

# PROTECTION AGAINST RACIAL DISCRIMINATION IN EUROPE

The work of the **UN Committee** on  
the Elimination of Racial Discrimination



UNITED NATIONS  
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## Contents

|      |  |    |
|------|--|----|
| I.   | Introduction .....   | 4  |
|      | Reporting by States parties .....  | 4  |
|      | General recommendations .....  | 4  |
|      | Content and purpose of the present Reader.....   | 5  |
| II.  | Concluding observations on the reports of States parties to the Convention that are<br>Member States of the European Union, by article of the Convention ..... | 5  |
|      | Article 1, paragraph 1 - Definition of discrimination and its grounds.....   | 5  |
|      | Article, 1 paragraph 2 – Distinctions between citizens and non-citizens.....   | 8  |
|      | Article 2, paragraph 1 (a) – (c) – States themselves shall not discriminate.....   | 9  |
|      | Article 2, paragraph 1 (d) – States shall prohibit discrimination .....  | 10 |
|      | Article 3 – Prohibition of racial segregation and apartheid.....   | 15 |
|      | Article 4 (a) – Dealing with hate crime (hate speech, incitement) .....  | 19 |
|      | Article 4 (b) - Prohibition of racist organizations and activities .....   | 21 |
|      | Article 4 (c) – Prohibition of incitement by public authorities and institutions .....   | 23 |
|      | Article 5 (a) – The right to equal treatment before the courts .....   | 24 |
|      | Article 5 (b) – Security and protection against harm (ill-treatment).....  | 25 |
|      | Article 5 (c) – Political rights.....  | 30 |
|      | Article 5 (d) (i) - The right to freedom of movement and residence within the border of<br>the State .....   | 31 |
|      | Article 5 (d) (iii) – The right to nationality.....  | 31 |
|      | Article 5 (d) (iv) - The right to marriage and choice of spouse.....   | 31 |
|      | Article 5 (d) (v) - The right to own property .....  | 32 |
|      | Article 5 (d) (vi) - The right to inherit .....  | 33 |
|      | Article 5 (d) (vii) - The right to freedom of thought, conscience and religion .....   | 33 |
|      | Article 5 (d) (ix) - The right to freedom of peaceful assembly and association .....   | 34 |
|      | Article 5 (e) - Economic, social and cultural rights.....  | 34 |
|      | Article 5 (e) (i) - The right to work.....   | 37 |
|      | Article 5 (e) (iii) - The right to housing.....  | 38 |
|      | Article 5 (e) (iv) - The right to public health, medical care, .....   | 40 |
|      | Article 5 (e) (v) - The right to education and training .....  | 41 |
|      | Article 5 (e) (vi) - The right to equal participation in cultural activities .....   | 43 |
|      | Article 5 (f) - The right of access to public places or services.....  | 43 |
|      | Article 6 – Judicial protection and remedies .....   | 43 |
|      | Article 7 – Combating prejudice, promoting tolerance and understanding .....   | 45 |
|      | Article 9 – Reporting duties .....   | 47 |
| III. | International Convention on the Elimination of All Forms of Racial Discrimination.....   | 49 |
| IV.  | Annex List of countries and references to concluding observations.....   | 57 |

## I. Introduction

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965. It entered into force on 4 January 1969, in accordance with its article 19.

The Convention established (in article 8) a Committee on the Elimination of Racial Discrimination consisting of 18 experts of high moral standing and acknowledged impartiality. These experts, who are elected by States parties for a four-year term from a list of persons nominated by the States parties, serve in their personal capacity; they do not represent the States parties in the Committee.

### REPORTING BY STATES PARTIES

In accordance with article 9 of the Convention, States parties undertake to submit an initial report to the Committee within one year after the entry into force of the Convention (for the State concerned), and additional reports every two years thereafter and whenever the Committee so requests. It has become the practice of the Committee that States parties submit two biennial reports together as one document, which means that States parties report every four years.

The Committee considers these reports and adopts concluding observations. In this process, the Committee draws on the expertise of its members, as well as on information obtained from independent sources, notably civil society organizations dealing with human rights. These concluding observations constitute the authoritative interpretation of the Convention and its individual articles, as envisaged by the Convention itself.

### GENERAL RECOMMENDATIONS

The Committee also makes general comments, referred to as “general recommendations”. As of the end of 2010, the Committee had issued a total of 33 such recommendations. These fall into several categories. Some of them have focused on the reporting process itself, for example:

- General recommendation No. 4 (1973) on the demographic composition of the population (of the reporting State)
- General recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples

Other general recommendations seek to explain key concepts reflected in the Convention and their understanding and proper use by the States parties, for example:

- General recommendation No. 8 (1990) on identification with a particular racial or ethnic group
- General recommendation No. 14 (1993) on the definition of discrimination
- General recommendation No. 19 (1995) on racial segregation and apartheid

Another category of general recommendation addresses particular substantive issues related to legislative, judicial, administrative or other measures which States parties should adopt to give effect to the provisions of the Convention:

- General recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights
- General recommendation No. 15 (1993) on organized violence based on ethnic origin
- General recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention
- General recommendation No. 20 (1996) on non-discriminatory implementation of rights and freedoms
- General recommendation No. 21 (1996) on the right to self-determination

- General recommendation No. 26 (2000) on article 6 (on the right to reparation)
- General recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system
- General recommendation No. 32 (2009) on the meaning of special measures in the Convention

Several general recommendations deal with the specific challenges faced by particularly vulnerable groups of victims of discrimination and their implications for the policies which States parties should pursue:

- General recommendation No. 22 (1996) on article 5 (the rights to be enjoyed by everyone) and refugees and displaced persons
- General recommendation No. 23 (1997) on indigenous peoples
- General recommendation No. 25 (2000) on gender-related dimensions of racial discrimination
- General recommendation No. 27 (2000) on discrimination against Roma
- General recommendation No. 30 (2004) on discrimination against non-citizens

Together with the body of concluding observations adopted on the basis of the Committee's examination of individual reports, including supplementary information submitted by interested parties, the general recommendations keep the Convention a living legal text which reflects developments in the field of protection from racial discrimination.

## CONTENT AND PURPOSE OF THE PRESENT READER

The present Reader summarizes the main points of the concluding observations of the Committee on the reports of the 27 States members of the European Union, all of whom are parties to the Convention, following the examination of their latest reports. For obvious reasons, in particular that these examinations took place at different sessions of the Committee, the concluding observations do not (and indeed cannot) offer a snapshot of the situation in all the EU Member States at a given moment. In addition, several of the concluding observations may reflect situations that are more than four years old. This may be due to the interval between the submission of a report and its consideration by the Committee, or to the failure of a States party to respect the obligation to submit a report every four years.

In order to highlight common issues, as well as to point out a specific situation in a particular EU Member State, the concluding observations in the Reader are arranged by individual articles of the Convention. Only the paragraphs of interest are quoted in each case. The web links to the full text are contained in the annex, along with the document symbols, to facilitate accessing them on the websites of the UN ([www.un.org](http://www.un.org)) or the Office of the United Nations High Commissioner for Human Rights ([www.ohchr.org](http://www.ohchr.org)). Where an issue is common to a number of States parties, only one or two concluding observations are cited as examples, with reference made to others. The full text of the Convention itself is contained in section III of the Reader

## II. Concluding observations on the reports of States parties to the Convention that are States members of the European Union, by article of the Convention

### Article 1, paragraph 1 - Definition of discrimination and its grounds

Article 1, paragraph 1, stipulates that “‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any other field

of public life". It is complemented by the Committee's general recommendation No. 14 (1993) on the definition of discrimination.

The Committee made few comments on the definition of discrimination in the legal regimes of States parties. However, it did express its concern in the case of Latvia (2003):

8. The Committee is concerned that the legal provisions defining racial discrimination are not in full conformity with article 1 (1) of the Convention. While acknowledging that amendments to the 2001 Labour Law are being prepared that will define indirect discrimination, the Committee notes that basing the finding of indirect discrimination on a quantitative condition is not in accordance with the Committee's general recommendation No. 14. Furthermore, it notes that the relevant provisions of the Labour Law and the Criminal Law lack reference to certain grounds of discrimination enumerated in the Convention... [The Committee] urges the State party to incorporate fully the definition of racial discrimination stipulated in article 1 (1) of the Convention, into its legislation.

In its concluding observations on Germany (2008), the Committee noted the absence of a definition of racial discrimination owing to reservations (for historical reasons) with regard to the use of the term "race" or "racial" in legislation:

15. While noting the State party's reservations with regard to the use of the term "race", the Committee is concerned that the State party's strong focus on xenophobia, anti-Semitism and right-wing extremism may lead to the neglect of other forms of racial discrimination. The Committee is also concerned that the overall legislative design of key provisions of the Criminal Code may not be sufficiently precise in relation to racist elements in crimes. In this connection, the Committee also regrets the absence of a definition of racial discrimination in the State party's domestic legislation (art. 1). The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its national legislation, in accordance with article 1, paragraph 1, of the Convention.

## SELF-IDENTIFICATION AND DEFINITION OF MINORITIES

In the context of article 1, paragraph 1, the Committee also made several observations on the way in which States parties define ethnic/national minorities and their members. With regard to Hungary's generous recognition of minorities (2002):

370. The Committee reiterates, in particular, its satisfaction at the promulgation and implementation of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, which recognizes 13 minorities and provides them with a degree of cultural autonomy, as well as a wide range of educational and linguistic rights, and sets up a system of minority self-governments.

However, the Committee, in view of general recommendation No. 8 (1990) on identification with a particular racial or ethnic group, expressed concern that self-identification by individuals and/or groups was not always respected and that certain groups – notably Roma and Travellers – were not recognized by the States parties concerned as minorities or ethnic groups. Thus, the Committee encouraged Ireland (2005) to recognize the Traveller community:

20. Recalling its general recommendation No. 8 on the principle of self-identification, the Committee expresses concern at the State party's position with regard to the recognition of Travellers as an ethnic group. The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the Convention (arts. 1 and 5). Welcoming the open position of the State party in this respect, the Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group.

The Committee also addressed a recommendation to Italy (2008) on the recognition of the Roma, with the specific recommendation that they should be recognized on an equal footing with "historical" minorities:

12. While noting the assurances provided by the delegation that the State party would consider the recognition of Roma and Sinti as minorities in national law, on an equal footing with the historical linguistic minorities protected by Act No. 482/1999, the Committee is concerned that no comprehensive national legislation and policies addressing the specificities and needs of Roma and Sinti have been adopted (art. 2). The Committee, recalling its general recommendation No. 27 on discrimination against Roma, recommends that the State party adopt and implement a comprehensive national policy and legislation regarding Roma and Sinti with a view to recognizing them as a national minority and protecting and promoting their languages and culture.

The Committee also noted with concern that in some States parties there are legal distinctions between “national” and “ethnic” minorities, which might give rise to different standards of rights. For instance, it requested Lithuania (2006) to provide further clarification of the distinction made between “ethnic” minorities or groups, and “national” minorities. Similarly, the Committee commented on distinctions made by States parties between communities identified as “autochthonous” or “historical” and those identified as “new”, for instance in the case of Austria (2008), where the question was compounded by territorial differences within the country:

10. The Committee is concerned about the distinction between autochthonous minorities and other minority groups. The Committee is further concerned about the application of a different treatment to individuals belonging to “autochthonous national minorities” residing in the so-called “historical settlement areas”, inter alia, the Slovene minority in Carinthia and the Roma and Croat minorities in Burgenland, and individuals who do not reside in those settlement areas, such as Slovenes outside Carinthia and Roma and Croats outside Burgenland. The Committee considers that these distinctions may lead to unjustified differential treatment (art. 1). The Committee, in light of its general recommendation No. 14 (1993) on article 1, paragraph 1 of the Convention, recommends [that] the State party [take] measures in order to avoid unjustified differential treatment of minority groups, on the basis of their area of residence within the State party’s territory.

Particular attention was given by the Committee to issues concerning indigenous peoples, in line with general recommendation No. 8 as well as general recommendation No. 23 (1997) on indigenous peoples. In the case of Finland (2009):

13. The Committee takes note of the explanations [of the State party] according to which an amendment to the Act on the Sami Parliament is not warranted at present and that the Sami Parliament considers that the definition of “Sami” should be discussed at the Nordic level in order to find a common definition. The Committee reiterates its opinion, however, that the State party’s approach to the definition of who may be considered a Sami and thus fall under the relevant legislation established in favour of the Sami, as defined by the Act on the Sami Parliament and the specific interpretation provided thereon by the Supreme Administrative Court, is too restrictive. The Committee reiterates its recommendation that the State party give more adequate weight to self-identification by [the] individuals concerned, as indicated in the Committee’s general recommendation No. 8 (1990).

A related issue in Denmark concerned the failure to recognize the Thule Tribe of Greenland not as a distinct group but as part of a larger indigenous community (on the ground that today it shares the same conditions as the rest of the Greenlandic people), which the Committee found (2010) contrary to the principle of self-identification referred to in general recommendation No. 8 (1990):

17. The Committee reiterates its concern with regard to the decision of the Supreme Court handed down on 28 November 2003 relating to the Thule Tribe of Greenland. The decision failed to follow established international norms in the conceptualization of indigenous peoples. As a result, the Supreme Court rendered a decision which found that the Thule Tribe is not a distinct indigenous people notwithstanding its own perception as such. The Committee reiterates that, pursuant to its general recommendation No. 8 (1990) and other United Nations instruments, the State party is urged to pay particular attention to self-identification as a critical factor in the identification and conceptualization of a people as indigenous. The Committee therefore recommends that, notwithstanding the decision of

the Supreme Court, the State party adopt measures to ensure that self-identification is the primary means for determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples' identification.

## Article, 1 paragraph 2 – Distinctions between citizens and non-citizens

Article 1 (2) states that the Convention does not apply to distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens. However, general recommendation No. 30 (2004) on discrimination against non-citizens elucidates that this paragraph “must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights”. General recommendation No. 30 (2004) also addresses issues such as the reduction of statelessness and access to citizenship.

In this context, the Committee commented on the specific situation in Latvia and Estonia where significant numbers of mainly Russian-speaking persons remain effectively stateless or with “undetermined citizenship” (non-citizens), having been resident on the territory of these two States since their independence.

The rights of a significant group of non-citizens who had been living since independence in Slovenia (the so-called “erased” people) have been a matter of concern for the Committee over several reporting cycles. In its last concluding observations (2010), the Committee took note of recent progress in this respect, but it also voiced concerns about residual problems and made concrete recommendations to overcome them:

13. While taking note of the adoption in March 2010 of the law regulating the legal status of the “erased” people, the Committee remains concerned at the situation of the non-Slovenes from the former Yugoslavia including Bosnians, ethnic Albanians from Kosovo, Macedonians and Serbs, whose legal status remains unresolved and who are therefore facing difficulties in terms of access to social and economic rights, such as access to health-care services, social security, education and employment. The Committee is also concerned that the new law does not envisage any outreach campaign directed towards “the erased” people living abroad in order to inform them of its existence... The Committee recommends that the State party:
  - (a) Resolve definitely the legal status of all concerned citizens from the former Socialist Federal Republic of Yugoslavia States presently living in Slovenia;
  - (b) Ensure the full enjoyment of their economic and social rights including the access to health services, social security, education and employment;
  - (c) Conduct an outreach campaign to inform “the erased” currently living outside Slovenia of the existence of the new legislative measures and the possibility of benefiting from them; and
  - (d) Grant full reparation, including restitution, satisfaction, compensation, rehabilitation and guarantees of non-repetition, to all individuals affected by the “erasure”.

Some specific distinctions between the rights of citizens and non-citizens were called into question by the Committee in the case of the Czech Republic (2007), where (unlike the three aforementioned States) the term “non-citizens” refers mainly to immigrants who are citizens of other countries:

18. The Committee notes that several distinctions made under domestic law between the rights of citizens and non-citizens may not be fully justified. It notes in particular that European Union non-citizens, although they are entitled to vote and be elected at local elections, may not belong to a political party. The Committee also notes with concern that



a condition under the Act on Registered Partnerships between Persons of the Same Sex, currently under debate in Parliament, may be that at least one of the persons be a Czech citizen. The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on non-citizens, and recalls that differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

## Article 2, paragraph 1 (a) – (c) – States themselves shall not discriminate

The Committee generally acknowledged the commitment of the reviewed States parties “to engage in no act or practice of racial discrimination”, as laid down in the Convention. Nonetheless, it did identify several problematic areas at both the national and subnational levels.

