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Contact Point for Roma and Sinti Issues joins in expressing its condolences for the passing of Ion Cioaba.

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EDITORIAL

This is the first issue of the *CPRSI Newsletter* in the 1997 series. In this issue, we would first of all like to inform our readers about the ODIHR Programme of Activities regarding Roma and Sinti issues.

This year we will also proceed with the presentation of various projects and organisations aimed at providing legal assistance to Roma and Sinti. The European Roma Rights Center is yet another public interest law organisation on the list of international mediation bodies defending the rights of Roma and Sinti on a transnational basis.

In her article describing the tools for monitoring Roma rights at the universal level, Marcia Rooker provides an in-depth analysis both of the human rights treaties, which include mechanisms to enforce compliance with the relevant laws, and of the international bodies which aim to facilitate the implementation of court decisions

Traditionally included in this newsletter, you will once again find the ODIHR bibliography of the most current reports regarding the situation of Roma and Sinti.

We wish you pleasant reading!

ODIHR CONTACT POINT FOR ROMA AND SINTI ISSUES -

Working Programme 1997

1. DISCRIMINATION AND VIOLENCE AGAINST ROMA

- 1.1. CPRSI/PER Workshop on preventing violence and discrimination of Roma and Sinti. Bucharest, 21-22 March;
- 1.2. Continuing registration of cases of violence against Roma and Sinti in the OSCE region.
- 1.3. Organisation of national projects addressing cases of discrimination of Roma in legal procedures.
- 1.4. Experimental operation of a Legal Clinic providing advice and legal assistance for a local Roma community.

2. CO-OPERATION WITH INTERNATIONAL ORGANISATIONS

- 2.1. ODIHR/CoE Round Table on future strategies for defending minority rights for Roma and Sinti. Warsaw, 10-11 October;
- 2.2. Contribution to the activities of the Group of Experts on Roma of the Council of Europe. Regular working relationships with relevant directorates of the European Commission, UNHCR, UNESCO and ICRC.
- 2.3. Regular exchange of information on Roma and Sinti issues.

3. DISSEMINATION OF INFORMATION

- 3.1. Quarterly publication of the Roma Newsletter in Romanese and English.
- 3.2. CPRSI/PER Second Workshop on Roma and media.

4. RELATIONS WITH ROMA ASSOCIATIONS

- 4.1. Roma internships in the CPRSI.
- 4.2. Establishing of the CPRSI Advisory Committee comprising of representatives of Roma associations.
- 4.3. Working contacts and assistance to the Standing Conference for Co-operation and Co-ordination of Romani Associations in Europe.

MONITORING HUMAN RIGHTS: The Importance of the Universal Level for Roma and Sinti

Marcia Rooker

In theory, once a state has become a party to a human rights treaty, human rights, including minority rights, are protected. However, a rule on paper is not always a rule in practice. It must be recognised that complete elimination of human rights violations in the world cannot be achieved. Nonetheless, human rights violations do not have to be accepted as a fact of life, and human rights treaties thus include mechanisms to enforce compliance with the relevant laws. Enforcement in international law is not easy, however, as unlike national communities, the international community does not have the institutions necessary to execute court decisions. Generally speaking, three kinds of monitoring mechanisms can be distinguished at the international level: inter-state complaints, state reports, and the most well-known, individual complaints.

The best known system of individual complaints is likely the procedure provided by the European Commission and European Court of Human Rights; this paper, however, will give attention only to the universal individual complaint procedures. The universal system in fact provides stronger protection against discrimination, as well as better protection for minorities. Prior to addressing the individual complaint systems in the paragraphs below, some attention will be given to the other two mechanisms, the inter-state complaint and the state report.

INTER-STATE COMPLAINTS

Inter-state complaints are possible under the following agreements: Article 24 of the European Convention on Human Rights and Fundamental Freedoms (ECHR); Article 41 of the International Convention on Civil and Political Rights (CCPR); Article 11 of the Convention on the Elimination of Racial Discrimination (CERD); and Article 22 of the Convention Against Torture (CAT). Consequently, a State can lodge an application with a treaty-body when it has reason to believe that another State has violated a right guaranteed in one of these conventions. The inter-state complaint procedures of the International Convention (CCPR), the Racial Discrimination Convention (CERD), and the Convention Against Torture (CAT) have never been used, however.

