exclusion. In the **Netherlands**, a research study examined the association between perceived discrimination and depressive symptoms among Turkish-Dutch and Moroccan-Dutch adolescents and young adults.<sup>50</sup> Results show that respondents who perceived discrimination on a personal level were more likely to suffer from depres-

sion than those who did not perceive that they had been discriminated against. This association was greater for the Moroccan-Dutch population than the Turkish-Dutch population. Moreover, the Dutch Healthcare Inspectorate (*Inspectie voor de Gezondheidszorg, IGZ*) stated that many ethnic minorities in the Netherlands may have a different way of dealing with emotions such as shame, because they are raised in a so-called 'collectivist society', representing a different set of values to those of more individualised Western societies.<sup>51</sup> They may find it difficult to talk with a professional about mental problems. According to findings of the Institute of Mental Health and Addiction (*Trimbos Institute*), the staff of the mental healthcare services are not fully aware or trained to take this into account.<sup>52</sup>

Investment in the promotion of immigrant mental health is also part of the upcoming National Health Plan (2011-2016)<sup>53</sup> in **Portugal**, under the theme of promoting immigrants access to the National Health Service.

The mental health of asylum seekers in particular also attracted attention in 2010. Insufficient access to psychological help for asylum seekers was noted in **Poland**, where a monitoring exercise covered five out of 20 asylum seekers centres operating in Poland and contained interviews of personnel and medical staff working at the centres as well as aliens living there.<sup>54</sup> In **Finland**, adult asylum seekers are given access to mental healthcare, while there is a lack of services for children.<sup>55</sup> A study from the **UK** points to the fact that indefinite detention has a negative impact on the health status of detained asylum seekers, who are said to experience high levels of mental health problems and suicide attempts.<sup>56</sup> For developments in the area of asylum, see Chapter 1 on asylum, immigration and integration.

46 Council of Europe, ECRI (2010b), p. 32.

47 Aetiology and Ethnicity in Schizophrenia and other Psychoses Study Group (AESOP) (2006).

48 *The Guardian*, 'Poor research or an attack on black people?', 3 March 2010.

49 Mattilda MacAttram, BMHUK Director, quoted in 'Fightback over claims on mental illness and its prevalence among black people', *The Guardian*, 3 February 2010.

50 Van Dijk, T.K., Agyemang, C., de Wit, M. and Hospers K. (2010).

51 Hilderink, I. van't Land, H. and Smits, C. (2009).

52 The Netherlands, Gemeenschappelijke Gezondheidsdienst (2010).

53 See Portugal, Ministerio de Saude (2002), No. 14/DSPCS.

54 Fundacja Międzynarodowa Inicjatywa Humanitarna (International Humanitarian Initiative Foundation) (2009).

55 Parsons, A. (2010).

56 London Detainee Support Group (2010).

## 6.4. Housing

This section will consider evidence from statistical patterns of inequality, as well as specific research projects, including discrimination testing, that points towards the existence of both direct and indirect discrimination in the area of housing. Roma and Travellers are the groups which are the most consistently disadvantaged in private and social housing. Findings emerging from the monitoring activities of ECRI and the United Nations Committee on the Elimination of Racial Discrimination (CERD) in 2010 drew attention to the continuing segregation and discrimination faced by these two groups in the area of housing; for more information on international monitoring, see Chapter 10 on international obligations. Migrants, refugees and asylum seekers are subject to legal and administrative restrictions in access to social housing in only a few Member States.

Housing is a crucial factor in determining the quality of life of all persons, and having an impact not only on day-to-day living conditions but also on employment and access to services, including education and healthcare. As such, housing is one of the most important aspects effecting the integration of people with an ethnic and migrant background. Promotion of the right to housing, recognised by the ICESCR to which all EU Member States are party, can be seen as an effective instrument of the integration process, as well as an important indicator of integration status. However, discrimination on the basis of race and ethnicity can have a serious impact on access to adequate housing.

*“Cases have also been reported of undocumented migrants sharing flats with many others, with the same beds being used according to the work schedule of individuals, with 5 or 10 beds allocated to one room.”*

*UN Special Rapporteur report on adequate housing, addressing the situation of undocumented migrants in Europe, 9 August 2010, paragraph 52*

In his 2010 report, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living concluded that “discrimination and xenophobia affect the living conditions of migrants and their coexistence with the local community. They have thus been identified as key factors in the exclusion of migrants from adequate housing. States need to combat xenophobia and discrimination as a matter of urgency and ensure that no legislative or administrative acts reinforce discrimination against migrants with regard to their access to social or private housing. Moreover, States should take effective measures to ensure that housing agencies and private landlords refrain from engaging in discriminatory practices.”<sup>57</sup>

Three trends can be identified in 2010. First, surveys and discrimination testing in a variety of EU Member States provide evidence that discrimination is still a frequent feature of the housing sector. In addition, the housing situation of Roma

and Travellers continues to be perceived as a special case which deserves particular attention; for more information, see the focus section on Roma in the EU. Finally, access to social housing continues to be subject to various legal and administrative restrictions effecting persons belonging to vulnerable groups.