### DISCRIMINATORY EFFECTS OF NATIONAL LEGISLATION OR POLICY

The Committee expressed concerns about several instances where national legislation might be conducive to discrimination. For example, it addressed possible discriminatory effects of language legislation in Latvia:

9. The Committee notes the entry into force in September 2000 of the State Language Law aimed at promoting the Latvian language and better integration of members of ethnic minorities into Latvian society. The Committee is concerned at the possible negative effects of a narrow and strict interpretation of this legislation. Furthermore, the scope of language requirements in the State Language Law in relation to employment, particularly in the private sector, may lead to discrimination against minorities. The Committee recommends that the State party ensure that the State Language Law does not result in unnecessary restrictions that may have the effect of creating or perpetuating ethnic discrimination. The Committee calls on the State party to ensure that vulnerable groups, such as prisoners, [the] sick and poor persons, among non-Latvian speakers have the possibility of communicating with the relevant authorities through provision of, if necessary, translation facilities.

In its concluding observations on the United Kingdom of Great Britain and Northern Ireland (2003), the Committee expressed its concerns about a particular section of the amendment to the racial equality legislation (which it generally welcomed) that explicitly allowed for discrimination by immigration officials:

16. The Committee is concerned about the application of section 19 D of the Race Relations Amendment Act of 2000, which makes it lawful for immigration officers to "discriminate" on the basis of nationality or ethnic origin provided that it is authorized by a minister. This would be incompatible with the very principle of non-discrimination. The Committee recommends that the State party consider reformulating or repealing section 19 D of the Race Relations Amendment Act in order to ensure full compliance with the Convention.

In the case of Italy, the Committee linked the incidence of ill-treatment of the Roma by the police to the application of a particular law (Presidential Decree 181/07), without explicitly identifying the legislation in question as discriminatory.

A very recent national policy – one that came into being after the State party presented its report - was addressed (2010) as a source of concern in the concluding observations on France:

14. The Committee is concerned at the increase in manifestations of racism and racist violence against the Roma in the State party's territory. It takes note of the statement by the State party to the Committee that a framework has been put in place for the voluntary return of Roma to their country of origin. The Committee notes that, since the State party presented its report, there have been reports that groups of Roma have been returned to their country of origin without the free, full and informed consent of all the individuals concerned. The Committee reminds the State party of its statements and recommends

that it ensure that all its policies concerning Roma are consistent with the Convention, that it avoid collective repatriations in particular, and that it endeavour to find lasting solutions to issues related to Roma, with full respect for their human rights (arts. 2 and 5).

### DISCRIMINATORY ACTS BY REGIONAL OR LOCAL AUTHORITIES

Article 2, paragraph 1 (a), also stipulates that States parties undertake to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. In this context, the Committee expressed concerns about discrimination perpetrated by public authorities other than national ones. It voiced its deep concern about the situation prevailing in Italy:

16. The Committee is deeply concerned by the prevailing negative attitudes and stereotypes concerning Roma among the municipalities and the public, resulting in discriminatory ordinances and road signs and other measures adopted by the municipal authorities aimed at the nomadic population... The Committee, recalling its general recommendation No. 27 (2000), requests the State party to ensure that municipalities remove discriminatory ordinances and comply with the State party's obligations under the Convention.

In the case of Belgium, the Committee addressed (2008) the issue of particular discriminatory decrees issued by both regional and local authorities. It recalled that under international law, States parties have the obligation to ensure the implementation of the provisions of the Convention throughout their territory, even if they have a federal structure:

16. The Committee is concerned that the Flemish community adopted a decree on 15 December 2006 restricting access to social housing to persons who speak or make the commitment to learn Dutch, as well as by the fact that the decree was endorsed by the State Council. The Committee is further concerned that the municipality of Zaventem, near Brussels, adopted a regulation restricting the acquisition of public lands to Dutch speakers or to persons committing themselves to learn it... While noting that the State party has a federal structure, the Committee recalls that Belgium is a single State under international law and has the obligation to ensure the implementation of the provisions of the Convention throughout its territory. The Committee recommends that the State party ensure that linguistic requirements do not lead to indirect discrimination affecting both citizens and non-citizens who do not speak Dutch, on grounds of their national or ethnic origin, thus impairing their enjoyment of economic, social and cultural rights, in particular their housing rights. The Committee further recommends that the State party provide detailed information in its next periodic report on this issue.

On a non-legislative level, the Committee raised concerns about the potentially discriminatory content of citizenship questionnaires issued by the constituent parts of Germany:

19. The Committee is concerned about the addition by some Länder of specific questions to citizenship questionnaires which may be discriminatory, in particular the questionnaire introduced in Baden-Württemberg, which was to be answered by citizens of the 57 Member States of the Organization of the Islamic Conference (OIC) who apply for German citizenship... The Committee recommends that the Federal Government encourage the use of questionnaires without discriminatory content, for all applicants for citizenship.

### Article 2, paragraph 1 (d) – States shall prohibit discrimination

#### PROGRESS IN NON-DISCRIMINATION LEGISLATION

The Committee consistently devoted attention to the scope, quality and practical implementation of non-discrimination legislation in the States parties. In several cases, it welcomed the significant progress achieved.

Thus, the Committee commented on further improvements to the non-discrimination legislation in the United Kingdom. It is noteworthy that this State party's equality legislation has been welcomed by the

Committee on a number of previous occasions and that it was the first of its kind among EU Member States, dating back to 1976 (and its predecessor to 1967). The amendments welcomed by the Committee represent another step in the long-term development of anti-discrimination law:

4. The Committee welcomes the Race Relations Amendment Act of 2000, which strengthens the 1976 Race Relations Act by outlawing discrimination in all public authority functions, including the police, as well as the Race Relations Act (Amendment) Regulations of 2003, which widen the definition of indirect discrimination and shift the burden of proof from the victim to the alleged offender.

In the case of Sweden, the Committee also welcomed (2008) the further improvement of already well-established anti-discrimination legislation and the consolidation of its institutional back-up:

4. The Committee welcomes the adoption of a new Anti-Discrimination Act (*Ett starkare skydd mot diskriminering*) by the State party in July 2008, which merges the existing anti-discrimination legislation into one law and extends the scope of protection.

In its concluding observations on Ireland, the Committee appreciated the more recent emergence of comprehensive non-discrimination legislation:

5. The Committee welcomes the enactment of a comprehensive legislative framework on anti-discrimination, which includes the Employment Equality Act 1998, the Equal Status Act 2000 and the Equality Act 2004, and notes with satisfaction that legislation to implement Council Directive 2000/43/EC of 29 June 2000, which prohibits discrimination on the grounds of racial or ethnic origin in employment, education, social protection and access to goods and services, is currently before Parliament.

Similarly, the Committee welcomed the adoption by Germany, as part of its implementation of EU law, namely Directives 2000/43/EC (Race Equality Directive) and 2000/78/EC (Employment Equality Directive), of an unprecedented non-discrimination law, and the creation of an “equality body” to provide institutional back-up to the new law:

4. The Committee welcomes the adoption of the General Equal Treatment Act in August 2006 (*Allgemeines Gleichbehandlungsgesetz - AGG*), which prohibits discrimination on the grounds of race and ethnic origin, gender, religion and belief, disability, age and sexual orientation.
5. The Committee welcomes the establishment of the Federal Anti-Discrimination Office within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, which provides legal advice to individuals who claim to have been victims of racial discrimination.

Moreover, the Committee made explicit reference to the European legal framework as a source of progress in the legislation of several States parties.

## DEFICIENCIES IN NON-DISCRIMINATION LEGISLATION

The Committee also identified deficiencies in terms of legislative protection from discrimination. In several cases, it noted that the State party in question had not yet adopted any comprehensive non-discrimination legislation at all. It is noteworthy that at the time of review by the Committee, these State parties had already been under the obligation to adopt such legislation as part of their *acquis communautaire*, in the process of the transposition of EU Directives (above all Directive 2000/43/EC).<sup>1</sup>

Thus, in its concluding observations on the Czech Republic, the Committee stated:

<sup>1</sup> Indeed, a number of EU Member States were the subjects of infringement procedures by the European Commission between 2005 and 2010 for not having notified the Commission of having transposed the non-discrimination Directives, or for substantive deficiencies in terms of transposition.

8. The Committee reiterates its concern that, despite efforts to that end, the State party has still not adopted a general anti-discrimination law guaranteeing the right to equal treatment and protection against discrimination (articles 1, 2 and 5). The Committee recommends again that the State party adopt legislation providing for the prohibition of discrimination based on colour, race, descent [and] national or ethnic origin, as defined in article 1 of the Convention, as a general principle applicable in the political, economic, social and cultural spheres or any other field of public life.

Concerning Latvia, the Committee concluded that important areas had been left out of the existing legislation and recommended the preparation of a new comprehensive law:

8. ... these provisions do not fully cover civil, political, economic, social, cultural and other fields of public life, as required by the Convention. The Committee recommends that the State party pursue its efforts with regard to the preparation of a comprehensive anti-discrimination law and of amendments to the Labour Law.

As mentioned above under article 1, paragraph 1, the Committee expressed concern about the scope of protection from indirect discrimination in Latvia. The issue of incomplete protection was evoked also in the concluding observations on Cyprus (2001) wherein the Committee addressed another clear gap concerning discrimination by private persons in two important areas of life:

269. The Committee expresses its concern at the lack of legal provisions expressly outlawing racial discrimination by private persons in education and employment, and recommends that the State party give attention to the development of such legislation.

Finally, the Committee also raised the issue of the potential effectiveness of existing legislation. In its concluding observations on Austria (2008), it made clear its preference for comprehensive legislation rather than scattered non-discrimination clauses:

12. While acknowledging that the State party has adopted around 30 different laws on non-discrimination covering different aspects of the Convention, the Committee is concerned about the scattered character of this legal framework and its complexity, due to the different procedures and institutions associated with each of the discrimination laws (art. 2 (1)). The Committee recommends that the State party review the effectiveness of its current legal framework on non-discrimination with a view to initiating a harmonization process while continuing its efforts to adopt adequate and comprehensive legislative provisions for the implementation of the Convention in its entirety. The Committee further recommends that the State party invite civil society to participate in such a process.

## DEFICIENCIES IN IMPLEMENTATION OF NON-DISCRIMINATION LEGISLATION

The Committee expressed its general concern at the lack of effective implementation of existing non-discrimination provisions in the case of Greece (2009):

10. The Committee is concerned that the State party is not effectively implementing legal provisions aimed at eliminating racial discrimination and in particular those relating to prosecution and punishment of racially motivated crimes. The Committee calls upon the State party to ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination and that racially motivated crimes are effectively prosecuted and punished.

In the concluding observations on Austria, the issue of territorial disparities in federal States emerged once again, both in general and in the context of implementation of a federal ruling concerning one particular minority (Slovenes):

11. The Committee is concerned that not all the federal provinces of the State party fully implement federal laws and measures and about the differences in the extent of protection against racial discrimination between the federal provinces (art. 2 (1)). The Committee recommends that the State party, as a federal State, take the necessary legal and political

measures to ensure that all its federal provinces and local authorities observe and comply with the laws and decisions adopted to implement the provisions of the Convention.

14. The Committee regrets the delay in the implementation of the decision of the Constitutional Court of 13 December 2001 regarding bilingual (Slovene-German) topographical signs in Carinthia, and the corresponding delay in guaranteeing the full protection of the rights of the Slovene minority (art. 2 (1)). The Committee urges the State party to accelerate its search for an appropriate solution to the implementation of the decision of 2001 of the Constitutional Court. The Committee requests the State party to provide information in its next periodic report on progress made in implementing this decision.

In the case of the Netherlands (2010):

15. The Committee regrets that despite the information provided by the State party ... that reports on the implementation of the Convention in Aruba and the Netherlands Antilles would be provided, none were submitted.

Among cases of territorial disparity, that of Cyprus stands out because the Government of the State party lacks the authority to implement the provisions of the Convention throughout its national territory, as the Committee acknowledged:

258. Despite Cyprus having been one of the first countries to ratify the Convention, the Government of Cyprus is still prevented from implementing the provisions of the Convention throughout its national territory. The occupation since 1974 by Turkish forces of 37 per cent of the territory has caused the de facto separation of the various ethnic and religious communities. This artificial division is not only an obstacle to peace and the enjoyment of human rights in the region, but impedes the construction of a progressive anti-discrimination strategy for the island as a whole.

## SUPPORTIVE INSTITUTIONS

The Committee generally welcomed the creation of institutional back-up for non-discrimination legislation in the form of ombudsman-like institutions or other “equality bodies”. The Committee’s comment on major development in Ireland is illustrative in this respect:

4. The Committee notes with appreciation the establishment of several independent institutions with competence in the field of human rights and racial discrimination, namely the Irish Human Rights Commission, the Equality Authority and the National Consultative Committee on Racism and Interculturalism, as well as judicial bodies with specific jurisdiction on equality and non-discrimination, such as the Equality Tribunal.

Moreover, where ombudsman-type institutions have had a long tradition, the Committee nonetheless commented – in appreciative terms – on their further consolidation, as exemplified by the concluding observations on Sweden:

5. The Committee commends the State party for the forthcoming merger of the different Ombudsmen into a single institution and recommends that the new consolidated institution, once established, seek accreditation through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

On the other hand, the Committee also expressed certain doubts about the developments in some States parties. In the context of the aforementioned progress in Ireland, the Committee noted:

12. While ... welcoming in particular the establishment by the State party of several independent institutions and judicial bodies in the field of human rights and non-discrimination ... the Committee wishes to underscore the importance of providing adequate resources to these institutions, in order to enable them to efficiently and effectively exercise their duties and functions (art. 2). The Committee recommends that the

State party provide the newly established institutions in the field of human rights and non-discrimination with adequate funding and resources to enable them to exercise the full range of their statutory functions, and also support the NGO community.<sup>2</sup>

In its concluding observations on Bulgaria, the Committee addressed (2009) the issue of unclear mandates of various bodies and institutions:

12. Noting that, for the implementation of article 2 of the Convention, the State party has established various bodies and institutions to combat discrimination, the Committee is unclear as to the actual scope of action of such bodies in combating ethnic discrimination. The Committee recommends that the State party strengthen the role of such bodies and institutions, in particular the Commission for Protection against Discrimination, in receiving complaints, carrying out studies, applying penalties and assisting victims of acts of discrimination. The Committee further recommends that the State party provide supplementary information on the guarantee of the independence of the Ombudsman and the role of the National Council for Cooperation on Ethnic and Demographic Issues (art. 2).

Limitations in terms of resources as well as of competence were mentioned as issues of concern by the Committee in its concluding observations on Austria:

13. The Committee welcomes the establishment in 2005 of the Ombudsperson for Equal Treatment irrespective of ethnic affiliation, religion or belief, age or sexual orientation in employment, and the Ombudsperson for Equal Treatment irrespective of ethnic affiliation in other areas. However, the Committee is concerned about the limited resources, as well as his/her limited competence to participate in court proceedings. The Committee recommends that the State party take appropriate measures to provide the Ombudspersons with the human and financial resources required to adequately advise and support victims of discrimination, and to grant them competence to initiate and participate in court proceedings as a third party.

The Committee, which had previously welcomed the creation of the High Authority to Combat Discrimination and Promote Equality in France, expressed concern about more recent developments, as a result of which combating discrimination would become only one aspect of the mandate of a new institution, the “Defender of Rights”:

19. The Committee takes note of the bill on the “Defender of Rights” but is concerned by the large number of functions to be taken on by this new institution and fears that the mandate to combat discrimination, including racial discrimination, currently devolved to the High Authority to Combat Discrimination and Promote Equality (HALDE), will be only one aspect of the mandate of the Defender of Rights. In light of its recommendation on the national plan to combat racial discrimination, and while calling for closer coordination between State mechanisms that address problems related to racial discrimination, the Committee recommends maintaining a separate, independent institution responsible for combating discrimination, including racial discrimination. In this regard, the Committee underlines the importance of the role of HALDE in fighting discrimination, particularly racial discrimination (art. 2).

## NATIONAL HUMAN RIGHTS INSTITUTIONS

The Committee welcomed the creation of independent national human rights institutions dealing with a broader range of human rights issues. It also noted, however, that several States parties had not yet established such an institution and recommended that they do so, in accordance with the Paris Principles (General Assembly resolution 48/134, annex, of 20 December 1993). This recommendation was addressed to Belgium, Estonia, Italy and Lithuania.

<sup>2</sup> This comment turned out to be remarkably prescient. In 2008-2009, with the advent of the economic crisis, the budget of the Irish Equality Authority was dramatically reduced, whereupon its first director resigned in protest.