Member States of the Council of Europe have used the inter-state complaint mechanism a total of eighteen times, though in only six different situations. A subsequent use of the mechanism, the nineteenth, is approaching, as Denmark has announced its intention to lodge an application against Turkey, alleging that a Kurd of Danish nationality was tortured by the Turkish police. Such is an example of the use of this mechanism in a situation in which political disagreement already

exists. In four of the six of the aforementioned situations, a national concern was the basis for a State complaint. Greece has twice complained about British behaviour in Cyprus; Austria complained on one occasion about the treatment of South Tyroleans in Italy; Ireland has filed two complaints about the UK; and Cyprus has complained about Turkish behaviour in Cyprus on three occasions. Further, the mechanism was used to acknowledge a general concern for human rights in five complaints made by Scandinavia and the Netherlands against the former Greek military regime, as well as in five complaints against Turkey lodged jointly by the Scandinavian countries, France and the Netherlands.

The latter two situations illustrate that human rights protection is an international concern; ideally, the international community should react to any violation. Tradition in international law is much stronger, however; state relations are dominated by mutual rights and obligations. An inter-state complaint made for the benefit of certain individuals, often citizens of the State receiving the complaint, is inappropriate. Moreover, inter-state complaints damage diplomatic relations, and maintenance of open diplomatic channels naturally is of importance, also from a human rights perspective. It must be therefore be concluded that the mechanism of inter-state complaints does not work. Many serious and well-known violations of human rights have occurred despite the availability of the inter-state application. Consequently, a question must be posed: are the remaining two mechanisms sufficient to enforce protection of human rights?

STATE REPORTS

Many treaties contain a provision pertaining to state reports: the European Convention (Art. 57 ECHR); the International Convention (Art. 40 CCPR); the Economic, Social and Cultural Rights Convention (Art. 16 CESCR); the Racial Discrimination Convention (Art. 9 CERD); the Convention Against Torture (Art.19 CAT); the Convention Against the Discrimination of Women (Art.18 CEDAW); the Convention for the Rights of Children (Art.14 CSR); the European Social Charter (Art. 21 ESC); the Framework Convention on the Protection of National Minorities (Art. 25); and the European Charter for Regional or Minority Languages (Art.15); and numerous other examples. This reporting mechanism requires that States regularly report on the progress of implementation of the treaty provisions.

Reporting systems have various levels of development. For example, the European Convention has a rather rudimentary system; judgments on reports are not anticipated, and measures cannot be taken to force a State to implement international rules. This example supports the idea that reporting systems are of prime importance for those human rights that cannot be enforced by individual complaint procedures. More specifically, the most effective reporting systems may be found in the treaties on social, economic and cultural rights. The reporting

systems in both the European Social Charter and the International Covenant on Economic, Social, and Cultural Rights are indeed well-developed.

In the paragraphs that follow, the reporting procedures of the Covenant on Civil and Political Rights (CCPR), the Covenant of Economic, Social and Cultural Rights (CESCR), the Racial Discrimination Convention (CERD), and the Charter on Regional or Minority Languages will be addressed, as these four relate to the legal protection of Roma and Sinti.

The United Nations Human Rights Committee

States must submit reports to the United Nations Human Rights Committee (UNHRC) under Article 40 of the International Covenant (CCPR) on the implementation of the treaty. According to the UNHRC's decision, following the initial submission States are required to file reports every five years. In special circumstances, these regulations may be set aside and a report can be submitted earlier. The UNHRC studies the report and carries out "constructive dialogue" with the State concerned. Further, the UNHRC submits a report of its annual activities to the General Assembly, and since 1992 has adopted specific comments for each report. These comments, for example with regard to Hungary (CCPR/C/79/Add.22 - 3 August 1993), Bulgaria (CCPR/C/79/Add.24 - 3 August 1993), and Romania (CCPR/C/79/Add.30 - 5 November 1993), are worth mentioning, as attention is paid to the treatment of Roma. With regard to Hungary, the Committee names as one of the principal subjects of concern the "...persistent pattern of prejudice and discriminatory attitudes towards certain minorities, in particular, the Roma (gypsies)." Regarding Bulgaria, of primary concern to the UNHRC are the "...many disadvantages experienced by the Roma (gypsy) minority." Further, the UNHRC gives even more critical consideration to the report submitted by Romania, in which a principal subject of concern is the use of violence against Roma:

The Committee expresses concern at the continuing problems in Romania regarding discrimination against persons belonging to minorities, and in particular, offences committed as a result of incitement to ethnic or religious intolerance. This situation is especially threatening to vulnerable groups, such as the Roma (gypsies). The Committee is concerned that the Government has not been sufficiently active in combating such discrimination or effectively countering incidents of violence against members of minority groups.

These are merely samples from, rather than the results of a thorough study of the reports made to the Committee and their consequent consideration.