### 6.4.1. Surveys and discrimination testing

According to the EU project on Promoting Comparative Quantitative Research in the field of Migration and Integration in Europe (PROMINSTAT) “evidence suggests that, in general terms, migrant and minority groups, given their more vulnerable position, continue to experience difficulties in accessing all tenures of housing. Various obstacles hindering access to housing have been documented. Both housing supply and affordability are undoubtedly central to this debate, yet other aspects such as direct or indirect discrimination on the part of landlords, agents, housing professionals, local authorities, banks etc. [...] are also fundamental aspects”.<sup>58</sup> In **Germany**, the Criminological Research Institute of Lower Saxony (*Kriminologische Forschungsinstitute Niedersachsen*, KFN) published the results of a large scale questionnaire-based survey, carried out in 2006 among almost 45,000 secondary school students in the ninth grade. In a sub-sample, 20,604 German (non-migrant) ninth-grade students were asked about their attitudes towards certain minority members as neighbours. The results of the survey show that German youngsters prefer other native Germans in their neighbourhood over migrants and minorities. By far the most undesirable neighbours are Turks followed by ethnic German repatriates (*Spätaussiedler*). People with dark skin and Jewish people are considered more positively by the respondents, but still less desirable than Swedish and Italian neighbours.<sup>59</sup>

Another survey carried out by the Centre for Studies on Turkey (*Zentrum für Türkeistudien*, ZfT) among 1,000 migrants of Turkish origin, revealed that housing continues to be an area where people of Turkish origin in North Rhine-Westphalia experience discrimination: 39.1% of respondents reported experiences of discrimination when looking for a flat and 28.4% have encountered discrimination in the neighbourhood.<sup>60</sup> In **Italy**, a survey carried out among 1,000 non-EU citizens in 2009 by the union of tenants, Sunia, revealed that landlords often refuse to rent to foreigners or do so only on unfavourable terms, such as high prices and low-quality housing. The survey showed that rents are on average 30% to 50% higher than those applied to Italians and landlords often asked for additional guarantees at the time of signing the lease, such as an Italian guarantor or a bank deposit.<sup>61</sup>

58 Fonseca, M. L., McGarrigle, J. and Esteves, A. (2010), p. 3.

59 Baier, D., Pfeiffer, C., Simonson, J., Rabold, S. (2009), p. 114.

60 Sauer M. (2010).

61 SUNIA (2009).

57 UN, General Assembly (2010), paragraph 89.



In a few Member States, discrimination tests were carried out in order to determine the prevalence of discrimination against migrants and ethnic minority groups in access to the housing market. In **Spain**, a report of SOS Vizcaya Racism (SOS Racismo Bizkaia) found discrimination as one of the main reasons explaining the difficulties encountered by migrants in accessing decent housing in the city of Bilbao.<sup>62</sup> The report also includes the findings of a discrimination testing exercise based on 60 visits to private houses and 6 visits to estate agents that revealed that 64% of housing owners rented flats to native individuals but not to migrants and 50% of estate agents did not provide migrants with housing offers despite having flats in stock.

In **Italy**, the Centre for Public Policy of the University of Modena and Reggio Emilia conducted a field experiment using the Internet to measure discrimination in the Italian rental housing market. The research was based on 3,676 e-mails enquiring about the rental of vacant apartments in 41 Italian cities. The experiment revealed that in extensive areas of the Italian rental housing market there is a significant degree of discrimination against people from Arab and eastern European countries. The research also found that the most discriminated groups are those with names of Arab origin and, within the same group, men were found to be more discriminated against than women (the names used represented three different ethnic groups: Italian, Arab-Muslim and Eastern European).<sup>63</sup>

In **Sweden** in August 2010, the Equality Ombudsman (*Diskriminerings Ombudsmannen*) published a study on discrimination in the housing market based on discrimination testing. The property rental market was examined through almost 400 phone calls to 150 tenants in 90 different locations. The property purchasing estate market was examined by a total of 44 visits in Stockholm, Helsingborg and Lund. The study revealed that discrimination on the ground of ethnicity occurred to a greater extent than on other grounds, targeting mainly people of foreign background in the property rental market and Finnish Roma and Muslims in the property purchasing estate market, respectively.<sup>64</sup>

#### 6.4.2. Legal and administrative restrictions for access to social housing

Social housing serves different client groups in different states – in some states its use is confined to the very poor, while in others it houses low-waged working families or even those belonging to the middle class.<sup>65</sup> Access to social housing for migrants, refugees and asylum seekers is still subject to legal and administrative restrictions in a few EU Member States.

In her report, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living noted that “insufficient information and inadequate advice, discrimination in the allocation of dwellings or financial assistance, laws restricting the access of non-citizens to public housing, cumbersome bureaucracy and lack of access to grievance mechanisms restrict the access of migrants to public housing. In many countries migrants are not entitled to housing assistance or to public housing, which are reserved for long-term residents”.<sup>66</sup>

In August 2010, the UN High Commissioner for Refugees (UNHCR) Regional Representation for Central Europe published its regular report on the situation of asylum seekers and refugees in central Europe, including **Slovenia**. With regard to the situation of refugees, the report noted that access to affordable housing tends to be a systematic problem for refugees in **Slovenia**, as they are not entitled to state non-profit housing and have to provide for their accommodation at market prices. In this respect, the report recommended “that stakeholders (Ministry of Interior, NGOs and UNHCR) approach the Ministry of Environment to review the issue of access to social housing with a view of ensuring that refugees and holders of permanent residence permits are eligible for non-profit apartments”.<sup>67</sup>

The 2010 ECRI report on **France** noted that “direct and indirect racial discrimination towards immigrants, persons of immigrant origin and other visible minority groups remains a problem in both the private and the public housing sectors. With regard to social housing, a key problem is the lack of transparency of the system for allocating dwellings, which in the opinion of certain specialists can help create an environment conducive to potential discriminatory practices”.<sup>68</sup>