## REGIONAL LEGAL CONTEXT

In the context of article 2, paragraph 1, the Committee referred repeatedly to a regional instrument, the Council of Europe Framework Convention for the Protection of National Minorities, welcoming the ratification of the Framework Convention by Bulgaria and recommending its ratification to Belgium.<sup>3</sup>

## INCORPORATION OF THE CONVENTION INTO THE DOMESTIC LEGAL ORDER

In the concluding observations on Ireland, the United Kingdom and Denmark, the Committee, while acknowledging that there is no obligation for States parties to incorporate the Convention into their domestic legal order, nevertheless expressed its regret that these States parties had not and invited them to do so. With respect to the United Kingdom:

11. The Committee takes note of the State party's position regarding the non-inclusion of the full substance of the Convention within the State party's domestic legal order... It is concerned that the State party's courts will not give legal effect to the provisions of the Convention unless the Convention is expressly incorporated into its domestic law or the State party adopts necessary provisions in its legislation. The Committee recommends that the State party review its legislation in order to give full effect to the provisions of the Convention in its domestic legal order.

Similarly, the Committee pursued its long-standing discussion on this issue with Denmark:

8. The Committee notes with regret that notwithstanding its previous concluding observations recommending the incorporation of the [Convention], the State party finds it unnecessary to do so because, arguably, the Convention is already a source of law in Danish courts. However, the non-incorporation of international treaties results in reluctance by lawyers and judges to invoke such treaties in Danish courts (art. 2). The Committee reiterates its position that the State party should incorporate the Convention into its legal system to ensure its direct application before Danish courts in order to afford all individuals its full protection.

## Article 3 – Prohibition of racial segregation and apartheid

This short article is complemented by general recommendation No. 19 (1995) on racial segregation and apartheid, which stipulates that although the reference to apartheid may have been directed exclusively to South Africa, the article as adopted prohibits all forms of racial segregation in all countries. The obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State party.

In the general recommendation, the Committee further observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of racial segregation may also arise as an unintended by-product, without any initiative or direct involvement by the public authorities. For instance, residential segregation may involve group differences in income which, combined with differences of race, colour, descent and national or ethnic origin, can result in stigmatization and discrimination in which race plays a part. The Committee invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports.

## RESIDENTIAL SEGREGATION

The issue of residential segregation (i.e., segregation in housing) was addressed by the Committee in a number of concluding observations.

<sup>3</sup> In the previous reporting cycle, the Committee had also recommended to Denmark that it recognize the Roma as a national minority under the Framework Convention.

In its concluding observations on Italy, the Committee referred specifically to actions taken by public authorities that lead to racial segregation in the case of Roma communities, including expulsion, local measures denying residence to Roma and their placement in isolated camps:

14. ... [T]he Committee is concerned that Roma and Sinti still live in conditions of de facto segregation in camps, in which they lack access to the most basic facilities (arts. 3 and 5 (e) (iii)). The Committee, recalling its general recommendation No. 27 [on discrimination against the Roma], recommends that the State party develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing, to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance. The Committee further recommends that the State party act firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.<sup>4</sup>

In its concluding observations on Slovenia, the Committee welcomed positive steps by the authorities, but also voiced its continued concern:

10. The Committee welcomes the steps taken to eliminate discrimination against Roma in the field of housing, including by the involvement of the Ministry of Environment and its expert working group. However, it remains concerned about de facto segregation as well as other forms of discrimination related to housing encountered by the Roma minority. The Committee continues to be concerned about the housing conditions in many segregated neighbourhoods. The Committee is also concerned at the placing of Roma in camps outside populated areas that are isolated without access to health care and other basic facilities (arts. 2, 3 and 5 (e) (iii)). In light of its general recommendation No. 27 (2000), the Committee recommends that the State party effectively implement and monitor compliance, at the local level, with its laws, policies and projects, in particular within the framework of the “National Programme of Measures for Roma people for the 2010–2015 period” aimed at ensuring the right to housing for all without discrimination, including social housing. The Committee reiterates its recommendation that the State party strengthen its measures aimed at improving the housing conditions of the Roma in view of the importance of such conditions for their enjoyment of other rights enshrined in the Convention. The Committee also recommends that the State party intensify its efforts to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance. It further recommends that the State party refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities

The Committee also expressed its concern about the residential segregation of Roma communities in Lithuania, referring to “ghetto-like neighbourhoods”, and in Slovakia (2010), where it addressed the issue of racial segregation of the Roma as a result of (deliberate) measures carried out by local authorities:

17. The Committee welcomes the steps taken to eliminate discrimination against Roma in the field of housing, including by the involvement of the Plenipotentiary of the Government for the Roma Communities and the Milan Šimečka Foundation, to avoid forced evictions. However, it remains concerned about de facto segregation, forced evictions, as well as other forms of discrimination related to housing encountered by the Roma minority. The Committee also continues to be concerned about the housing conditions in many segregated neighbourhoods. It also notes with concern that the State party described the autonomy of the construction authorities or self-governing bodies at the local level as a

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<sup>4</sup> The placement of Roma in isolated camps, surrounded by high fences with police surveillance towers and located far from urban centres and their services, has remained the preferred policy option of local as well as national authorities in Italy, notwithstanding the Committee’s concrete recommendation to the contrary. Indeed, as witnessed by United Nations High Commissioner for Human Rights Navi Pillay during her visit to Italy in February 2010, the build-up of such segregated settlements has accelerated. In a meeting with the High Commissioner, Italian Interior Minister Roberto Maroni declared his full commitment to this policy, arguing that the placement of Roma in segregated settlements should be seen as an improvement in comparison with the unsanitary conditions in which they had previously been living, also segregated, in slum-type dwellings.



major obstacle to achieving non-discrimination in access to social housing subsidized by the State party (arts. 2, 3 and 5 (e)).

Likewise, the Committee evoked article 3, as well as the responsibility of the State party for actions undertaken by local authorities, in its concluding observations on the Czech Republic, where it stated:

16. The Committee reiterates its concern about information according to which Roma people are particularly vulnerable to evictions and segregation in housing, and regrets that the State party has not taken sufficient action to tackle this issue... [T]he Committee is concerned that the autonomy of municipalities under domestic law is described by the State party as an obstacle to the fulfilment of its obligations... The Committee reminds the State party that it may not invoke the provisions of its internal law as a justification to implement the Convention...

The Committee repeatedly recalled its general recommendation No. 19 (1995), indicating that the absence of a (deliberate) practice of racial segregation does not remove the responsibility of the State party for dealing with unintended (de facto) segregation.

Apart from Roma, other ethnic minorities and immigrants may also suffer from de facto segregation in housing. The Committee expressed the following concerns regarding the situation in Belgium:

15. The Committee is concerned about the fact that ethnic minorities are often overrepresented in social urban housing – up to 90 per cent in some cases – which has resulted in de facto segregation in certain neighborhoods of large cities. In addition, such phenomenon may lead to the use of ethnic criteria to allocate social housing, which would be a discrimination violating the provisions of the Convention (article 5 (e)). The Committee, recalling its general recommendation No. 19 (1995) on article 3 of the Convention, recommends that the State party adopt effective measures to prevent de facto segregation and address the underlying factors, especially as such segregation has a negative impact on the enjoyment of economic, social and cultural rights of the individuals affected. The Committee further recommends that the State party provide detailed information in its next periodic report on specific measures adopted to address the de facto segregation and the impact of these measures.

Furthermore, de facto segregation or isolation and marginalization of some groups of immigrants and ethnic minorities were mentioned by the Committee in the concluding observations on Portugal and Finland.

## RACIAL SEGREGATION IN EDUCATION

The issue of racial segregation of Roma children was repeatedly addressed by the Committee. In its concluding observations on Poland (2009), the Committee referred to “the progressive abolition of separate education for Roma school children”, indicating that this practice was still in existence. In its concluding observations on Hungary, the Committee noted that, despite the State party’s efforts to improve the situation, separate classes based on Roma ethnicity were still a reality:

382. ... The Committee is also concerned about discriminatory practices resulting from the system of separate classes for Roma students and from private schooling arrangements. While noting that the State party intends to improve the education of Roma, the Committee further recommends that new programmes integrate Roma children into mainstream schools as far as possible, in order to avoid discrimination.

Furthermore, the Committee continued to express concern at the de facto segregation of Roma children in special schools for mentally disabled children in several States parties. This issue was dealt with in detail in the concluding observations on the Czech Republic, in which the Committee used particularly forceful language to express its deep concern about both the situation itself and the lack of acknowledgment by the State party that it existed:

17. The Committee is deeply concerned by consistent information according to which the Roma suffer racial segregation on the State party's territory in the field of education, a situation that the State party does not seem to fully acknowledge. It notes with particular concern that a disproportionately large number of Roma children attend "special schools". While noting the views of the State party that this results from the vulnerable situation of the Roma and the need to adopt special measures to respond to their needs, and having taken note of the new Education Act, the Committee remains concerned that this situation also seems to result from discriminatory practices and lack of sensitivity on the part of the authorities to the cultural identity and specific difficulties faced by the Roma. Special measures for the advancement of certain groups are legitimate provided that they do not lead, in purpose or in practice, to the segregation of communities. The Committee is also deeply concerned that a disproportionately large number of Roma children are being removed from their families and placed in State institutions or foster care (articles 2, 3 and 5 (e) (iii) and (v)). The State party should increase its efforts to assess the situation of the Roma in the field of education. It should develop effective programmes specifically aimed at putting an end to the segregation of Roma in this area, and ensure that Roma children are not deprived of their right to family life and to education of any type or any level. The Committee, in particular, recommends that the State party review the methodological tools used to determine the cases in which children are to be enrolled in special schools so as to avoid indirect discrimination against Roma children on the basis of their cultural identity.

The same issue was dealt in the Committee's consideration of the report of Slovakia, leading to several detailed recommendations:

16. While welcoming the various measures adopted by the State party to ensure equal access to quality education for Roma children, the Committee reiterates its previous concern about the de facto segregation of Roma children in education. It expresses its concern at their large overrepresentation in special schools and classes for children with mental disabilities. The Committee is particularly concerned about decision-making processes for placing children in such special schools, which may not take into account the cultural identity of, and specific difficulties faced by Roma (arts. 2, 3 and 5(e)). Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to bring to an end and to prevent segregation of Roma children in the field of education. It further recommends that the State party
- a) Assess, on a more frequent basis, all pupils placed in special schools with a view to removing all children without mental disability from them;
  - b) Revisit the procedure used for the determination of which children are to be enrolled in special schools, with a view to avoiding discrimination against Roma based on their cultural identity, and to closely monitor whether the criteria established are followed in practice, in light of paragraph 27 of the recommendations of the First Forum on Minority Issues on "Minorities and the Right to Education" (A/HRC/10/11/Add.1);
  - c) Consider offering incentives to local authorities so that they develop action plans aimed at desegregating schools and promote active consultation and cooperation between parents of children of minorities and school authorities at the local level;
  - d) Address de facto segregation of Roma in education in a global manner, taking into account its close relation to discrimination in the fields of housing and employment.

In the concluding observations on Hungary the Committee noted the existence of both types of segregation, i.e., separate classes for Roma and their de facto segregation in classes for the mentally disabled, leading it to recommend "that the State party reconsider its policy of assigning Roma children to schools and classes for the mentally disabled" (para. 382). In its concluding observations on Slovenia, the Committee addressed the same issue as follows:

9. While welcoming the various measures adopted by the State party to ensure equal access to education for Roma children, including through the "Strategy for the Education of Roma

in the Republic of Slovenia”, the Committee is concerned about the practice of segregating these children in Slovene schools – ordinary or “special” – which has not yet been completely abolished (arts. 2, 3 and 5 (e) (v)).

Segregation of Roma children was also identified as an issue in the Committee’s concluding observations on Romania (2010):

14. The Committee takes note of the numerous measures taken by the State party to improve the situation of the Roma, and also to prevent and combat racial discrimination against them. However ... the Committee recommends that the State party ... ensure ... that the ministerial order of July 2007 banning segregation is disseminated among teachers and Roma parents, and properly implemented.

Overrepresentation of children of immigrants in special schools for underachievers (*Sonderschulen*) was mentioned as a concern in Germany:

23. The Committee is concerned that children of immigrants are overrepresented in special schools for “underachievers” (*Sonderschulen*), mainly on account of their lack of adequate German language skills, and underrepresented in secondary and tertiary education. The Committee, recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party take effective measures to ensure the integration of children of non-citizens in the regular school system and reconsider the problem of transfer of such children to *Sonderschulen*, including the criteria for any such transfer, as well as improving current arrangements to support the German language skills of such children.

In the concluding observations on the Netherlands, the problem of de facto segregation in education was also linked mainly to the situation of ethnic minorities of immigrant background. It urged the State party to take action:

7. The Committee is concerned that the de facto segregation of educational establishments, particularly primary and secondary schools, remains a problem in the State party and that measures such as the establishment of the Mixed Schools Knowledge Centre and the role assigned to the Education Inspectorate in promoting integration have proved inadequate (art. 3). The Committee urges the State party to increase its efforts to prevent and abolish segregation in education, including through the review of admissions policies which may have the effect of creating or exacerbating this phenomenon and other disincentives to such segregation.

#### **Article 4 (a) – Dealing with hate crime (hate speech, incitement)**

The issue of hate speech poses particular problems to those States parties that have a legal tradition of placing relatively few limitations on freedom of expression and opinion, leading to a restrictive interpretation of article 4. The Committee addressed this issue in its concluding observations on the United Kingdom:

12. The Committee also reiterates its concern over the fact that the State party continues to uphold its restrictive interpretation of the provisions of article 4 of the Convention. It recalls that such interpretation is in conflict with the State party’s obligations under article 4 (b) of the Convention and draws the State party’s attention to the Committee’s general recommendation No. 15, according to which the provisions of article 4 are of a mandatory character. In the light of the State party’s recognition that the right to freedom of expression and opinion are not absolute rights, and in the light of statements by some public officials and media reports that may adversely influence racial harmony, the Committee recommends that the State party reconsider its interpretation of article 4.

In its concluding observations on Austria, the Committee expressed its concern about the restrictive nature of the State party’s legal provisions themselves:

15. While welcoming the fact that the State party is in the process of reviewing its Criminal Code, especially section 283 related to the offence of incitement to racial discrimination, the Committee expresses its concern about the restrictive nature of its provisions, which are limited to acts that endanger public order and which are committed against individuals who are members of ethnic groups (art. 4). The Committee encourages the State party to complete the review of its Criminal Code and to extend the scope of section 283 to cover all acts of racial discrimination against persons belonging to all vulnerable groups, including ethnic minorities, migrants, asylum-seekers and foreigners, without limiting them to public order, in order to give full effect to provisions of article 4 of the Convention.

Legal as well as methodological problems were identified by the Committee as possible obstacles to further progress on issues covered by article 4, including hate speech, in the concluding observations on Sweden:

15. While the Committee welcomes the State party's efforts to combat hate crimes, including by new tracking methods in the judicial system, it is concerned about the increase of reported racially motivated hate crimes since 2000, as well as the spread of white power music and propaganda. It also expresses concern that the objectives of the relevant laws and policies are not being realized fully in practice, and that the Attorney-General initiated criminal proceedings only in a limited number of cases of agitation against ethnic minorities. Furthermore, the Committee is concerned that the judiciary, the prosecution authority and the police force use different definitions of hate crime (arts. 4 and 6). The State party should intensify its efforts to prevent, combat and prosecute racially motivated offences and hate speech, and to ensure that relevant criminal law provisions and existing policy directives are effectively implemented. In this regard, the Committee recommends that the State party replicate best practice examples, such as the hate crime unit in Stockholm. The Committee also requests that the State party provide orientation courses in order to sensitize prosecutors to the general importance of prosecuting racist acts, including hate speech. The State party should introduce a common definition of hate crime to be used by all the authorities involved in combating such crimes.

The Committee clearly indicated that while adopting legislation was necessary, it was not in itself sufficient, as in the case of Slovenia:

11. While welcoming the adoption of the Criminal Code in 2008 which criminalizes incitement to racial hatred, the Committee is concerned about continuing public manifestations of hate speech and intolerance by some politicians in the media, including online, towards persons belonging to minorities (arts. 4 and 7). The Committee recommends that the State party continue to endeavour to combat prejudices against persons belonging to ethnic minorities and to improve relations between the general public and minority communities. The Committee also recommends that the State party ensure the effective investigation and prosecution of all acts of political discourse against these minorities that are not in line with the Convention.