In the **Netherlands**, in April 2010, the Minister of Housing, Communities and Integration gave permission<sup>69</sup> to extend the application of the Special Measures Urban Issues Act in the municipality of Rotterdam by four years.<sup>70</sup> According to this legislation, at the request of a city council, the Minister can identify areas in which additional requirements apply for persons seeking housing. The Act allows cities to regulate the housing market in these specific areas and to temporarily limit the influx of disadvantaged households, with no income or employment. The Dutch equality body, the Equal Treatment Commission (ETC) (*Commissie Gelijke Behandeling*, CGB), has argued that the legislation results in indirect discrimination on the grounds of race, nationality and gender, affecting migrant groups disproportionately.<sup>71</sup> The government reasons, however, that the legislation aims to improve the living standards and strengthen the settlement and investment climate for businesses, within

62 SOS Racismo Bizkaia (2010).

63 Baldini, M., Federici M., (2010). On multiple discrimination, see Chapter 5 on equality and non-discrimination.

64 Sweden, Equality Ombudsman (2010).

65 Whitehead, C. and Scanlon, K. (2007).

66 UN, General Assembly (2010), paragraph 89.

67 UNHCR Regional Representation for Central Europe (2010), p. 71.

68 Council of Europe, ECRI (2010a), p. 24.

69 The Netherlands, Decision of the Dutch Government (2010).

70 The Netherlands, Wet bijzondere maatregelen grootstedelijke problematiek (Stb. 2005, 726), 22 December 2005.

71 The Netherlands, ETC (2005).

Promising practice

### Guidelines for rentals and sales of housing space

As a member of the international city network 'Cities for Human Rights', the city of Nuremberg has made fighting discrimination and racism against people with a migration background in the local housing market a political priority. To this end, the city of Nuremberg and stakeholders of the Nuremberg housing market have drafted guidelines specifically aimed at assisting the city, property companies, estate agents and landlords to consider migrants who want to rent or buy a flat without prejudice and free of discrimination.

*Nuremberg places emphasis on human rights and submits guidelines for housing, Media release of the Nuremberg City Hall, No. 994, 2 October 2009.*

specific poor areas. It submits that the selection is based on income, not on grounds of race, nationality or gender, and that it only applies to people who do not live in the Region of Rotterdam.

## 6.5. Education sector

The ability to access education can have a significant impact on the range of employment opportunities available to individuals, which in turn can affect income, housing and quality of life in general. Although the right to education is guaranteed in the European Convention on Human Rights (ECHR) and the ICESCR, among other international instruments, a number of challenges remain in ensuring equality and non-discrimination in the sphere of education.

*"Education-related inequalities have an impact over the life-span, not just in childhood. Differences in participation in education persist throughout life."*<sup>72</sup>

*UK Equality and Human Rights Commission (2010)*

This section focuses on equality in access to education and persisting forms of segregation in education. In more general terms, information received in the reporting period confirms, however, that racist incidents and discriminatory practices continue in the area of education. At the same time, regular and institutionalised reporting mechanisms are still lacking and 2010 did not witness overall improvement as regards the monitoring of racist incidents in schools. It appears, nevertheless, to be the case that systems for monitoring racist incidents in educational establishments, such as schools, are widespread in **France**, **Germany** and the **Netherlands**. In **Germany**, some federal states (*Bundesländer*) monitor right-wing extremism in schools. In the **UK**, schools have an obligation to collect and keep annual records of racist incidents in their establishments. In **France**, data on racist incidents is provided through the Vigilance and Information System on School Safety (*Système d'Information et de Vigilance sur la Sécurité scolaire*, SIVIS) and in the Netherlands, local and regional Anti-Discrimination Agencies register complaints in the area of education. It is unclear, whether other Member States currently have

systematic monitoring of racist incidents in educational institutions in place.

### 6.5.1. Equal access to education

While at a formal level EU Member States provide open access to education, in practice, vulnerable groups face many difficulties in accessing good quality education. In some Member States, the children of asylum seekers are not subject to compulsory schooling. This is, for instance, the case in **Sweden**, although asylum seekers' children do have a right to attend school. Discussion arose as to whether children who reside in **Sweden** without a residence permit should be granted the right to education and participation in pre-school. The Cabinet Office (*Regeringskansliet*) presented a proposal regarding access to school for all children in February 2010.<sup>73</sup> In **Latvia**, in January 2010 the Ministry of Education and Science (*Izglītības un zinātnes ministrija*, IZM) received a complaint from a legal guardian of an asylum seeker about the failure to provide education opportunities envisaged by legislation.<sup>74</sup>

Promising practice

### National register on discrimination in schools

According to a decision of the Dutch Ministry Council (*Ministerraad*) of June 2010, primary, secondary and vocational schools in the **Netherlands** will become obliged to register racist incidents in a single national registration system. Every second year, the figures will be made available in a national monitor. Discrimination on grounds of race, sex and sexual orientation is one of the categories of incidents that have to be registered. In the school year 2009-2010, a series of pilots took place in which clear definitions of different types of incidents were formulated. It is expected that the register will come into force on 1 August 2011.

*For more information, see Central government (Rijksoverheid) media release on a national incident recording mechanism for a safer school climate, 25 June 2010.*

<sup>72</sup> UK, Equality and Human Rights Commission (2010).

<sup>73</sup> Sweden, Cabinet Office (2010).

<sup>74</sup> Latvia, Ministry of Education and Science (2010), Letter No. 1-12/517.

Access problems are to be expected where school authorities are obliged to collect information and report on the legal status of students and their parents. According to data received in 2010 through a questionnaire sent to national authorities in the context of a FRA project on 'Fundamental rights of irregular migrants', in some Member States, including **Austria, Belgium, Finland, Greece, Italy** and the **Netherlands**, school authorities are prohibited from reporting irregular migrants to immigration authorities. It should also be noted that no provision relating to reporting irregular migrant children to the authorities exists in a number of other Member States, including **Bulgaria, Estonia, Luxembourg, Latvia, Finland, Portugal, Romania, Slovenia, Spain** and **Sweden**.

Exceptions are **Cyprus**, or – to some degree – **Slovakia**. In Cyprus a circular of the Migration Department requires state schools to inform authorities about the enrolment of undocumented children.<sup>75</sup> In **Slovakia**, school administrations are obliged to report undocumented children attending or leaving a school on the basis of the Act on Stay of Aliens (Article 53 (3)).<sup>76</sup> In **Germany**, the situation is more complicated: at federal level, a general 'duty to report' exists according to Article 87 of the Residence Act.<sup>77</sup> However, several federal states have enacted legislation or issued administrative instructions that exempt school authorities from this general duty, such as North Rhine-Westphalia.<sup>78</sup> In Hamburg and Berlin, registration systems for school children were set up in the form of databases. Parents associations campaigned against this move and activists supporting data protection tried to boycott the database.<sup>79</sup>

Available data indicates that Roma are among the most disadvantaged as regards access to education. For example, in **France**, according to the annual report of the French Ombudsperson for Children (*Défenseur des enfants*), and in many international reports, Travellers as well as Roma migrants continue to encounter many difficulties and even refusals, when they seek to enrol their children in school.<sup>80</sup> For more information on the situation of Roma in the field of education, see this report's focus section on Roma in the EU.

Further barriers in accessing education include: geographical isolation and long distances to schools; unavailability of pre-school facilities; unequal treatment in enrolment procedures and access testing.

However, initiatives for widened and fairer access to education can also be noted. For instance, in **Germany**, in the federal state Hesse a new provision came into force at the end of 2009, which removed practical barriers for undocumented migrants to enrol their children at school. According to a new regulation, which was introduced with an amendment to section 3 of the Hesse State Act on schooling for pupils with non-German mother tongue, an official document, proving residence status or that the family is registered in the municipality, or a 'toleration' certificate (*Duldungs-Bescheinigung*), is no longer required for the enrolment procedure.<sup>81</sup>

### 6.5.2. Segregation in education

In past years, a number of research studies have pointed to the fact that segregation produces and reproduces inequality. In its report, *Segregation of Roma children in education*, the European Commission classified segregation as "structural discrimination" that is not justifiable under the Racial Equality Directive.<sup>82</sup> The practice of sending students with a Roma or migrant background to special needs schools remains a problem. For further information, see this report's focus Chapter on Roma in the EU. In **Bulgaria**, the enrolment of pupils with normal intellectual capacity in establishments for children with disabilities is explicitly forbidden by Regulation No. 6 (2002) of the Minister of Education, Youth and Science. Its implementation is monitored by the Commission for Protection against Discrimination, together with relevant NGOs. The final list of the children with special educational needs is approved by the Minister. Due to these additional procedural guarantees, the number of children judged to have special educational needs dropped in 2010 by 760 out of 2,571 children assessed by the Special Expert Commission established by the Ministry of Education, Youth and Science. Consequently, as of September 2010, the total number of children with disabilities who attend special schools amounted to 1,811 children.

In its 2010 report on the **Netherlands**, CERD expressed its concerns about forms of segregation in Dutch primary and secondary schools. Measures that have been taken in previous years, including the establishment of the Mixed Schools Knowledge Centre (*Kenniscentrum Gemengde Scholen*, KGS) and the role assigned to the Education Inspectorate in promoting integration, have proved inadequate. CERD urged the Dutch authorities to increase their efforts to prevent and abolish segregation in education, for example, through the review of admissions policies that may have the effect of creating or exacerbating segregation.<sup>83</sup>

In **Hungary**, the Supreme Court reversed the decision of the second instance court, holding that the segregation of Roma children amounted to discrimination. This case had been appealed by the Chance for Children Founda-

75 November 2004, (not publically available).

76 Slovakia, Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov (Act on Stay of Aliens).

77 Germany, Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (AufenthG) (2004), Article 87.

78 Deutsches Rotes Kreuz and Caritas, *Aufenthaltsrechtliche Illegalität: Beratungshandbuch* 2010, p. 18.

79 For more information, see, for example, the Berlin Refugee Council website (*Flüchtlingsrat Berlin*) available at: [www.fluechtlingsrat-berlin.de/print\\_pe.php?sid=424](http://www.fluechtlingsrat-berlin.de/print_pe.php?sid=424).

80 Défenseur des enfants (2009), p. 95-96. See also sections on Roma migrants and Travellers in CERD (2010).

81 Vogel, D. and Aßner, M. (2010).

82 European Commission (2007).

83 UN CERD (2010b).

tion. The case concerned the segregation of Roma pupils, where different buildings within the same schools were predominantly used for either Roma or children from the majority. The Supreme Court established that segregation did not require active behaviour. By not taking measures to redress the factual situation, the local council and schools had effectively segregated Roma pupils. The court pointed out that neither the lack of space in the central buildings, nor long-standing traditions, nor special forms of education, justified segregation of the Roma pupils.