In its concluding observations on Poland, the Committee paid particular attention to the continued incidence of anti-Semitic activities, including hate speech, as well as to racism in the context of sports events:

7. The Committee notes the continued incidence of anti-Semitic activities in the State party, including the desecration of Jewish cemeteries, anti-Semitic hate speech and the dissemination of anti-Semitic material via the internet. The Committee urges the State party to sensitize the public on the problems relating to anti-Semitism and to reinforce its efforts to prevent and punish such acts and to provide, in its next periodic report, information on any measures taken in this regard.
8. The Committee notes that, despite the State party's efforts to address manifestations of racial hatred during sports functions, the incidence of such activities remains high in the State party (art. 4). The Committee recommends that the State party embark on a sensitization and awareness-raising campaign against racism in sports and take additional

steps to address these manifestations by, inter alia, enhancing its efforts to investigate them and punish those involved.

In several reports, States parties presented their efforts to stem the dissemination of racism on the internet. The Committee welcomed these measures, but remained generally concerned about the persistence of this problem (Finland, Netherlands). Furthermore, it encouraged the States concerned to ratify the Council of Europe Convention on Cybercrime (Luxembourg) and, where that had already occurred, its Additional Protocol (Germany).

### **Article 4 (b) - Prohibition of racist organizations and activities**

This area proved to be one of the most problematic parts of the Convention for States parties, several of which were found by the Committee not to have carried out their obligation to declare illegal and prohibit organizations (and propaganda activities) which promote and incite racial discrimination.

In its concluding observations on Hungary, the Committee welcomed some legislative progress in the area of article 4 while also drawing attention to legislative shortcomings, above all to the failure to prohibit racist organizations and activities:

376. Further to decision No. 12/1999 (V.21) of the Hungarian Constitutional Court which annulled part of section 269 of the Criminal Code punishing incitement to hatred, the State party committed itself to enacting the necessary provisions to prohibit hate speech. The Committee expresses concern that the existing legislation does not cover all aspects of article 4 of the Convention. The Committee recalls its general recommendations Nos. 7 and 15 which stress, inter alia, the mandatory character of this provision and recommends the adoption of further amendments to the Hungarian Criminal Code to encompass all those aspects, including the prohibition of organizations and activities mentioned in article 4 (b) of the Convention.

A similar issue was identified by the Committee in its concluding observations on Sweden:

14. While noting the existence of legal provisions giving effect to article 4, and the State party's position that its legislation meets the requirements of the Convention, the Committee remains concerned about the absence of any explicit criminal law provisions declaring illegal and prohibiting organizations promoting and inciting racial hatred (art. 4). The Committee reiterates its recommendation that the State party review its position on the prohibition of racist organizations and amend its legislation to bring it in line with article 4 (b) of the Convention. In this regard, the Committee recalls its general recommendation No. 15 (1993) on article 4 of the Convention, according to which all provisions of article 4 are of a mandatory character.

and on Latvia:

10. The Committee is concerned that the law of the State party does not fully respond to the requirements of article 4 of the Convention. The Committee notes that the State party has failed to effectively prohibit all organized and other propaganda activities and to recognize participation in such activities as an offence punishable by law, in accordance with article 4 (b) of the Convention. The Committee recommends that the State party review its domestic law in the light of its general recommendation No. 15 concerning the implementation of article 4 of the Convention, and that it adopt specific legislation on organized and other propaganda activities that promote and incite racial discrimination, irrespective of the legal status of the group or organization.

In the case of Belgium, the same issue was alluded to by the Committee in the context of the controversy concerning the legality of a political party, Vlaams Belang,<sup>5</sup> although the State party had actually outlawed the party's predecessor and made the current party subject to a judicial procedure:

12. The Committee notes that the Vlaams Block party, an organization promoting racism and discriminatory propaganda, dissolved itself in 2004 following a lengthy trial for racist offences. It further notes that the Vlaams Belang party, its successor, has been under a judicial procedure before the State Council since May 2006 for "hostility towards rights and liberties guaranteed by the European Convention on Human Rights" (article 15 ter, paragraph 1, of the law of 4 July 1989) aimed at cancelling its public financial allocation. The Committee, however, is concerned that the State party has not adopted any specific provisions implementing article 4 (b) of the Convention in its domestic legislation, declaring illegal and prohibiting organizations which promote and incite racial discrimination (article 4 (b)). The Committee, recalling its general recommendation No. 15, recommends that the State party adopt legislation to ensure the full and adequate implementation of article 4 of the Convention in its domestic legal system, especially provisions declaring illegal and prohibiting organizations which promote and incite racial discrimination, in accordance with article 4 (c).

The Committee was further concerned about the judicial procedure brought before the Constitutional Court by the Vlaams Belang party and others, based on the allegation that the national law which criminalizes the dissemination of ideas of racial superiority and hatred violates freedom of expression.

Similarly, some other European political parties explicitly mentioned by the Committee as promoting or inciting racial discrimination are represented in national Parliaments (or the European Parliament); their members are therefore holders of public office. The Committee's concluding observations on their activities are therefore relevant both in terms of article 4 (b) of the Convention and of article 4 (c), on incitement to racial discrimination by public authorities. Such is the case, for instance, of the Ataka party,<sup>6</sup> which was referred to by the Committee in the concluding observations on Bulgaria:

18. The Committee is concerned about reports of the propagation by certain organizations, press and media outlets and political parties, in particular the Ataka party, of racist stereotypes and hate comments against persons belonging to minorities... The Committee recommends that the State party take effective measures to penalize organizations, press and media outlets and political parties that are guilty of such acts.

In other cases the Committee's concluding observations contain specific reference to less prominent political parties without parliamentary representation, such as the Front National<sup>7</sup> in Belgium (the Committee noted that members of this party had been found guilty of incitement to racial hatred and sentenced to 250 hours of community service, with a suspension of the right to be elected for 10 years) and the National Renovation Party<sup>8</sup> in Portugal (2004):

9. ... [T]he Committee is concerned about the activities of the National Renovation Party, which targets immigrants in its manifestos and campaigns. The Committee recommends that the Government pursue and intensify its efforts to eradicate all incitement to, and acts of, racial discrimination. The Committee would also appreciate more detailed information on the procedure applicable to and the authorities competent to deal with cases of organizations reported to be racist.

In some of its concluding observations, the Committee referred to hate speech and other activities of neo-Nazi groups. In the case of Greece, it made the following recommendations:

<sup>5</sup> Vlaams Belang (Flemish Interest) is a Flemish nationalist and separatist party with an anti-immigration agenda and strong electoral support in the Flemish part of Belgium, with 17 seats in the Chamber of Representatives, 3 in the Senate and 2 in the European Parliament.

<sup>6</sup> The National Union Attack (Ataka) is a nationalist party promoting anti-Roma views which holds 21 seats in the Bulgarian Parliament and 2 seats in the European Parliament.

<sup>7</sup> The National Front (Front National) is a francophone Belgian party with a strongly anti-immigration agenda, which is currently not represented in Parliament.

<sup>8</sup> The National Renovation Party (Partido da Renovação Nacional) is a nationalist, white supremacy party in Portugal with a relatively small following and without representation in Parliament.

11. The Committee is concerned about reports on the propagation by certain organizations and media outlets of racist stereotypes and hate comments against persons belonging to different ethnic and racial groups. The Committee recommends that the State party take effective measures to penalize organizations and media outlets that are guilty of such acts. It further recommends that the State party concretely ban neo-Nazi groups from its territory and take more effective measures to promote tolerance towards persons of different ethnic origins.

The concluding observations on the Czech Republic focused on the organization of neo-Nazi concerts:

10. The Committee notes the decrease in the number of neo-Nazi concerts ... as well as efforts undertaken by the State party to establish guidelines for the police to prevent their organization. It remains deeply concerned, however, by information according to which action taken by the public authorities to prevent and prosecute the organization of, and participation in, such concerts is neither systematic nor sufficient. The Committee urges the State party to ensure that the organization of, and participation in, racist concerts are prevented, prosecuted, and punished accordingly. The authorities of the State party, in particular the police, should adopt a proactive and vigorous policy to ensure that such concerts do not take place, and impede the distribution of related propaganda.

#### **Article 4 (c) – Prohibition of incitement by public authorities and institutions**

The Committee paid particular attention to instances where hate speech or incitement to racial discrimination was deemed to emanate from politicians who hold public office or from other public authorities and institutions. Thus, in its concluding observations on Italy, the Committee stated:

15. The Committee, while noting the initiatives adopted by the State party to combat racial discrimination and intolerance, is concerned about reported instances of hate speech, including statements targeting foreign nationals and Roma, attributed to politicians (art. 4). The Committee recommends that the State party increase its efforts to prevent racially motivated offences and hate speech, and ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas. It also recommends that the State party take resolute action to counter any tendency, especially from politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin or to use racist propaganda for political purposes.

A similar problem of hate speech on the part of politicians gave rise to the Committee's concerns in the cases of Austria, Denmark, Lithuania, the Netherlands and Romania. In its concluding observations on Austria, the Committee stated:

16. The Committee is concerned about reported instances of hate speech by politicians, targeting migrants, asylum-seekers, refugees, persons of African origin and members of minorities (art. 4 (c)) ... It recommends that the State party take resolute action to counter any tendency, especially [on the part of] politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin, or to use racist propaganda in politics.

In its concluding observations of Romania, the Committee expressed concern about hate speech aimed at the Roma by politicians as well as other actors:

16. The Committee is concerned at reports of the spread of racial stereotyping and hate speech aimed at persons belonging to minorities, particularly Roma, by certain publications, media outlets, political parties and certain politicians (arts. 4, 5 and 6). The Committee recommends that the State party take effective measures to punish the publications, media outlets, political parties and politicians guilty of such behaviour. It also

recommends that the State party take measures to promote tolerance among ethnic groups.

In the concluding observations on the Netherlands, the Committee expressed concern about the general deterioration in the tone of political discourse:

8. The Committee is concerned at the incidence of racist and xenophobic speech emanating from a few extremist political parties, the continuing incidence of manifestations of racism and intolerance towards ethnic minorities and the general deterioration in the tone of political discourse around discrimination (art. 4). The Committee urges the State party to take more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance and to encourage a positive climate of political dialogue, including at times of local and national election campaigns.

One of the Committee's concluding observations concerned the promotion of racial hatred and racial discrimination by a wide range of organizations, including a political party, the League of Polish Families,<sup>9</sup> which had been part of the Government in Poland until recently:

9. The Committee notes that, despite the State party's indication that there are no organizations promoting racial hatred and racial discrimination on its territory, groups such as the All-Polish Youth, the National-Radical Camp, Liga Polskich Rodzin (the League of Polish Families) and the local chapter of the Blood and Honour group, which are reported to be involved in promoting racial hatred and racial discrimination, remain active in the State party (art. 4.) The Committee urges the State party to expedite the passing of legislation to criminalize the promotion of racial hatred and racial discrimination and the dissemination of racist material and ideology and to take firm measures to prosecute and punish those responsible.

## Article 5 (a) – The right to equal treatment before the courts

Article 5 (a) is complemented by general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In this area, the Committee focused on those instances where problems were identified either at the legislative level or in the outcomes of judicial procedures.

The most serious concern with regard to problematic legislation was expressed by the Committee with respect to the indefinite detention of non-nationals without charge or trial<sup>10</sup> in the United Kingdom:

17. The Committee is deeply concerned about provisions of the Anti-Terrorism Crime and Security Act which provide for the indefinite detention without charge or trial, pending deportation, of non-nationals of the United Kingdom who are suspected of terrorism-related activities. While acknowledging the State party's national security concerns, the Committee recommends that the State party seek to balance those concerns with the protection of human rights and its international legal obligations. In this regard, the Committee draws the State party's attention to its statement of 8 March 2002 in which it underlines the obligation of States to "ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin".

<sup>9</sup> Liga Polskich Rodzin (League of Polish Families) is a nationalist political party which was part of the governing coalition until 2007; it was represented in the Polish Parliament (Sejm) until 2007 and in the European Parliament until 2009.

<sup>10</sup> In 2004, in a landmark decision, the Law Lords (of the United Kingdom House of Lords) pronounced this provision incompatible with the European Convention on Human Rights. In 2005, the Prevention of Terrorism Act replaced detention in prison with "control orders" allowing for the imposition of an extensive and non-exhaustive set of restrictions approaching a form of house arrest, but applicable to both citizens and non-nationals. This, too, was controversial in human rights terms, as were subsequent Acts which introduced specific time limits on detention without charge or trial.



In terms of access to justice and procedural rights, the issues cited by the Committee were mainly of a linguistic nature. The right to translation/interpretation in judicial procedures was evoked in the concluding observations on Sweden, together with several other concerns:

16. The Committee, while noting relevant studies undertaken by the State party, is concerned about discrimination in the judicial and law enforcement systems against persons of non-Swedish background. The Committee is particularly concerned about allegations of racial prejudice among judicial personnel and about the lack of legal interpreters (arts. 5 (a) and 6). By reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee encourages the State party to develop and strengthen its programmes aimed at combating discrimination in the judicial and law enforcement systems. In this regard, the State party is encouraged to implement the recommendations contained in the study entitled “Discrimination in the Criminal Justice Process” by the National Council of Crime Prevention in 2006, in particular by providing effective interpretation and translation facilities to all persons appearing before institutions of law and justice, and by actively recruiting staff with foreign backgrounds into the law enforcement authorities and the judiciary.

In several other situations, the Committee identified no legislative deficiency, but nonetheless voiced its concern about disproportionate outcomes of judicial processes for members of minorities or non-nationals. For example, it commented on more severe sentencing for foreigners in its concluding observations on Belgium:

14. The Committee is concerned about the findings in the study from the National Institute on Criminal Statistics and Criminology concluding that foreigners in the penal system receive more severe sentences than people of Belgian origin. The Committee has noted that, according to the State party, this is not an intentional policy but rather an unconscious “vicious circle” involving many actors in the administration of the penal system (article 5 (a)). The Committee urges the State party to follow this development closely and develop a focused strategy, taking into consideration general recommendation No. 31, for changing the situation in order to ensure that all persons irrespective of race, colour, descent, or national or ethnic origin are treated equally in the penal system.

In fact, the disproportionate incarceration of members of minorities is probably prevalent in a number of other States parties, but statistical evidence is often lacking, as indicated by the following concluding observations on the Czech Republic, where the Committee also commented on the alleged use of detention as an instrument of coercion:

11. The Committee ... reiterates its concern about information according to which Roma, in particular children, are subject to ill-treatment by police officers and are placed in detention and coerced into confessing minor crimes... The Committee strongly recommends that the State party, in accordance with its general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and No. 27 (2000) on discrimination against Roma, ensure that allegations of police ill-treatment and misconduct towards persons belonging to minority groups, in particular the Roma, are promptly and impartially investigated and prosecuted... The Committee also wishes to receive detailed information and statistical data on the ethnic composition of the prison population, indicating in particular the proportion of Roma and non-citizens.

## **Article 5 (b) – Security and protection against harm (ill-treatment)**

### **VIOLENCE ON THE PART OF NON-STATE ACTORS**

Referring to article 5 (b) as well as article 4 (a), the Committee expressed its concerns – often continuing from previous concluding observations – about the prevalence of violent racist incidents in

several States. In the case of Germany, it commented on the reported increase of such incidents and requested more resolute action:

18. The Committee remains concerned about the increase of reported racist-related incidents against members of the Jewish, Muslim [and] Roma/Sinti communities as well as German nationals of foreign origin and asylum-seekers, in particular of African origin. The Committee recommends that the State party take more resolute action at the federal and Länder level to prevent and punish perpetrators of racially motivated acts of violence against members of the Jewish, Muslim and Roma/Sinti communities, as well as German nationals of foreign origin and asylum-seekers, in particular of African origin. Furthermore, the State party should provide updated statistical data, on an annual basis, on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and the national or ethnic origin of victims.

While noting the efforts of Slovakia to counter racist violence, the Committee also expressed very clear concerns about the reported increase in such attacks:

12. The Committee welcomes the steps taken to combat and prevent racially motivated violence, including the introduction of stronger punishments in the Criminal Code as well as the establishment of an Inter-ministerial task force entrusted with the implementation of the Action Plan for the Prevention of All Forms of Discrimination. However, it continues to be concerned about the increase in racially motivated attacks, including anti-Semitic violence and violence targeting Roma and non-EU migrants, sometimes perpetrated by neo-Nazi skinhead groups (arts. 4, 5 (b) and 7). The Committee urges the State party to intensify its efforts to combat and prevent racially motivated offences, in particular violence against Roma, Jews, and non-EU migrants, including by ensuring that all racially motivated acts of violence are duly investigated and prosecuted, and that perpetrators are punished, taking into account the racial motivation of such acts as an aggravating circumstance. It also recommends that the State party carry out awareness-raising campaigns on this matter. The Committee further recommends that the State party take further measures to promote tolerance among ethnic groups. It also requests the State party to provide updated statistical data on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and national or ethnic origin of victims.

In its concluding observations on the United Kingdom, the Committee identified asylum-seekers as a particular target group of racist attacks:

14. The Committee remains concerned at reports of attacks on asylum-seekers. In this regard, the Committee notes with concern that antagonism towards asylum-seekers has helped to sustain support for extremist political opinions.

In its concluding observation on Poland, the Committee expressed its concern about the prevalence of racial violence against members of various groups:

6. The Committee notes the delegation's statement that racially motivated crimes against persons of Arab, Asian and African origin are prosecuted when evidence is available. Nevertheless, the Committee remains concerned at the prevalence of racial violence and other acts of racial abuse against members of these groups (art. 4). The Committee recommends that the State party enhance its efforts to address racially motivated hate crimes by ensuring that all such incidents are thoroughly investigated and that perpetrators are brought to justice, and by continuing to raise awareness of the extent of ethnic discrimination and intolerance among local authorities and the general public.

In its concluding observations on Denmark, the Committee noted its concern about procedural arrangements which appeared to result in the discontinuation of a large number of cases, thus potentially discouraging the victims from reporting:

9. The Committee, while taking note of the State party's efforts to encourage reporting of hate crimes through the preparation of guidelines on the handling of cases under section

266 B of the Criminal Code, is concerned at the broad powers of the Director of Public Prosecutions to stop investigations, withdraw charges or discontinue cases, and at the large number of cases that have been discontinued by the Director of Public Prosecutions, which would discourage reporting by victims... The Committee recommends that the State party [limit] the powers of the Director of Public Prosecutions by establishing an independent and multicultural oversight body to assess and oversee the decisions taken by the Director of Public Prosecutions with regard to cases under section 266 B of the Criminal Code to ensure that discontinuance of cases does not discourage victims from lodging complaints or promote impunity for perpetrators of hate crimes.

The Committee also addressed violence by non-State actors in the context of trafficking in human beings. As the Committee pointed out, victims of trafficking are often women and children belonging to ethnic minorities, including non-citizens. In the case of Belgium, the Committee noted the lack of measures to protect and provide adequate reparation to victims while in the case of Poland, it noted the absence of information on the subject.

### ILL-TREATMENT BY STATE ACTORS (POLICE)

In this area, the Committee did not comment on the absence of ill-treatment (which should be the norm), but highlighted instances where ill-treatment, above all by police officers, was reported to have occurred. Indeed, this article was invoked in the concluding observations with respect to a number of EU Member States.

Reports of violence against members of minorities by the police or other security forces were explicitly mentioned by the Committee in its concluding observations on Austria, Belgium, Bulgaria, Greece, Hungary, Italy, Portugal, Romania, Slovakia and Spain. In the concluding observations on Italy, the Committee expressed its concern about the use of illegal force by the police as well as by non-State actors, indicating that the State party should refrain from the former and take stronger action against the latter:

19. The Committee is concerned about reports of ill-treatment of Roma, in particular of Roma of Romanian origin, by members of the police force in the course of raids in Roma camps, notably following the enactment, in November 2007, of Presidential Decree No. 181/07 regarding expulsion of foreigners (art. 5 (b)). The Committee recommends that the State party take measures to prevent the use of illegal force by the police against Roma and that local authorities take more resolute action to prevent and punish racially motivated acts of violence against Roma and other persons of foreign origin. In this regard, the Committee draws the attention of the State party to its general recommendation No. 27 and urges it to ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures to prevent racially motivated acts of violence against them.

In the case of Austria, the Committee expressed concern about reported cases of ill-treatment by the police which had led to death, as well about arbitrary controls and verbal abuse used by the police against non-citizens, notably asylum-seekers, persons of African descent and Roma. In its concluding observation, it recalled general recommendation No. 31 (2005) and stated:

18. ... [T]he Committee strongly recommends that the State party take the necessary steps to prevent questioning, arrests, searches and interrogations which are based on physical appearance, colour or membership of a racial or ethnic group, or any profiling.

In its concluding observations on Slovakia, the Committee was concerned about reports of police brutality against the Roma, including minors:

14. The Committee notes with appreciation the State party's obligatory provision of human rights training for, and the regular screening of, law enforcement officials, as well as the identification of police experts for Roma communities, among other measures. However, it continues to be concerned about reports of police brutality against members of the Roma minority, including minors, during arrest or while in custodial detention. It is also concerned about the low representation of Roma in the police (art. 5 (b) and (e)). Recalling its general

recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reiterates its recommendation that the State party intensify its efforts to combat and prevent ill-treatment of Roma by law enforcement officials, including by ensuring the effective implementation of relevant regulations of the Ministry of the Interior. It also reiterates its recommendation that the State party consider establishing a monitoring mechanism to carry out investigations into alleged police misconduct, which is independent from the State party's authorities. The Committee calls upon the State party to take further steps to increase the representation of Roma in the police force, for example by adopting special measures regarding their recruitment.

The Committee also focused on the issue of ethnic profiling in its concluding observations on Ireland (police and airport checks) and the United Kingdom ("stops and searches" by police), addressing the following statement to the latter:

19. The Committee is concerned that a disproportionately high number of "stops and searches" are carried out by the police against members of ethnic or racial minorities. The Committee encourages the State party to implement effectively its decision to ensure that all "stops and searches" are recorded and to give a copy of the record form to the person concerned. The Committee invites the State party to address this issue in more detail in its next periodic report.

In the concluding observations on Romania, the Committee focused both on excessive use of force by the police and on ethnic profiling, including by judicial officials:

15. The Committee notes with concern the excessive use of force, ill-treatment and abuse of authority by police and law enforcement officers against persons belonging to minority groups, and Roma in particular. It is also concerned about the use of racial profiling by police officers and judicial officials (art. 5). Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee encourages the State party to:
  - a) Continue to take measures and to enforce existing measures, particularly Act No. 218/2002 and Act No. 360/2002, with a view to combating the excessive use of force, ill-treatment and abuse of authority by the police against persons belonging to minority groups, including Roma;
  - b) Facilitate access to remedies by persons belonging to minorities in respect of such behaviour;
  - c) Guarantee the effective and objective processing of complaints, under the supervision of the Inspectorate General of the Police;
  - d) Ensure that such behaviour is indeed prosecuted and punished by the judicial authorities;
  - e) Continue, meanwhile, to recruit Roma into the police force.

The Committee also recommends that the State party eliminate the use of racial profiling by the police and justice system and that it provide comprehensive data, in its next report, on complaints, prosecutions and punishments for such behaviour.

The Committee recognized that in some States parties there were systemic issues involved which went beyond the problem of racial prejudice itself and which concerned other potential victims of police misconduct. The absence of an independent monitoring mechanism with power to investigate complaints of police misconduct was explicitly identified by the Committee as a key problem, exemplified by its concluding observations on Austria, the Czech Republic, Hungary, Ireland, Lithuania and Slovakia. While expressing its concern about allegations of ill-treatment and violence by the police towards members of minority groups in Lithuania, the Committee recommended both the creation of such a mechanism and the provision of human rights training:

17. ... The Committee recommends that the State party establish an independent monitoring mechanism to carry out investigations into allegations of police misconduct and at the same time intensify its actions to halt this phenomenon, in particular through the provision of adequate human rights training to law enforcement personnel.

Other potential ways of improving the attitudes of law enforcement suggested by the Committee included human rights training for police officers or other public officials, as in the recommendation addressed to Portugal:

10. ... Furthermore, in light of its general recommendation No. 13, the Committee recommends that the State party continue to provide intensive training to law enforcement officials so as to ensure that in the performance of their duties they respect and protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour, descent, or national or ethnic origin.

Similar recommendations were addressed by the Committee to Spain, while Ireland was commended for having already launched efforts in this respect. The Committee also encouraged States parties (e.g., Denmark, Hungary, Greece) to increase the representation of ethnic minorities among law enforcement officers.

Even where police complaint systems were already in place and the State party was taking initiatives to recruit more persons of ethnic minority background, as in the United Kingdom, the Committee insisted on strong implementation measures and concrete reporting. It was concerned, *inter alia*, about the disproportionately high incidence of deaths in custody of members of minorities:

18. While the Committee welcomes the initiatives taken for further reforms within the police force, including enhanced representation of ethnic minorities, it recalls its previous concerns about the disproportionately high incidence of deaths in custody of members of ethnic or racial minority groups. The Committee invites the State party to submit in its next periodic report detailed information on the new police complaints system; the new Police Complaints Commission (IPCC) which will be fully operational from April 2004; the number of complaints involving racial discrimination referred to IPCC, including deaths in custody; and the outcome of these complaints as well as the disciplinary measures taken in each case. It also encourages the State party to adopt measures conducive to integrating the different ethnic and racial representation within the police force.

## DETENTION OF (REJECTED) ASYLUM-SEEKERS AND IRREGULAR IMMIGRANTS

In Belgium, problems of ill-treatment by police officers involved in particular non-citizens who were being expelled. In this context, the Committee cited a judgement of the European Court of Human Rights:

18. The Committee is concerned that police forces continue, in certain cases, to use excessive force during expulsion of non-citizens, as noted by the European Court of Human Rights, in its judgement of 12 October 2006, which found that Belgium had violated articles 3 and 8 of the European Convention on Human Rights. The Committee recommends that the State party continue to follow this issue closely, especially by ensuring that members of the police forces are adequately trained in human rights and that all allegations of ill-treatment and excessive use of force are investigated.

In the concluding observations on Austria, Belgium and Greece, the Committee linked ill-treatment of asylum-seekers, particularly those rejected and awaiting deportation, and illegal migrants to their conditions of detention, including its length. It recommended that States parties reduce the length of detention as much as possible. In the case of Greece, it specifically mentioned the problem of unaccompanied children:

12. The Committee is concerned about reported cases of ill-treatment of asylum-seekers and illegal immigrants, including unaccompanied children. The Committee recommends that

the State party take more effective measures necessary to treat asylum-seekers humanely and to reduce as much as possible the period of detention of asylum-seekers, in particular children.

In the same context, the Committee cited yet another important judgement of the European Court of Human Rights concerning Belgium, but with more general implications:

17. Noting that the European Court of Human Rights, in its judgement of 24 January 2008, found that Belgium had violated articles 3 and 5 of the European Convention on Human Rights on [the] ground of inhuman and degrading treatment of asylum-seekers, the Committee shares the concern about the detention of asylum-seekers, the conditions of such detention and the lack of non-custodial measures applicable to them (article 5). The Committee, recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party ... use non-custodial measures for asylum-seekers and, when detention is required, that conditions meet international standards.

### Article 5 (c) – Political rights

In its concluding observations on France,<sup>11</sup> the Committee stated that it remained very concerned about the difficulties faced by travellers,<sup>12</sup> particularly regarding their right to vote. It urged the State party to ensure equal treatment with respect to the exercise of this right.

The Committee occasionally referred to political rights in its concluding observations in relation to restrictions placed upon non-citizens in certain States parties (e.g., Estonia, Czech Republic), some of which have already been mentioned in the context of article 1 (b) on the distinction between citizens and non-citizens. Another observation dealing with this issue was addressed by the Committee to Latvia:

12. The Committee recognizes that political rights can be legitimately limited to citizens. Nevertheless, noting that most non-citizens have been residing in Latvia for many years, if not for their whole lives, the Committee strongly recommends that the State party consider facilitating the integration process by making it possible for all non-citizens who are long-time permanent residents to participate in local elections.

Another area of concern to the Committee was the lack of political representation of minorities. Thus, the Committee made the following observations on Ireland:

22. The Committee notes that members of the Traveller community are not adequately represented in the State party's political institutions and do not effectively participate in the conduct of public affairs (art. 5 (c)). The Committee invites the State party to consider adopting affirmative action programmes to improve the political representation of Travellers, particularly at the level of Dáil Eireann [Lower House of Parliament] and/or Seanad Eireann [Upper House] .

The Committee also addressed the issue of low participation of minorities in political life as well as in administration in its concluding observations on Estonia (2010):

14. The Committee notes with concern the very low level of participation of minorities in political life and the limited representation of minorities in Parliament (art. 5 (c)). In view of the fact that the civil and political integration of minorities is an objective of the Estonian Integration Strategy, the Committee recommends that the State party redouble its efforts to ensure greater participation by members of minorities in public life, including in Parliament, and take effective steps to ensure that they participate in the administration at all levels.

<sup>11</sup> At paragraph 16. See the section on article 5 (e) below for the full quotation.

<sup>12</sup> In the case of France, where the travelling community (*gens du voyage*) is not recognized as a distinct ethnic group, the Committee refers to "travellers" while in the concluding observations of other countries where this is the case the form "Travellers" is used.

### **Article 5 (d) (i) - The right to freedom of movement and residence within the border of the State**

The Committee addressed an issue linked to the right to freedom of residence within the border of the State only in the concluding observations on Belgium, which dealt with language-related restrictions enacted by the Flemish community and by the municipality of Zaventem (see section on article 2, paragraph 1).

### **Article 5 (d) (iii) – The right to nationality**

The Committee mentioned the issue of statelessness in its concluding observations on Estonia, Latvia and Slovenia, all with reference to groups of persons who have been on the territory of the respective State party since its independence in the early 1990s. In its concluding observations on Estonia, the Committee recommended that the State party “lessen language requirements for naturalization, particularly for older persons and those who were born in the State party” (para. 13).

It also made the following general observation:

15. While noting with appreciation that reducing the number of persons with undetermined citizenship remains an objective for the State party and welcoming the steps taken to facilitate naturalization for long-term resident minorities, the Committee remains concerned at the persistently high number of persons with undetermined citizenship and at the reported negative perception of the naturalization procedure by applicants (art. 5 (d)). The Committee reiterates its previous recommendation calling on the State party to enhance efforts to reduce the number of persons with undetermined citizenship. The Committee calls on the State party to examine further the reasons behind the reluctance of potential applicants to engage in the naturalization process with a view to improving the situation. The Committee also reiterates its invitation to the State party to ratify the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.

### **Article 5 (d) (iv) - The right to marriage and choice of spouse**

The Committee addressed this issue only rarely, in the concluding observations on Cyprus and Denmark. The statement on Cyprus referred to the removal of two forms of discrimination which had previously been laid down in law:

263. Satisfaction is also expressed at the amendment of the 1967 Citizenship Law which eradicates discrimination in marriage to foreigners. Through this amendment, the right of an alien spouse to acquire the citizenship of the Cypriot spouse is now recognized for both spouses, as is the equal right of both spouses to transmit citizenship to their children.
264. The Committee notes with approval that a draft marriage law, allowing marriage between a Greek Orthodox Christian and a Muslim of Turkish origin, has been approved by the Council of Ministers and laid before the House of Representatives for enactment.

In its concluding observations on Denmark, the Committee expressed concern about restrictions on family reunification:

14. The Committee reiterates its concern at the restrictive conditions under Danish law with regard to family reunification. This relates to the requirements that both spouses must have attained the age of 24, and that their aggregate ties with Denmark must be stronger than their ties with any other country unless the spouse living in Denmark has been a Danish national or has been residing in Denmark for more than 28 years. The Committee reiterates its concern that this may lead to a situation where persons belonging to ethnic and national backgrounds other than Danish are discriminated against in the enjoyment of their right to family life, marriage and choice of spouse (art. 5 (d) (iv)). The Committee

urges the State party to adopt concrete measures to assess the racial impact of this legislation on the enjoyment of the right to family life, marriage and choice of spouse. Furthermore, the study must assess whether this law unduly restricts entry into marriage and whether this limitation on the rights affected outweighs the mischief it seeks to prevent, namely forced and early marriages. The State party should also evaluate whether this requirement unduly restricts those people who satisfy the minimum age requirement for contracting a lawful marriage in Denmark.