In 2009, the **Bulgarian** Helsinki Committee reported that Roma pupils who go to school with Bulgarian children are often verbally harassed because of their ethnic background which eventually results in them leaving education.<sup>84</sup> In this sense, the reversal of segregation should be accompanied by measures to combat harassment and discrimination of Roma pupils in mainstream schools. For more information, please see this report's focus Chapter on Roma in the EU.

## 6.6. Racist crime

This section focuses on the situation in the EU with respect to manifestations of racially motivated and related crime (hereafter 'racist crime') – which is one of the most extreme expressions of racism and xenophobia against specific groups in society. Further developments relating to the rights of victims of crime can be found in Chapter 9 on protection of victims.

It is important to note that the information presented here is based only on an analysis of publicly available official data on racist crime (government as opposed to NGO generated), and is therefore necessarily limited to those Member States that collect sufficient data for analysis. The information can be usefully compared with results from the FRA EU Minorities and Discrimination Survey (EU-MIDIS),<sup>85</sup> which includes data on the prevalence of respondent-perceived racially or religiously motivated crime based on information supplied in interviews with 23,500 ethnic minority and immigrant people across the EU. EU-MIDIS results indicated that between 57% and 74% of incidents of assault or threats, depending on the different respondent groups surveyed, were not reported to the police. In this regard, and in the general absence of alternative sources of data collection on racist crime such as victimisation surveys in the style of EU-MIDIS, it should be kept in mind that, in all likelihood, official data will represent only a minority of incidents that actually take place. Nationally recorded statistics can only be understood as representing those few incidents that come to the attention of the police and are processed through Member States' criminal justice systems.

<sup>84</sup> Bulgaria, Български хелзинкски комитет (2009).

<sup>85</sup> FRA (2009).

### 6.6.1. Developments and trends in officially recorded racist crime

Across the EU, the collection and public availability of official criminal justice data on racist crime continues to vary significantly between Member States, with some publishing no data (such as **Bulgaria** and **Greece**) and only a few collecting and publishing comprehensive data on a regular basis (such as **Finland**, **Sweden** and the **UK**). Uncritical readings of existing data on racist crime can make it appear that those few Member States that comprehensively record and publish data have a greater problem with some of the most abhorrent forms of racism – such as racially motivated violent crime – than those that publish no or limited data. A more insightful reading of official data is that the collection and publication of extensive figures indicates that a Member State is effectively responding to racist crime by acknowledging its existence, and the State's response to it, in a transparent way.

Table 6.1 shows the status of official criminal justice data collection mechanisms on racist crime in the EU27 for 2009. The reality is that for the past six years for which the FRA, and its predecessor the European Union Monitoring Centre on Racism and Xenophobia (EUMC), has categorised the status of data collection on racist crime there has been no overall improvement in data collection across the EU. Notably, **Sweden** has progressed from 'Good' to 'Comprehensive' data collection, particularly as a reflection of changes in 2008 that saw the extension of racist and other hate crime categorisation. However, the continuing status quo illustrates the extent to which many Member States are not responding to racist crime as a fundamental rights abuse that warrants improved data collection in order to formulate policies and courses of action to address it.

Table 6.2 indicates trends in criminal justice data on racist crime, encompassing a range of incidents and crimes, which variously cover racism, xenophobia, anti-Semitism and related crimes such as incitement to racial hatred and violence, which are based on the most recent publicly available government data. In some of the Member States which are in the 'lowest' category according to the status of their data collection mechanisms, details on racist crime incidents are collected by the police, but these are available only upon specific request and the data are not systematically published on a regular basis – this is the situation for example in **Cyprus**. On the other hand, in **Spain** detailed data on racist crimes is available for Catalonia and bigger cities, but a data collection system is yet to be implemented nationwide.

When looking at official criminal justice data on racist crime, direct comparisons should not be made between data gathered in different EU Member States. This is because information is reported and recorded differently in each Member State. However, looking at fluctuations in recorded crime *within* a Member State can serve to highlight patterns in both manifestations of racist crime and changes



Table 6.1: Status of official criminal justice data collection mechanisms on racist crime in the EU27

Official data not systematically available	Limited	Good	Comprehensive
Official national data tend either not to be collected or made publically available	Limited reporting on a handful of investigations and court cases, and/or focus on general discrimination that can include racist crime	A good system exists to register crimes, and/or system focuses on right-wing extremism and/or anti-Semitism	Extensive data collection, with detail typically provided about victim characteristics, place of victimisation etc.
Bulgaria Cyprus Greece Portugal Spain	Estonia Hungary Italy Latvia Lithuania Luxembourg Malta Netherlands Romania Slovenia	Austria Belgium Czech Republic Denmark France Germany Ireland Poland Slovakia	Finland Sweden UK

Source: FRA, 2010

Table 6.2: Trends in officially recorded racist crime, 2000-2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	% change 2008-2009	% change 2000-2009
Belgium	757 crimes	751	727	848	1,021	1,272	1,375	1,304	1,188	1,053	-11.4%	+8.5%
Czech Republic	364 crimes	452	473	335	364	253	248	196	217	265	+22.1%	-6.0%
Denmark	28 incidents	116	68	53	37	87	227	35	175*	306	+74.9%	+89.1%
Germany	-	14,725 crimes	12,933	11,576	12,553	15,914	18,142	17,607	20,422	19,468	-4.7%	+8.2% 2001-2009
France	903 reports	424	1,317	833	1,574	979	923	723	864	1,841	+113.1%	+6.1%
Ireland	72 reports	42	100	62	84	94	173	214	172	128	-25.6%	+27.9%
Austria	450 complaints	528	465	436	322	406	419	752	835	791	-5.3%	+11.3%
Poland	215 crimes	103	94	111	113	172	150	154	122	109	-10.7%	-1.5%
Slovakia	35 crimes	40	109	119	79	121	188	155	213	132	-38.0%	+31.6%
Finland	495 crimes	448	364	522	558	669	748	698	1,163*	1,385	+19.1%	+33.1%
Sweden	2,703 crimes	2,785	2,391	2,436	2,414	2,383	2,575	2,813	4,826**	4,707	-2.5%	+10.3%
England & Wales	47,701 incidents	53,121	54,858	49,344	54,157	57,863	60,926	62,071	58,445	55,862	-4.4%	+2.2%
Scotland			1,699 offences	2,673	3,097	3,856	4,294	4,474	4,543	4,564	+0.5%	+18.1% 2002-2009
Northern Ireland							1,006 incidents	1,183	1,044	1,036	-0.8%	-0.5% 2002-2009

Notes: \* Not comparable with previous years due to changes in the incident counting rules. \*\* Not comparable with previous years due to changes in the definition of hate crime.

Source: FRA, 2010

in recording practices. However, Member States with low absolute figures, such as **Denmark**, tend to show the most significant percentage changes from year to year. Therefore, fluctuations in recorded crime in these countries have to be interpreted cautiously. In addition, in 2008 **Denmark**, **Finland** and **Sweden** changed their system of recording racist crime, which resulted in notable increases in recorded crime between 2007 and 2008, and continuing high levels of recorded racist crime in 2009 in contrast with earlier periods. As a result, long-term trend analysis of data for these countries has to be treated with caution and contextualised with respect to changes in data collection practices. With this in mind, Table 6.2 shows the following:

- during the period 2000-2009, 10 of the 12 Member States, which publish sufficient criminal justice data on racist crime to be able to undertake an analysis of trends, experienced an upward trend in recorded racist crime. The **Czech Republic** and **Poland** experienced a downward trend;
- looking only at the most recent two years for which data is available for comparison – 2008 to 2009 – four of the 12 Member States which collect sufficient criminal justice data on racist crime experienced an upward trend in recorded racist crime.<sup>86</sup>

In sum, looking at overall long-term trends in recorded racist crime from 2000 to 2009, a picture emerges of a general increase in the majority of Member States where sufficient data is available for analysis. In comparison, when looking at trends between the latest two years for which data is avail-

able, only one third of Member States indicate an increase. In **France**, the 113% rise in recorded racist crime in the period 2008-2009 largely reflects a significant increase in recorded anti-Semitism during 2009 (see Table 6.3), which occurred around the time of Israeli interventions in Gaza. To this end, it can be deduced that events elsewhere in the world can have an impact on manifestations of racism at the Member State level. Herein, comparison of data between two years can highlight the influence of particular events on fluctuations in racist crime, while the analysis of data over several years allows for an assessment of general trends that are not subject to sporadic influences.

### 6.6.2. Trends in anti-Semitism

Given Europe’s history in the twentieth century, the need to collect data specifically on anti-Semitism remains important. However, only six Member States collect sufficiently robust criminal justice data on anti-Semitic crime for a trend analysis.

Looking at Table 6.3, the picture of anti-Semitic crime that emerges is as follows:

- between 2001 and 2009 four out of six Member States, for which a trend analysis was undertaken, experienced an overall upward trend, while two remained stable;
- in comparison, between 2008 and 2009 five out of six Member States showed an upward trend and one a downward one. In the case of **Austria**, the recorded figures are consistently lower each year, and therefore the notable 47.8% decrease between 2008 and 2009

**Table 6.3: Trends in recorded anti-Semitic crime, 2001-2009**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	% change 2008-2009	% change 2001-2009
<b>Austria</b>	3	20	9	17	8	8	15	23	12	-47.8%	+9.1%
<b>France</b>	219	936	601	974	508	571	402	459	815	+77.6%	+0.4%
<b>Germany</b>	1,629	1,594	1,226	1,346	1,682	1,662	1,561	1,496	1,520	+1.6%	+0.3%
<b>Netherlands*</b>	41	60	50	58	65	108	50	49	67	+36.7%	+4.0%
<b>Sweden</b>	115	131	128	151	111	134	118	159	250	+57.2%	+10.3%
<b>UK**</b>	310	350	375	532	459	598	561	546	926	+69.6%	+25.7%

Notes: \* Statistics of the Dutch Public Prosecution Service: number of discriminatory incidents where anti-Semitism was identified, but which might not relate specifically to anti-Semitic crime.

\*\* The UK data is from the ‘Community Security Trust’, an independent Jewish organisation, which is used as source material by official government publications in the UK.

In addition to the Member States listed here, the Centre for Equal Opportunities and Racism (CEOR) in Belgium also releases official statistics on complaints of anti-Semitism, but these statistics go beyond addressing just racist crime. For more information, see FRA (2010).

Source: FRA, 2010

86 For the UK, the overall trend in recorded crime is based on data for England and Wales. This reflects the relative population of England and Wales in comparison with Scotland and Northern Ireland. In Scotland, recorded racist incidents showed a year-on-year downward trend over the period of 2006-2007 to 2008-2009. See [www.scotland.gov.uk/Publications/2010/04/26153852/8](http://www.scotland.gov.uk/Publications/2010/04/26153852/8)

has to be put into perspective as based on only eleven crimes. Also the 36.7% increase in incidents in the Netherlands is based on 18 recorded cases more in 2009, compared with 2008. In comparison, in **France**, and also potentially in the **UK** and **Sweden**, the notable increases in recorded anti-Semitic crime can be cautiously attributed to the influence of events concerning Israel and Palestine in 2009 – as noted in the previous sub-section.