### **Article 5 (d) (v) - The right to own property alone as well as in association with others**

The few instances in which the Committee addressed the issue of property rights concerned land rights of indigenous people, as exemplified by the concluding observations on Finland:

14. While appreciating the State party's acknowledgement that the prevailing legal uncertainty surrounding the question of Sami land rights is potentially harmful to inter-ethnic relations in the areas concerned, the Committee reiterates its concern about the limited progress achieved in resolving Sami rights issues and the State party's failure to adhere to International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (arts. 5 (d) (v), 5 (e) (vi) and 6). The Committee draws once again the State party's attention to general recommendation No. 23 (1997) on the rights of indigenous peoples which, inter alia, calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources. The Committee renews its appeal to the State party to find an adequate settlement of the land dispute together with the Sami people and its recommendation that it adhere to ILO Convention No. 169 as soon as possible. It recommends that the State party take effective measures to ensure that the so-called study on land rights in Upper Lapland results in concrete action, including the adoption of new legislation, in consultation with the communities affected. The State party is also encouraged to continue negotiations with relevant ministries and the Sami Parliament on the establishment of a new preparatory body in charge of reaching a solution for the land use rights issue in the Sami Homeland.

Land rights of indigenous (Sami) communities were also at the heart of the Committee's concluding observation on Sweden:

19. While noting the State party's stated intention to address the reports of various inquiries regarding Sami land and resource rights in a bill to be submitted to Parliament in March 2010, the Committee reiterates its concern about the limited progress achieved in resolving Sami rights issues. It is also concerned about the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights, as well as the lack of resources allocated to these inquiries (arts. 5 (d) (v), 5 (e) (vi) and 6). The Committee recommends that the State party take effective measures to ensure that studies conducted in the area of Sami rights result in concrete action, including the adoption of new legislation, in consultation with the communities affected. The State party is also invited to initiate further studies into methods by which Sami land and resource rights may be established, taking into account the oral tradition of Sami culture, as well as any limitations in written documentary evidence of Sami title.
20. While noting the State party's assumption that no further legal actions by Swedish landholders against Sami reindeer herders are to be expected, the Committee reiterates its concern regarding such land disputes. It is particularly concerned about past court rulings which have deprived Sami communities of winter grazing lands. It is also concerned about de facto discrimination against the Sami in legal disputes, as the burden of proof for land ownership rests exclusively with the Sami, and about the lack of legal aid provided to Sami villages as litigants (art. 5 (a), 5 (d) (v), 5 (e) (vi) and 6). The Committee recommends that the State party grant necessary legal aid to Sami villages in court disputes concerning land and grazing rights and invites the State party to introduce legislation providing for a shared burden of proof in cases regarding Sami land and grazing



rights. It also encourages the State party to consider other means of settling land disputes, such as mediation.

In its concluding observations on France, the Committee addressed the issue of land rights (i.e. property rights) of indigenous people in the State party's overseas territories, together with a number of other difficulties faced by these populations:

18. While appreciating the detailed information provided by the State party on efforts undertaken in its overseas territories to ensure increased representation of, and greater autonomy for, indigenous populations, the Committee is still concerned that the current system does not allow recognition of the collective rights of indigenous peoples, in particular the ancestral right to land. The Committee is also concerned at the increasing difficulties faced by some inhabitants of overseas territories in gaining access without discrimination to education, employment, housing and public health. The Committee recommends that the State party allow recognition of the collective rights of indigenous peoples, in particular with regard to property. It further recommends that the State party take the necessary legislative measures to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169). The Committee also recommends that the State party step up efforts to ensure equal access to education, work, housing and public health in overseas territories (art. 5).

### **Article 5 (d) (vi) - The right to inherit**

The issue of the right to inherit was evoked by the Committee only exceptionally. In its concluding observations on Denmark, which concerned the rights of some members of an indigenous community:

17. ...The Committee further notes the case of Greenlandic people considered to be "legally fatherless" because they were born out of wedlock to Danish men who were in Greenland in the 1950s and 1960s. This status has an impact on matters of family law, land ownership and inheritance (art. 5 (d) (vi)). The Committee urges the State party to take measures to address the problems faced by the legally fatherless who, by virtue of having been born out of wedlock, are negatively affected by various laws including the laws governing family life, land ownership and inheritance.

### **Article 5 (d) (vii) - The right to freedom of thought, conscience and religion**

The issue of freedom of religion came under scrutiny by the Committee in the context of difficulties experienced by Muslims in several States. The Committee addressed the issue as one of "intersectionality between ethnicity and religion", for example in its concluding observations on Greece:

14. Bearing in mind the intersectionality between ethnicity and religion, the Committee is concerned about information on certain specific difficulties encountered by Muslims belonging to different ethnic groups to practise their religion. The Committee recalls the State party's obligation to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent, or national or ethnic origin, in accordance with article 5 (d) of the Convention.

"Islamophobia" linked to fears of terrorism was identified as a concern in the concluding observations on the United Kingdom, where inconsistencies in protection from religious discrimination were also pointed out:

20. The Committee notes that the State party recognizes the "intersectionality" of racial and religious discrimination, as illustrated by the prohibition of discrimination on ethnic grounds against such communities as Jews and Sikhs, and recommends that religious discrimination against other immigrant religious minorities be likewise prohibited.

21. The Committee is concerned about reported cases of "Islamophobia" following the 11 September attacks. Furthermore, while the Committee takes note that the State party's criminal legislation includes offences where religious motives are an aggravating factor, it regrets that incitement to racially motivated religious hatred is not outlawed. The Committee recommends that the State party give early consideration to the extension of the crime of incitement to racial hatred to cover offences motivated by religious hatred against immigrant communities.

In the concluding observations on Ireland, the issue of religious freedom was closely linked to education as the Committee noted the near absence of non-denominational or multid denominational schools:

18. The Committee, noting that almost all primary schools are run by Catholic groups and that non-denominational or multid denominational schools represent less than 1 per cent of the total number of primary education facilities, is concerned that existing laws and practice would favor Catholic pupils in the admission to Catholic schools in case of shortage of places, particularly in the light of the limited alternatives available (art. 5 (d) (vii) and 5 (e) (v)). The Committee, recognizing the "intersectionality" of racial and religious discrimination, encourages the State party to promote the establishment of non-denominational or multid denominational schools and to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) to schools is concerned.

### **Article 5 (d) (ix) - The right to freedom of peaceful assembly and association**

The Committee made a rather exceptional comment on an issue concerning the freedom of peaceful assembly and association in its concluding observations on Greece:

15. The Committee is concerned about the obstacles encountered by some ethnic groups in exercising the freedom of association, and in this regard takes note of information on the forced dissolution [of] and refusal to register some associations [whose titles include] words such as "minority", "Turkish" or "Macedonian", as well as of the explanation for such refusal. The Committee recommends that the State party adopt measures to ensure the effective enjoyment by persons belonging to every community or group of their right to freedom of association and of their cultural rights, including the use of mother languages.

### **Article 5 (e) - Economic, social and cultural rights**

The issue of non-discriminatory enjoyment of economic, social and cultural rights was addressed by the Committee in a number of its concluding observations. In particular, the Committee identified difficulties in this area with respect to immigrants and ethnic minorities, including the Roma and Travellers (e.g., concluding observations on Austria, Belgium, Denmark, Germany, Greece, Ireland, Portugal, Romania, Slovenia, Spain and Sweden).

In several cases, the Committee acknowledged the efforts of the State party to overcome the disadvantaged situation of particular groups through special measures (in line with article 2, paragraph 2, of the Convention), while noting that problems persist and that further improvements are therefore necessary, as in the case of Spain (2004):

8. The Committee equally notes with satisfaction the extensive measures taken in the social, economic, cultural and other spheres in connection with the Gypsy<sup>13</sup> community, including, inter alia:

<sup>13</sup> The group in question is referred to in Spanish as "Gitanos", which is usually translated into English as "Gypsies". Until the early 1990s, the latter term was also used in Central and Eastern Europe for the people who now prefer to be referred to as "Roma". Spanish Gypsies (Gitanos) do not refer to themselves as Roma, but they are ethnically related to the Roma, face similar socio-economic challenges and their representatives take active part in the international Roma empowerment.

- (a) The further implementation of the Gypsy Development Programme, aimed at promoting access for members of the Gypsy community - on terms of equality with the rest of the population - to public education, health, housing [and] employment;
  - (b) The National Plan of Action for Social Inclusion identifying the Gypsy community as a specific beneficiary group;
  - (c) The Gypsy Education Group aimed at improving the current situation regarding education for Gypsy children and young people.
15. With respect to article 5 of the Convention, while the Committee notes with satisfaction the extensive measures taken by the State party in order to improve the overall situation of Gypsies, it is concerned about the difficulties still faced by a large part of them in the fields of employment, housing and education, as well as about reported cases of discrimination in daily life. The Committee draws the attention of the State party to its general recommendation No. 27 on discrimination against Roma (Gypsies) and recommends that the State party take all necessary measures with a view to promoting tolerance and overcoming prejudices and negative stereotypes in order to avoid any form of discrimination against members of the Roma (Gypsy) community.

The Committee made it clear, however, that what matters is the actual impact of the policies in question. Thus, in the concluding observations on Greece, the Committee urged the State party to conduct an evaluation of the results of its policies:

16. While acknowledging the important special measures already adopted for the social integration of the Roma, the Committee is concerned about obstacles encountered by Roma persons with regard to access to work, housing, health care and education. The Committee recommends that the State party undertake an evaluation of the results of the “Integrated Action Programme for the Social Integration of Greek Roma”, in consultation with the respective communities, and adopt adequate measures to effectively improve the living conditions of the Roma, in accordance with article 5 of the Convention and general recommendation No. 27 (2000) on discrimination against Roma.

Similarly, in the case of Romania, the Committee took note of numerous measures taken by the State party, but reiterated its concern that the Roma continue to be the victims of racial stereotyping and racial discrimination in access to education, housing, health services, social services and employment. In this context, it urged Romania to enforce existing legislation.

The specific issue of ensuring enjoyment of their economic, social and cultural rights by communities with a travelling lifestyle (caravan-dwellers) was addressed in the concluding observations on Belgium, France and Ireland. In particular, the Committee was very concerned about the situation of travellers in France, identifying both legal restrictions on travelling and the practical availability of encampment areas as issues of concern:

16. The Committee remains very concerned at the difficulties faced by travellers, particularly regarding their freedom of movement, exercise of the right to vote and access to education and decent housing. In this respect, the Committee notes with concern that, despite the recommendations formulated in its previous concluding observations, the State party has still not provided travellers with the necessary number of encampment areas, as provided for in the Act of 5 July 2000 known as the “Besson Act”. The Committee is also concerned at the legal requirement for travellers to hold a travel permit, which has to be renewed periodically. The Committee urges the State party to ensure equal treatment for travellers in respect of the right to vote and access to education. The Committee recommends that the Besson Act be implemented swiftly to ensure that illegal encampment areas are no longer an issue. The Committee also recommends that travel permits for travellers be abolished to ensure equal treatment for all citizens of the State party (arts. 2 and 5).

The concluding observations on Belgium acknowledged the progress which had been achieved while pointing out the continued existence of problems:

22. While acknowledging the work of the Walloon Travellers' Mediation Centre since 2001 and the recognition of caravans as a form of housing in the Flemish Housing Code since 2004, the Committee remains concerned as to the practical enjoyment of social, economic and cultural rights by Roma and Travellers, especially in education and employment (arts. 5 (e) and 7). The Committee recommends, in light of its general recommendation No. 27 (2000) on discrimination against Roma, that the State party strengthen its measures to improve the schooling of Roma children, as well as employment opportunities for Roma and Travellers. The Committee further recommends that the State party provide, in its next periodic report, detailed information on the enjoyment of social, economic and cultural rights of Roma and Travellers, as well as on the impact of the measures taken to increase and improve sites on residential land for caravan-dwellers and improve access to health care and other basic facilities.

In the case of Ireland, the Committee also noted the special efforts concerning the economic, social and cultural rights of Travellers, but expressed its continued concern about their effectiveness:

21. While noting the efforts made so far by the State party with regard to the situation of members of the Traveller community in the field of health, housing, employment and education, the Committee remains concerned about the effectiveness of policies and measures in these areas (art. 5 (e)). The Committee recommends to the State party that it intensify its efforts to fully implement the recommendations of the Task Force on the Traveller community, and that all necessary measures be taken urgently to improve access by Travellers to all levels of education, their employment rates as well as their access to health services and to accommodation suitable to their lifestyle.

In the case of Slovenia, the Committee welcomed the adoption of a specific policy aimed at improving the access of the Roma to economic, social and cultural rights:

5. The Committee welcomes the following legislative and institutional developments in combating racial discrimination of the Roma community in Slovenia:
- a) The adoption in March 2010 of the National Programme of Measures for Roma People for the 2010–2015 period. This programme outlines a series of measures to combat discrimination against Roma in access to education, housing, health care, employment and living conditions;
  - b) The adoption in 2007 of the Roma Community Act;
  - c) The establishment of the Roma Community Council, which represents the interests of the Roma community in Slovenia before State authorities;
  - d) The adoption in 2004 of the Strategy Plan for the Education of Roma", where representatives of the Union of Roma of Slovenia participated in its drafting.

However, in the light of continued marginalization and precarious socio-economic situation of the Roma, the Committee urged Slovenia to develop these policies further:

8. The Committee, while expressing appreciation for the measures adopted by the State party to eliminate discrimination against the Roma communities, such as the National Roma Programme 2010-2015, remains concerned about the continued marginalization and precarious socio-economic situation of members of this minority and the discrimination they are faced with, including in the fields of education, housing, health and employment (arts. 2 and 5). The Committee urges the State party to enhance its efforts aimed at combating discrimination against Roma. In light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party engage in a data-gathering exercise to ensure that special measures in favour of Roma, in the fields of education, housing, health and employment, are designed and implemented on the basis of need, and that their implementation is monitored and their effectiveness is regularly assessed.

In the case of Austria, the Committee expressed concern at insufficient legislative protection in the area of economic, social and cultural rights, recommending the adoption of special measures:

21. The Committee is concerned that in the State party the acts of racial discrimination in everyday life in fields such as employment, housing, education and access to public places are only considered minor offences in Austrian law (art. 5 (e)). The Committee recommends that the State party review its legislation on racial discrimination, so as to ensure the adequate protection against discrimination in practice of persons belonging to vulnerable groups, such as ethnic minorities, immigrants and asylum-seekers, [in accordance with] article 5 of the Convention. The Committee also recommends that the State party consider adopting special measures in favour of such groups with the aim of guaranteeing them the full and equal enjoyment of their human rights and fundamental freedoms, in accordance with article 2, paragraph 2, of the Convention.

### **Article 5 (e) (i) - The right to work**

Apart from general observations on economic, social and cultural rights, the Committee also addressed more specific recommendations to several States parties dealing with particular areas of these rights and possible solutions to remaining problems. In its concluding observations on Finland, it proposed various measures which could help increase the employment opportunities of Roma:

18. While welcoming the efforts made by the State party to eliminate discrimination against the Roma, such as the nominations of contact persons for Roma in local employment offices and the training of local employment staff on the Roma culture and ethnic equality, the Committee remains concerned about the limited enjoyment by members of the Roma community of the rights enshrined in the Convention, especially the rights to education, employment, housing and access to public places. The Committee is particularly concerned about the high rate of unemployment among the Roma people, owing to the fact that they lack basic education (arts. 2, 5 and 6).

In light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that States parties strengthen their efforts to increase the level of education of members of Roma communities, inter alia by raising awareness about the possibility for Roma children to receive instruction in their mother tongue, and by further promoting the recruitment of Roma teachers. It also encourages States parties to increase employment opportunities for Roma, including by training unemployed Roma for the labour market, as well as ensuring that they have equal access to housing and public places. States parties should also increase their efforts to combat negative attitudes and prevailing stereotypes concerning Roma, in particular among employers.

The Committee addressed the high rates of Roma unemployment and discrimination against Roma in the labour market in its concluding observations on several States parties, as exemplified by its comments on the Czech Republic:

15. The Committee is concerned that, despite the adoption of the new Employment Act of 2004 and programmes undertaken by the State party, unemployment among Roma continues to be particularly high and that Roma face persistent discrimination in recruitment (arts. 2 and 5 (e) (i)). The State party should adopt more effective strategies to promote the employment of Roma in the public administration and institutions, as well as in private companies, and to ensure that they are not discriminated against in the enjoyment of their right to work.

The Committee also addressed similar recommendations concerning the employment of Roma to Hungary, Lithuania and Romania. In the concluding observations on Romania, the Committee explicitly recommended (para. 14 (e)) that the State party develop training and learning opportunities for Roma, with a view to facilitating their entry into the labour market.

Moreover, in the context of the rights to adequate remuneration and working conditions, the Committee expressed its concern about the exploitation of immigrant workers, for example in its concluding observations on Ireland:

14. The Committee is concerned about reported instances of exploitation of foreign workers by some employers and of violations of labour regulations prohibiting discrimination (art. 5). The Committee, recalling its general recommendation No. 30 (2003) on discrimination against non-citizens, encourages the State party to ensure full practical implementation of legislation prohibiting discrimination in employment and in the labour market. In this context, the State party could also consider reviewing the legislation governing work permits and envisage issuing work permits directly to employees.