**FRA ACTIVITY**

**Anti-Semitism in the EU**

In April 2010, the FRA published a *Summary overview of the situation of anti-Semitism in the European Union in the period 2001-2009*. This is the sixth update of the 2004 report on manifestations of anti-Semitism in the EU; it contains governmental and non-governmental statistical data covering 2001 to 2009 for those EU Member States that have official or unofficial data and statistics on anti-Semitic incidents.

For more information, see:  
[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2010/pub\\_cr\\_antisemitism\\_update\\_2010\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_cr_antisemitism_update_2010_en.htm)

very slight increases are recorded. For **France**, no discernible long-term trend can be noted. However, the one-year trend analysis between 2008 and 2009 shows a very different pattern, as **France** has a 40% increase in recorded crime with an extremist right-wing motive, while **Sweden** shows a major decrease in extremist right-wing crime in this 12-month period and **Germany** shows a slight decrease. These 12-month fluctuations could reflect either an actual increase or decrease in the activities of right-wing extremists, particularly with regard to Internet-based crime. It can also indicate potential improvements or downturns in the detection and prosecution of these activities by criminal justice agencies in these four Member States, which might be explained by factors such as shifting police priorities and resource allocation. At the same time, the (historical) focus in some Member States on data collection concerning crimes with an extremist right-wing motive needs to be contextualised against manifestations of ‘racist’ and related ‘hate’ crimes where the perpetrators have no political ‘extremist right-wing’ motivation. Evidence from the Agency’s EU-MIDIS survey, as reported in last year’s Annual Report, indicates that the involvement of persons with such a background is, according to respondents who indicated they were victims of racially motivated crime, very limited with respect to incidents that could be considered as ‘racist’.

**6.6.3. Trends in right-wing extremism**

In line with the focus on data collection on anti-Semitism in Europe, another traditional area for data collection in some Member States concerns the activities of right-wing extremist groups with regard to racist and related hate crimes. To date, only four Member States collect criminal justice data that is sufficiently robust to allow for a comparison of trends in crime with an extremist right-wing motive.

Looking at Table 6.4, the most notable long-term increase in recorded crime with an extremist right-wing motive can be noted in **Germany**, whereas in **Austria** and **Sweden**

Evidence from the FRA’s RAXEN research teams indicates increased Internet use, including the use of social networks, by different individuals and groups in the promotion and perpetration of hate crime against particular groups in society.<sup>87</sup> In this regard, it is notable that 18 Member States still have to ratify the additional protocol to the Council of Europe’s Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Twelve EU Member States have already signed the Council of Europe convention.

**Table 6.4: Trends in recorded crime with an extremist right-wing motive, 2000-2009**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	% change 2008-2009	% change 2000-2009
<b>Austria</b>	291	301	261	264	189	188	204	280	333	356	+6.9%	+1.8%
<b>Germany</b>	-	10,054	10,902	10,792	12,051	15,361	17,597	17,176	19,894	18,750	-5.8%	+16.6% 2001-2009
<b>France</b>	207	198	179	148	461	419	301	247	129	181	+40.3%	+0.1%
<b>Sweden</b>	566	392	324	448	306	292	272	387	667*	538	-19.3%	+2.3%

\* Not comparable with previous years due to changes in the definition of crimes with an extremist right-wing motive.

87 Data collected in the EU27 as part of the FRA research study on ‘Racist and related hate crimes in the EU’, which was submitted to the Agency in September 2010 and will be published after analysis.

## FRA ACTIVITY

### Ethnic profiling and low levels of trust in police

In 2010, the FRA launched a Guide to assist law enforcement officers in understanding the differences between legitimate uses of profiling as an investigatory tool and profiling that breaches rules on non-discrimination. It also featured examples of good practice from various EU Member States. The Guide is accompanied by a *Data in Focus Report* on police stops and minorities, which presents data from the FRA EU-MIDIS survey comparing the experiences and perceptions of police stops among minority respondents and majority respondents living in the same areas in 10 Member States. The results from EU-MIDIS, together with the findings of the Guide, indicate that levels of trust in the police decline if minorities perceive they experience discriminatory treatment from the police – the implications of which are that minorities who are victims of racially motivated crime are likely not to report their victimisation to the police because of lack of trust.

*FRA (2010), Understanding and preventing discriminatory ethnic profiling: A guide; FRA (2010), EU-MIDIS Data in focus 4: Police stops and minorities, both available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm)*

#### 6.6.4. The Council Decision on Racism and Xenophobia

By 28 November 2010, the Council Framework Decision on Racism and Xenophobia should have been transposed in Member States' national laws.<sup>88</sup>

According to information collected by the Agency, at the beginning of September 2010 five EU Member States had taken measures to transpose the framework decision. In other eight Member States, existing legislation was considered as already meeting or surpassing provisions in the framework decision. In some of these Member States existing legislation extends to 'hate crime' motivated by other grounds. The remaining Member States were still in the process of transposing the framework decision and notifying their implementing measures to the European Commission – which is responsible for monitoring the situation. As soon as this process is complete and translations are available, the European Commission will start its analysis of the transposition of the Framework Decision.