In the concluding observations on Italy, the Committee expressed particular concern with regard to undocumented workers, citing several examples of clear violations of their rights:

17. The Committee is concerned at reports regarding the situation of undocumented migrant workers from various parts of the world, in particular from Africa, Eastern Europe and Asia, drawing attention to violations of their human rights, in particular of their economic, social and cultural rights, including alleged ill-treatment, low wages received with considerable delay, long working hours and situations of bonded labour, whereby a part of [their] wages [is] withheld by employers as payment for accommodation in overcrowded lodgings without electricity or running water (art. 5). The Committee, recalling its general recommendation No. 30 on non-citizens, urges the State party to take measures to eliminate discrimination against non-citizens in working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. Furthermore, it recommends that the State party take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, including debt bondage, passport retention, illegal confinement and physical assault.

### **Article 5 (e) (iii) - The right to housing**

As noted in the section on article 3, the Committee addressed the right to housing in several concluding observations in the context of residential segregation experienced by Roma (e.g., Czech Republic, Italy, Lithuania, Slovakia) and immigrants (e.g., Finland, Portugal), identifying specific language-related restrictions in Belgium.

In the case of Slovakia, the Committee explicitly mentioned the very poor conditions in segregated neighbourhoods (see above) as well as the lack of access to social housing:

17. ... In light of its general recommendation No. 27 (2000), the Committee recommends that the State party effectively implement and monitor compliance, at the local level, with its laws, policies and projects aimed at ensuring the right to housing for all without discrimination, including social housing. It reminds the State party that it may not invoke provisions of its internal law as a justification for a failure to implement the Convention. The Committee reiterates its recommendation that the State party strengthen its measures aimed at ameliorating the housing conditions of the Roma in view of the importance of such conditions for their enjoyment of other rights enshrined in the Convention. The Committee also recommends that the State party intensify its efforts to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance. It further recommends that the State party act firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.

In this context, the Committee also referred to its opinion on an individual complaint concerning social housing for Roma in Slovakia:

20. The Committee notes the delegation's assurances that the State party is committed to follow up the Committee's recommendations in [communication] No. 31/2005 (*Mrs. L.R. et*

a/.) concerning social housing for Roma in the municipality of Dobšina. The Committee recommends that the State party ensure effective and timely implementation of its recommendations [on] communications under article 14 of the Convention and to continue to keep it informed of any new developments.

The issue of forced evictions of Roma was given particular attention by the Committee in its concluding observations on the Czech Republic, Hungary and Italy.

More specific comments on the right to housing included the concluding observations on Denmark, where the Committee on the one hand welcomed the active approach to preventing de facto segregation (“ghettoization”), but on the other hand stressed the need to balance it with the right to freedom of residence and cultural rights:

15. The Committee, while it appreciates that the State party’s objective under the “anti-ghettoization” law is to prevent marginalized groupings and not ethnic groupings, regrets the lack of data on the impact that the implementation of this law has on the affected people’s rights to freedom of residence, the practice of their culture and preservation of their cultural identities (arts. 5 (d) (i) and (e) (iii) and (vi)). The Committee recommends that the State party assess the impact that the implementation of the anti-ghettoization law has on the rights of various ethnic groups to practise their culture, and ensure that it does not have an assimilationist effect that leads to the loss of cultural identities by those affected by this law.

The policies applied in Germany with the aim of creating and maintaining “socially stable residential structures and balanced housing estates” also came under scrutiny by the Committee, leading to the following comment:

17. The Committee is concerned about the possible negative effects in terms of indirect discrimination on the grounds of ethnic origin, due to the exception to the principle of equal treatment as regards access to rental housing contained in paragraph 19, section III of the General Equal Treatment Act. According to this provision, landlords can refuse to rent apartments to persons applying for accommodation with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions (arts. 3 and 5 (e) (iii)). The Committee recommends that the State party guarantee the equal enjoyment of the right to adequate housing by ensuring that housing agencies and other providers of accommodation refrain from engaging in discriminatory practices. Furthermore, the Committee encourages the State party to consider modifying paragraph 19, section III of the General Equal Treatment Act in order to conform with article 5 (e) (iii) of the Convention.

The potentially discriminatory role of housing agencies was addressed by the Committee in its concluding observations on Luxembourg (2005):

17. While recognizing the steps taken by the State party to combat racial discrimination, the Committee notes that certain vulnerable groups, such as non-nationals, refugees and asylum-seekers, are not afforded sufficient protection. In the light of its general recommendation No. 30, the Committee proposes action specifically to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.

Discrimination in rental accommodation was identified (2000) by the Committee as being an issue in Malta:

9. It is noted with concern that there have been claims of racial discrimination in housing, particularly as regards rental accommodation. It is recommended that the State party review the situation of rental accommodation with a view to ensuring non-discrimination, and provide additional information on this matter in its next periodic report to the Committee.

Finally, the Committee expressed specific concerns about the poor (housing) conditions of asylum-seekers, refugees and undocumented immigrants in detention in Hungary:

380. The Committee is concerned at the prevailing conditions in refugee shelters and the conditions of detention of undocumented immigrants. Noting the efforts of the State party in this respect, the Committee strongly encourages the Hungarian authorities to further improve the existing facilities so that they meet international standards and to provide relevant information thereon in the next periodic report.

In its concluding observations on Italy, the Committee also invoked the need for conditions in such centres to meet international standards, emphasizing their physical conditions as well as several other issues related to article 5 (a) and (b).

18. The Committee is concerned by allegations that foreigners held in the temporary stay and assistance centre of Lampedusa are not properly informed of their rights, do not have access to a lawyer and face collective expulsion. It is further concerned about reports that detention conditions in the centre are unsatisfactory in terms of overcrowding, hygiene, food and medical care, and that some immigrants have suffered ill-treatment (art. 5). The State party is encouraged to improve the conditions of stay and assistance centres and reception and identification centres to ensure that adequate health care and better living conditions are provided. It also recalls the obligation of the State party to take measures to ensure that conditions in centres for refugees and asylum-seekers conform to international standards.

In the concluding observations on Spain, similar concerns were specifically related to overcrowding in reception centres outside the European mainland:

13. While the Committee commends the ongoing cooperation between the State party and the United Nations High Commissioner for Refugees as well as the commitment of the State party to improve the country's asylum system by transposing into Spanish law, by February 2005, European Union Directive 2003/9, laying down minimum standards for the reception of asylum-seekers, it is concerned about the poor conditions encountered by asylum-seekers due to the overcrowding of reception centres, in particular in Ceuta and the Canary Islands. The Committee recommends that the State party take adequate measures necessary to improve the situation of asylum-seekers, especially in Ceuta and in the Canary Islands. It also invites the State party to provide further information on this issue in its next periodic report.

Also in the case of Spain, the Committee particularly emphasized the serious implications of such poor conditions for (unaccompanied) children:

14. While the Committee warmly welcomes the 2003 Memorandum of Understanding between Spain and Morocco on assistance in the repatriation of unaccompanied foreign children, it expresses concern about the situation of these children, particularly in relation to the poor conditions in the reception centres for minors (especially in Ceuta and Melilla). The Committee recommends that the State party take all necessary measures to improve the conditions in reception centres for minors and ensure respect for the existing laws so that regular procedures in the expulsion of unaccompanied foreign children are carried out. The Committee also invites the State party to provide clarification on the issue of the reported reduction of the age of majority from 18 to 16 years for the purpose of expulsion.

### **Article 5 (e) (iv) - The right to public health, medical care, social security and social services**

While the issues covered by this provision appeared less frequently in concluding observations, the Committee was alarmed by the "critical" health situation of some Roma communities, identifying the root problems as poverty and unsanitary conditions, including the lack of clean drinking water and sewerage, rather than access to medical services. The concluding observations on Lithuania dealt with the issue as follows:



22. The Committee is alarmed at the critical health situation of some Roma communities, which is largely a consequence of their poor living conditions (art. 5). The Committee recommends that the State party continue to implement programmes and projects in the field of health for Roma, bearing in mind their disadvantaged situation resulting from extreme poverty and low levels of education. To this end, the Committee encourages the State party to take further measures to address the issues of drinking water supplies and sewage disposal systems in Roma settlements.

In the context of health care, the Committee expressed its concern in the concluding observations on Slovakia about past cases of sterilization of Roma women without their full and informed consent:

18. The Committee continues to be concerned about allegations of sterilizations of Roma women without their informed consent, while acknowledging the delegation's assurance that they have not been carried out during the reporting period. It welcomes the adoption of new legal provisions prohibiting unlawful sterilizations and prescribing the "informed consent" of the patient for such a procedure, including Act No. 576/2004 Coll. on Healthcare, but takes note of information alleging inconsistent implementation by health personnel (arts. 5 (b) and (e) and 6). The Committee urges the State party to establish clear guidelines concerning the requirement of "informed consent" and to ensure that these guidelines are well known among practitioners and the public, in particular Roma women. It recommends that the State party continue to monitor all health centres performing sterilizations with a view to ensuring that all patients who undergo such a procedure have been able to give their informed consent as required by law, and to investigating and, if appropriate, sanctioning in case of a breach. The Committee also recommends that all reports of sterilization without informed consent be duly acknowledged and that victims be provided with adequate remedies, including apologies, compensation and restoration, if possible.

### **Article 5 (e) (v) - The right to education and training**

A number of the Committee's specific comments on the right to education and training concerned the limited educational opportunities of the Roma. As mentioned above (in the section dealing with article 3 on segregation), the Committee's conclusions on several States parties addressed the disproportionate placement of Roma children in special education or other forms of their segregation (e.g., Bulgaria, Czech Republic, Estonia, Hungary, Poland, Slovakia, Slovenia).

In the concluding observations on Italy, the Committee addressed the issue of high dropout rates of Roma children, recommending the use of teaching assistants from the Roma community itself:

20. While welcoming the initiatives taken by the Ministry of Education at both the central and local levels to ensure the integration and effective schooling of Roma children and to combat school failure and dropout, the Committee remains concerned about the low rate of school attendance by Roma children (art. 5 (e) (v)). The Committee once again draws the attention of the State party to its general recommendation No. 27 and recommends that the State party strengthen its efforts to support the inclusion in the school system of all children of Roma origin and to address the causes of dropout rates, including any cases of early marriage, in particular of Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities. It further recommends that it proceed to improve dialogue and communication between teaching personnel and Roma children, Roma communities and parents, including more frequent use of teaching assistants chosen from among the Roma.

The introduction of Roma teaching assistants was appreciated by the Committee in its concluding observations on Poland. (In previous reporting periods, the Committee had also welcomed their introduction in the Czech Republic and Slovakia.)

Another issue in the area of education which was raised by the Committee involved the access to education of children of asylum-seekers in (parts of) Germany:

22. While noting current proposals for legislative change, the Committee is concerned by reports that the principle of compulsory primary education is not fully applied to children of asylum-seekers in Hesse, Baden-Württemberg and Saarland, with the effect that the children concerned encounter obstacles in connection with school enrolment (art. 5 (e) (v)). In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party ensure that children of asylum-seekers residing in the territory of the State party do not face any obstacles in connection with school enrolment.

Yet another specific issue which was raised by the Committee in the context of article 5 (e) (v) involved the right to education in a minority language, as exemplified by the concluding observations on Greece:

17. The Committee is concerned about the alleged limited access to quality minority education for the Turkish-speaking minority in Western Thrace. The Committee recommends that the State party improve the quality of education for the vulnerable ethnic groups and the Muslim minority, including through the training of teachers belonging to these groups, to ensure that there is a sufficient number of secondary schools, and to create preschools that teach in the mother tongue of their students.

Concerns about the diminishing use of a minority language (Sorbian) in the school system were expressed by the Committee in the concluding observations on Germany:

24. The Committee is concerned about the fragile situation of the Sorbian school network in Saxony and Brandenburg, caused in part by falling school enrolment, which may have an impact on the general principle of the use of minority languages in the school system (art. 5 (e) (v)). The Committee recommends that the State party ensure effective implementation of the legal provisions with regard to the use of minority languages in the school system. The State party should encourage the authorities of Saxony and Brandenburg to consider means of strengthening the involvement of the Sorbian minority in decision-making in this field and ensure the continuation of a viable Sorbian school network, including secondary schools, in order to sustain Sorbian language and culture.

The availability of mother tongue instruction was also mentioned in the Committee's concluding observations on Sweden with respect to the indigenous Sami population:

22. The Committee expresses concern about the continuing discrimination against the Sami in many segments of Swedish society. It is also concerned that despite the State party's effort to increase awareness of the possibility of schools providing mother tongue tuition, such awareness remains low among members of the Sami community (art. 5 (e)). The Committee encourages the State party to implement the recommendations contained in the study by the Ombudsman on Ethnic Discrimination published in July 2008. The State party is encouraged to raise greater awareness among the Sami regarding the availability of mother tongue tuition and to implement distance learning programmes as a measure to avoid teacher shortfalls and lack of funding. The Committee encourages the State party to learn from best practices in other countries with Sami communities.

In the concluding observations on Belgium, the Committee addressed the issue of the wearing of symbols or clothing denoting religious affiliation (headscarves), emphasizing that no pupil should be denied the right to education in this context:

21. While noting that in the State party the competence to regulate the wearing of the headscarf in schools belongs to each school board, the Committee is concerned as to the equal enjoyment of the right to education by all girls in Belgium (art. 5 (e) (v)). The Committee recommends that the State party ensure that the procedure implementing school regulations always places emphasis on dialogue in order to prevent such regulations from denying any student the right to education, and to ensure that everyone can always exercise that right.

The Committee also welcomed the efforts of Finland aimed at the prevention of bullying which frequently affects children of minority or immigrant background.

### **Article 5 (e) (vi) - The right to equal participation in cultural activities**

Apart from issues of minority language education (in the cases of Greece, Germany and Sweden, as noted in the preceding section), the Committee also made a statement on a broader range of issues related to the cultural rights of persons belonging to minority groups in the concluding observations on Austria:

22. The Committee is concerned about reports according to which minority groups encounter difficulties in preserving, using and developing their languages. The Committee urges the State party to take effective measures to preserve minorities' languages and culture by, inter alia, encouraging and promoting the use of their mother tongues in the fields of education, public administration and legal proceedings, in the media and through their participation in public life, in accordance with article 7 of the State Treaty of Vienna (1955).

The Committee also raised the issue of bilingual television programming (i.e., in minority languages), welcoming the removal of legal restrictions on minority-language broadcasting in Latvian private media.

### **Article 5 (f) - The right of access to public places or services**

The issue of denial of access to public places or services was raised by the Committee in several of its concluding observations (e.g., Romania, Hungary) with respect to members of the Roma minority. It made the following statement on Hungary:

385. The Committee expresses concern about discriminatory practices against persons belonging to the Roma minority in respect of access to public places such as restaurants, bars and cafés. The Committee recommends that the State party continue to intensify its efforts to combat such behaviour and raise the awareness of the population about all aspects of racial discrimination.

The Committee's concluding observations on Austria referred to a broader range of persons suffering from denial of access to public places as well as to particular deficiencies on the part of the State party:

23. The Committee is concerned about the frequent denial of access to places intended for use by the general public to persons of African and Latin-American origin, and to Roma. The Committee is further concerned about the lack of measures by the police and about the lack of public reaction on this issue in the State party (art. 5 (e) (f)). The Committee recommends that the State party take effective measures to ensure that individuals belonging to groups covered by the Convention enjoy and exercise equal rights to access any place or service intended for the use of the general public. The Committee further requests that the State party provide information on such measures.

In its concluding observations on Finland, the Committee expressed concern about "the difficulties that persons with an immigrant background and aliens continue to face when trying to access service places, such as bars and restaurants" (para. 19).

## **Article 6 – Judicial protection and remedies**

In the context of article 6, which is complemented by general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee most often commented on the absence (or small number) of court cases involving racial discrimination and how this could be interpreted. It explained why the absence or limited

number of such cases should not be viewed as necessarily positive, for example in the concluding observations on Austria:

25. The Committee notes that the small number of court cases on racial discrimination, might be misleading as to the prevalence of racial discrimination problems in the State party (art. 6). The Committee, recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, reminds the State party that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive. The State party should inquire whether this situation may be the result of inadequate information provided to victims concerning their rights, or victims' fear of social censure or reprisals, or their fear of the cost and complexity of the judicial process due to limited resources, or lack of trust in the police and judicial authorities, or the insufficient level of awareness by the authorities of offences involving racism. The State party, on the basis of such review, should take all necessary measures to ensure that alleged victims of racial discrimination have access to effective remedies.