#### 6.6.5. Developments at national level

Against this background, some promising practices can be noted from 2009 and 2010 that reflect various attempts to address racist crime in line with legislative developments, data collection and concrete initiatives. Amongst the latter is the continued commitment of the police force in **Ireland** to a diversity strategy for the years 2009-2012, which will encompass the policing of victims of racism. Other promising initiatives have emerged from the NGO community, and include examples such as the establishment of a legal aid package for victims by the NGO 'People against Racism' in **Slovakia**.

In parallel to improvements in responses to racist and religiously motivated hate crime, some of the most notable developments that are taking place in Member States relate to broader responses to hate crime that encompass a range

## FRA ACTIVITY

### Three forthcoming surveys and a report on hate crime

In 2011, the FRA is preparing a report on racist and related hate crime. This report is to be complemented by three large-scale surveys that the Agency will carry out in 2011 and 2012. The surveys were developed in the course of 2010 and will variously record manifestations of 'hate crime', namely: an EU-wide survey on violence against women; an EU-wide survey on discrimination and victimisation against members of the LGBT community, as well as a survey in selected Member States of manifestations of anti-Semitism. The latter will systematically explore the experiences of Europe's Jewish populations with respect to both reported and unreported experiences of hate crime. For more on related women's and LGBT issues, see Chapter 5 on equality and non-discrimination.

of grounds (far beyond provisions in the Framework Decision on Racism and Xenophobia). These promising practices are being driven both by governmental and non-governmental initiatives for change. For example, in the **Czech Republic**, a counselling centre *In Iustitia*, which was established in 2009 by an NGO, focuses on victims of different forms of hate-motivated violence.

National initiatives during 2009 and 2010 include the setting up of a government working group in **Finland** that looks into extending the scope of the current Framework Decision on Racism and Xenophobia to include hate crime across a range of grounds. The working group submitted a report to Parliament on 12 February 2010. In **Lithuania**, in June 2009, hate-motivated crimes across different grounds were added to the list of aggravating circumstances in the country's criminal code, including the grounds of sexual orientation and disability. In Scotland (**UK**), a key piece of legislation was enacted in 2009 which protects victims of crime who

<sup>88</sup> Council Framework Decision 2008/913/JHA, OJ 2008 L 328, p. 55.



are targeted as a result of hatred of their actual or presumed sexual orientation, transgender identity or disability.<sup>89</sup>

It is also notable that in **Finland**, **Sweden** and the **UK** (data collection systems differ between England and Wales, and Northern Ireland) official data collection already provides figures on a range of hate-motivated crimes; including sexual orientation and disability. In **Sweden**, categorisation of hate crime by the Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*, Brå) extends to anti-Roma and Islamophobic hate crime. Authorities in **Germany** also make available some data on politically motivated hate crimes committed because of the victim's sexual orientation or disability, although the label of 'politically motivated' would seem to narrow the scope for including 'everyday' crimes that are committed by those without any political motivation.

When looking to compare practices across the EU and between Member States, it should be emphasised that there is often great variation at regional level within a Member State. For example, with respect to **Spain**, Catalonia currently has the most comprehensive data collection on and responses to hate crime in the state across a range of different grounds.

It appears that the most progressive developments in response to a broad range of hate crimes are typically emerging in those EU Member States that have been at the forefront of addressing racist crime. The implementation of the Framework Decision on Racism and Xenophobia – both in terms of its legal transposition and implementation on the ground – will be evaluated by the European Commission in due course.

## Outlook

The successful use of discrimination testing as a means of monitoring the prevalence of discrimination and proving discriminatory practices in the employment and housing sectors by some Member States evidences the value of this technique. As a result of such success, it is anticipated that such testing could become more common across the EU.

Greater understanding of mental health issues facing minorities will need to be developed in order to ensure equality in the enjoyment of good health. Existing initiatives at EU level by the European Commission and the Social Protection Committee could help to encourage the spread of those positive practices discussed above to other Member States.

Combating segregation in education in the coming years will need to be accompanied by measures to prevent harassment and discrimination within the mainstream education system in order to ensure that minorities are able to participate effectively.

The collection of data that is disaggregated according to racial or ethnic origin, in line with the recommendations of ECRI and CERD, remains an open challenge for many Member States. Developments in Member States such as **France**, where the collection of this data has traditionally not occurred, may encourage other Member States to follow suit.

Given that racist crime continues to be a problem throughout much of the EU, it is clear that many Member States still need to commit to addressing racist crime through a combination of the following: changes in the law (in line with the Framework Decision and the Council of Europe's Convention on Cybercrime); improvements in criminal justice data collection and reporting in the public domain; and action on the ground to prevent and respond to racist crime.

<sup>89</sup> UK, Offences (Aggravation by Prejudice) (Scotland) Act 2009 (asp 8).

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## UN & CoE

## EU

January	January
February	February
2 March – European Commission against Racism and Intolerance (ECRI, established in 1993 by the CoE Member States) delivers its fourth report on Austria, Estonia and the United Kingdom	March
25 March – United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD), established under the International Convention on the Elimination of All Forms of Racial Discrimination, issues Concluding Observations on the Netherlands and Slovakia	April
March	May
28 April – ECRI delivers its fourth report on Poland	June
April	July
May	August
15 June – ECRI delivers its fourth report on France	September
June	October
July	28 November – Deadline for transposing the EU Council Framework Decision in all EU Member States
August	November
13 September – CERD issues Concluding Observations on Romania	December
20 September – CERD issues Concluding Observations on Denmark and Slovenia	
23 September – CERD issues Concluding Observations on Estonia and France	
September	
October	
November	
December	