In the concluding observations on Belgium, the Committee expressed concern not only about the limited number of cases brought to justice, but also about the number of cases that are discontinued, particularly when they involve police officers:

13. The Committee is concerned about the limited number of criminal cases concerning racist offences brought to justice and the high number of complaints that are discontinued, especially with regard to racial violence, hatred and discrimination committed by members of the police force. The Committee is further concerned about the lack of detailed statistical information on investigations, prosecutions and convictions with regard to racist offences, as well as on reparation provided to the victims (arts. 4 (a), 5 (b), 6 and 7). In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take all necessary measures to ensure that protection [against] and remedies [for] any acts of racial discrimination are effective, and that complaints are promptly, thoroughly and impartially investigated and [the] persons charged with offences prosecuted and tried. The Committee also recommends that the State party provide, in its next periodic report, detailed information on the investigation [of racially motivated offences and the] prosecution and conviction of [offenders] as well as on reparations provided to victims of such acts. The Committee further recommends that the State party reinforce information campaigns and education programmes on the Convention and its provisions, as well as strengthen its training activities for police and those working within the criminal justice system on the mechanisms and procedures provided for in national legislation in the field of racial discrimination.

The Committee also noted the small number of court cases concerning racial discrimination in its concluding observations on Bulgaria, the Czech Republic, Estonia, Italy, Latvia and Lithuania, citing several possible reasons for this phenomenon such as inadequate awareness of the existence of legal remedies and lack of confidence in the judicial system on the part of the victims, or lack of attention or sensitivity on the part of the authorities. In the case of Lithuania, the Committee referred specifically to reports indicating that fear of reprisals is a possible cause:

13. The Committee notes that very few cases of racial discrimination have been referred to the courts. According to some information, members of national and ethnic minorities who suffer discrimination do not complain to courts because they fear reprisals and lack confidence in the police and the judicial authorities, and because of the authorities' lack of impartiality and sensitivity to cases of racial discrimination (arts. 4 and 6). The Committee recommends to the State party that it inform victims of racial discrimination of their rights, including remedies available to them, that it facilitate their access to justice and guarantee their right to just and adequate reparation. The State party should ensure that its competent authorities investigate promptly and impartially complaints of racial discrimination and cases in which there are reasonable grounds to believe that acts of racial discrimination have occurred.

Moreover, the Committee expressed its concern about the lack of knowledge about the Convention itself on the part of the judiciary in its concluding observations on the Czech Republic and Bulgaria:

19. The Committee is concerned about the fact that the Convention is not well known among the people responsible for applying the law, in particular those working in the judiciary, which explains why it is insufficiently applied by judges. The Committee recommends that the State party step up its efforts to make the Convention known, in particular in the judiciary, through training courses and seminars, so as to foster its direct application by Bulgarian courts (art. 6).

In its concluding observations on Malta, the Committee voiced its concern about impunity in this respect enjoyed by policemen:

12. It is noted with concern that the new Police Code (Malta Police Force Act) provides that officers found to have treated persons in a discriminatory manner in the course of their duties are subjected to disciplinary action only. It is recommended that the State party take the necessary measures to ensure that criminal charges are brought against police officers for acts violating the provisions of the Convention.

The issue of reparations (for coerced sterilization of Roma women) was raised by the Committee in its concluding observations on the Czech Republic:

14. The Committee notes with concern that women, a high proportion of [whom] being Roma women, have been subjected to coerced sterilization. It welcomes the inquiries undertaken by the Public Defender of Rights on this matter, but remains concerned that to date, the State party has not taken sufficient and prompt action to establish responsibilities and provide reparation to the victims. While noting that a distinction should be drawn between sterilizations that have occurred before and after 1991, when an official policy encouraging such violations was ended, the Committee is deeply concerned that the State party has not taken sufficient action to abide by its positive obligation to impede their illegal performance by doctors after 1991, and that sterilizations without the prior informed consent of women are reported to have been carried out as late as 2004 (arts. 2, 5 (b) and (e) (iv) and 6). The State party should take strong action, without further delay, to acknowledge the harm done to the victims, whether committed before or after 1991, and recognize the particular situation of Roma women in this regard. It should take all necessary steps to facilitate victims' access to justice and reparation, including through the establishment of criminal responsibilities and the creation of a fund to assist victims in bringing their claims. The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that [the] criteria and procedures to be followed are well known to practitioners and the public.

## **Article 7 – Combating prejudice, promoting tolerance and understanding**

The Committee expressed its appreciation for the efforts made by some States parties in the context of obligations stemming from article 7. Specific initiatives welcomed by the Committee included the active promotion of diversity in companies as well as in the police force in Austria:

7. The Committee notes with appreciation the State party's recruitment campaign "Vienna needs you" aimed at diversifying the police force and increasing the percentage of police officers in Vienna with an immigrant background within the medium and long term.
8. The Committee acknowledges with appreciation good practices and measures with a view to preventing and combating racial discrimination in Austria, such as the Vienna integration and diversity policy and the project "Companies without racism".

However, the Committee also noted that similar attempts to increase diversity by recruiting Roma into the police force have not been particularly successful in the case of the Czech Republic:

12. The Committee notes with concern that efforts undertaken by the State party to improve the relationship and mutual understanding between the Roma and the police and to

encourage recruitment of members of Roma communities into the police have not enjoyed great success (articles. 4 and 7). The State party should significantly enhance its efforts to improve the [relations] and mutual understanding between the Roma and the police, and to ensure recruitment of members of Roma into the police and other law enforcement agencies.

Above all, the Committee drew attention to several recurrent problems such as the prevalence of prejudiced attitudes in the mass media and the inadequate response by States parties to this challenge, as exemplified by the concluding observations on the United Kingdom:

13. The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum-seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission in dealing with this issue. The Committee recommends that the State party consider further how the Press Complaints Commission can be made more effective and can be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organizations working in the field of race relations. The Committee further recommends that the State party include in its next report more detailed information on the number of complaints of racial offences received as well as the outcome of such cases brought before the courts.

Media ethics as well as the State party's response were called into question also in the Committee's concluding observations on Italy:

22. The Committee is concerned that the mass media continue to play a role in portraying a negative image of the Roma and Sinti communities and that insufficient measures have been taken by the State party to address this situation (art. 7). The Committee recommends that the State party encourage the media to play an active role in combating prejudices and negative stereotypes, which lead to racial discrimination, and that it adopt all necessary measures to combat racism in the media. It further requests the State party to adopt promptly the code of conduct of journalists drafted in collaboration with the National Office for the Elimination of Racial Discrimination, the Office of the United Nations High Commissioner for Refugees and the Italian National Press Federation.

In the case of Austria, the Committee recognized that legislative measures had been taken, but concluded that the problem of media hostility towards minority groups required further action:

26. The Committee notes that the State party has adopted measures to combat racism, stereotyping and racial prejudice in the media, such as the incorporation into the Federal Act for Austrian Broadcasting of provisions prohibiting racial incitement. However, the Committee is concerned that some media contribute to the creation of an atmosphere of hostility and rejection towards non-citizens in the State party (art. 7). The Committee recommends that the State party take action to develop educational and media training campaigns to educate the public about the life, society and culture of groups protected under the Convention, including ethnic minorities, migrants and persons of African origin, and the importance of building an inclusive society while respecting the human rights and cultural identity of all groups. The Committee also encourages the State party to work towards the reactivation of the mechanism of self-regulation of print media through the Austrian Press Council, which, according to information received from the State party, is currently inactive.

Prevailing negative sentiments concerning the Roma were the subject of the Committee's serious concern in its concluding observations on the Czech Republic:

13. The Committee is deeply concerned by the prevailing negative sentiments and stereotypes concerning the Roma among the Czech population (arts. 4 and 7). The State party should strive to improve the relations between Roma communities and non-Roma communities, in particular at the local level, with a view to promoting tolerance and ensuring that all persons fully enjoy their human rights and freedoms.

Similarly, the Committee expressed its concern about prevailing negative perceptions of the Roma among the general public in Romania:

20. The Committee is concerned that training in human rights and in interracial or inter-ethnic harmony remains insufficient and that a very negative perception of minorities, particularly the Roma, persists among the general public in the State party (art. 7). The Committee recommends that the State party intensify its efforts to impart human rights training and to foster an awareness of tolerance, interracial or inter-ethnic understanding and intercultural relations among law enforcement officials, including police, gendarmerie, judicial and prison administration personnel, and among lawyers and also teachers. It further recommends that the State party continue its public education and awareness-raising initiatives in the areas of multicultural diversity, harmony and tolerance of minorities, particularly the Roma.

Another issue identified by the Committee concerned the availability of information about the history and culture of minorities, for instance in school curricula. The Committee made specific recommendations in this respect, for example in its concluding observations on the Czech Republic:

21. The Committee regrets that it has not received sufficient information on the extent to which school curricula provide for intercultural as well as multicultural education, and on action taken to ensure the right of persons belonging to minorities to participate in cultural life (arts 5. (e) (vii) and 7). The Committee recommends that the State party include in textbooks, at all appropriate levels, chapters about the history and culture of minorities, including the Roma, and encourage and support the publication and distribution of books and other printed materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them. The Committee also recommends that the State party ensure the participation of minorities in the elaboration of such materials and programs. It also wishes to receive more information about the extent to which minority languages, including the Roma languages, are taught in schools and used as languages of instruction.

## Article 9 – Reporting duties

In the context of article 9, the Committee commented extensively on the lack of statistical data on the societies' ethnic composition in the reports of a number of States parties (Austria, Czech Republic, Estonia, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Portugal, Slovenia, Spain, Sweden), most of which provided specific legal reasoning to justify its absence. In contrast, it welcomed the decision of Ireland to start collecting ethnically disaggregated data:

6. The Committee, recalling the importance of gathering accurate and up-to-date data on the ethnic composition of the population, welcomes the decision by the State party to include a question on ethnicity in the next census in 2006, and encourages the State party to include in the next periodic report detailed information on the population, including non-citizens.

The Committee explained in a number of concluding observations that the collection of such statistical data is not in conflict with other legal duties, provided that the data collection follows well-established rules, including for personal data protection. In fact, the Committee's concluding observations showed that at least one State party – Latvia - was not providing ethnically disaggregated data of a statistical character but at the same time had imposed a requirement to record ethnic origin on personal identification documents. The requirement was ultimately removed following the recommendations of the Committee:

4. The Committee also welcomes the adoption of the new Law on Personal Identification Documents removing the requirement to record a person's ethnic origin, as recommended by the Committee in its previous concluding observations (CERD/C/304/Add.79, para. 24).
14. The Committee regrets the lack of disaggregated data in the State party report with respect to the enjoyment of the economic, social and cultural rights enumerated in article 5

(e) of the Convention. The Committee invites the State party to provide in its next report data, disaggregated by ethnicity and sex, on the enjoyment of the rights enumerated in article 5 (e) of the Convention, taking into account, inter alia, its general recommendations No. 25 on gender-related dimensions of racial discrimination and No. 27 on discrimination against Roma.

Furthermore, the Committee pointed out that valuable information on the ethnic composition of States parties' populations could be drawn not only from the census, but also from targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned. The following comes from the concluding observations on Germany, but is applicable to the problem of collecting ethnically disaggregated data in general:

14. While taking note of the explanations given by the delegation with regard to legislative provisions preventing the State party from identifying ethnic groups in a census or otherwise drawing a distinction between citizens on the grounds of ethnic, linguistic or religious origin, the Committee expresses concern regarding the lack of statistical data in the report of the State party on the ethnic composition of its population. The Committee recommends that, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), the State party provide information on the use of mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information derived from targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, so as to be able to evaluate the composition of its population and its situation in economic, social and cultural fields.



### III. Text of the international convention on the elimination of all forms of racial discrimination

#### International Convention on the Elimination of All Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965

**entry into force 4 January 1969, in accordance with Article 19**

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person, Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society, Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

## **PART I**

### **Article 1**

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

### **Article 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
  - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
  - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
  - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### **Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### **Article 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or

promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

### Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

### Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or

ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

## **PART II**

### **Article 8**

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5.
  - (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
  - (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### **Article 9**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
  - (a) within one year after the entry into force of the Convention for the State concerned; and
  - (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

### **Article 10**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

### **Article 11**

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

### Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

### Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

#### Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6.

(a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7.

(a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

#### Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2.

(a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

### **Article 16**

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

## **PART III**

### **Article 17**

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article 18**

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention. 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### **Article 19**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

### **Article 20**

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

#### **Article 21**

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

#### **Article 22**

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

#### **Article 23**

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

#### **Article 24**

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

#### **Article 25**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.



## IV. Annex

### List of countries

| <b>Country</b> | <b>Session and date of adoption of last concluding observations</b> | <b>Document symbol and link to concluding observations</b> |
|----------------|---|--|
|----------------|---|--|

|                       |  |                         |
|-----------------------|--|-------------------------|
| <b>Austria</b>        | <b>Seventy-third session<br/>August 2008</b> | <b>CERD/C/AUT/CO/17</b> |
| <b>Belgium</b>        | Seventy-second session<br>March 2008         | CERD/C/BEL/CO/15        |
| <b>Bulgaria</b>       | Seventy-fourth session<br>March 2009         | CERD/C/BGR/CO/19        |
| <b>Cyprus</b>         | Fifty-ninth session<br>August 2001           | A/56/18, paras. 256-277 |
| <b>Czech Republic</b> | Seventieth session<br>March 2007             | CERD/C/CZE/CO/7         |
| <b>Denmark</b>        | Seventy-seventh session<br>August 2010       | CERD/C/DNK/CO/18-19     |
| <b>Estonia</b>        | Seventy-seventh session<br>August 2010       | CERD/C/EST/CO/8-9       |
| <b>Finland</b>        | Seventy-fourth session<br>March 2009         | CERD/C/FIN/CO/19        |
| <b>France</b>         | Seventy-seventh session August<br>2010       | CERD/C/FRA/CO/17-19     |
| <b>Germany</b>        | Seventy-third session<br>August 2008         | CERD/C/DEU/CO/18        |

|                    |   |                         |
|--------------------|---|-------------------------|
|                    |   |                         |
| <b>Greece</b>      | Seventy-fifth session<br>August 2009    | CERD/C/GRC/CO/16-19     |
| <b>Hungary</b>     | Sixty-first session<br>August 2002      | A/57/18, paras. 367-390 |
| <b>Ireland</b>     | Sixty-sixth session<br>March 2005       | CERD/C/IRL/CO/2         |
| <b>Italy</b>       | Seventy-second session<br>March 2008    | CERD/C/ITA/CO/15        |
| <b>Latvia</b>      | Sixty-third session<br>August 2003      | CERD/C/63/CO/7          |
| <b>Lithuania</b>   | Sixty-eighth session<br>March 2006      | CERD/C/LTU/CO/3         |
| <b>Luxembourg</b>  | Sixty-sixth session<br>March 2005       | CERD/C/LUX/CO/13        |
| <b>Malta</b>       | Fifty-sixth session<br>March 2000       | CERD/C/304/Add.94       |
| <b>Netherlands</b> | Seventy-sixth session<br>March 2010     | CERD/C/NLD/CO/17-18     |
| <b>Poland</b>      | Seventy-fifth session<br>August 2009    | CERD/C/POL/CO/19        |
| <b>Portugal</b>    | Sixty-fifth session<br>August 2004      | CERD/C/65/CO/6          |
| <b>Romania</b>     | Seventy-seventh session, August<br>2010 | CERD/C/ROU/CO/16-19     |
| <b>Slovakia</b>    | Seventy-sixth session<br>March 2010     | CERD/C/SVK/CO/6-8       |

|   |                                      |                   |
|---|--------------------------------------|-------------------|
|   |                                      |                   |
| <b>Slovenia</b>   | Seventy-seventh session, August 2010 | CERD/C/SVN/CO/6-7 |
| <b>Spain</b>  | Sixty-fourth session<br>March 2004   | CERD/C/64/CO/6    |
| <b>Sweden</b>   | Seventy-third session<br>August 2008 | CERD/C/SWE/CO/18  |
| <b>United Kingdom of Great Britain and Northern Ireland</b> | Sixty-third session<br>August 2003   | CERD/C/63/CO/11   |

# PROTECTION AGAINST RACIAL DISCRIMINATION IN EUROPE

The work of the UN Committee  
on the Elimination of Racial Discrimination