The Committee On Economic, Social And Cultural Rights

Reports required for submission by States in accordance with Article 16 of the Covenant on Economic, Social and Cultural Rights are respectively judged by the Committee on Economic, Social and Cultural Rights. That this Committee is elected by the Economic and Social Council of the United Nations (ECOSOC) is exceptional, as generally such committees are elected by signatory States. The first problem faced by the Committee is the frequent tardiness of States in submitting their reports. Moreover, the quality of the reports may be very poor, i.e., brief, general, incomplete or outdated. Therefore, the Committee has developed a policy to encourage State representatives to be present when the Committee examines a report, making possible realisation of a "constructive dialogue." It was anticipated that the information contained in a report might be insufficient to present a clear picture of the problem; the treaty itself also provides for Specialised UN Agencies' submission of information to the Committee. Further, written statements from NGOs (those with and without consultative status to the ECOSOC) are welcomed; such is not provided for in the treaty, but is stated in Resolution 1987/5. In spite of this, NGOs have very restricted opportunities to participate in "constructive dialogue"; in fact, such is possible only in the case that a representative is invited as an expert. The Committee does consistently hold, however, a hearing of NGOs at the beginning of its session.

In 1994, the Committee concluded that the Romanian government discriminates against Roma with respect to their economic, social and cultural rights. Since that time, little has changed in Romania with respect to this issue, consequently indicating that the Committee and its "constructive dialogue" are lacking in power. Nevertheless, it is worthwhile to submit information to the Committee for its "constructive dialogues" with States when the economic, social or cultural rights of Roma and Sinti have been violated. In general, such is the case whenever a "constructive dialogue" with a European country takes place.

The Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination consists of eighteen experts elected by States Parties. In reports submitted to this Committee, greater attention appears to have been paid to the situation of Roma and Sinti than in those reports submitted to the UN Human Rights Committee in accordance with the Convention on Civil and Political Rights. This holds true for the period until 1986, when an analysis of the Committee's work with regard to Roma and Sinti was published. The Roma are the subject of more recent reports, however information on these recent reports has not yet been systematically gathered and analysed.

The Committee on the Elimination of Racial Discrimination is also faced with reports that are either overdue, too general or too brief; however, the reports that are submitted to the Committee appear to contain valuable information. The 1986 analysis of the information contained in these reports with respect to Roma and

Sinti illuminates the existence of three types of State attitudes towards Roma and Sinti. First, in the opinion of the former Czechoslovakia, Roma and Sinti comprise a social group that must be assimilated. In contrast, the attitude of the former Yugoslavia and of Norway is that the Roma and Sinti are a minority whose culture should be preserved. Finally, the views of Belgium, Denmark, France, Poland and the United Kingdom fall into neither the realm of preservation or assimilation; rather, there is an absence of information on Roma and Sinti in their reports. Problems which were reported, however, focussed mainly on travelling restrictions, inadequate housing, the lack of education, and the absence of measures taken to preserve the minority identity. No mention is made of any ethnic violence against Roma and Sinti.

In more recent reports ethnic violence has been addressed, however. In 1996, the Committee on the Elimination of Racial Discrimination considered the reports submitted by Hungary and Spain, and on 14 March 1996, during its 1154th meeting, the Committee adopted its concluding observations on Spain. The Committee noted an increase in acts of racial discrimination against members of the Gypsy community, including an increase in racist attitudes among members of the police and Civil Guard. The Committee also criticised the lack of socio-economic data available on the Gypsy population, as it is currently impossible to test the effectiveness of the policies designed to improve the population's situation. The Committee regards as positive the creation of the Gypsy Development Programme, as well as the self-regulating agreement between the Ministry of Social Affairs and the mass-media to promote a positive and non-discriminatory image of the Gypsy community. Finally, the Committee voiced its concern that the efforts to relocate the Gypsy community in Madrid might lead to segregation.

The concluding observations on Hungary were adopted by the Committee during its 1150th meeting on 12 March 1996. The Committee welcomed several Hungarian measures with regard to minorities, but was concerned about the "...persistence of expressions of racial hatred and acts of violence...towards...especially Gypsies...." Also, both harassment and the use of excessive force by the police against Roma were of concern. The Committee also drew attention to, "The persistent marginalisation of the large Gypsy population...." Two types of action which the Committee urged Hungary to take were the use of more initiative in preventing and countering attitudes and acts of racial violence against individuals, and the provision of increased attention to the protection of the Gypsies' civil, political, economic, social and cultural rights.

The Committee seems to be rather well-informed. The Covenant deals only with State reports; NGOs do not play an institutionalised role. It is possible to provide the individual members of the Committee with information, and thus the Committee has potentially a more accurate picture of the situation in a country, as States may submit rather subjective reports. Further, once the report has been discussed and the Committee has made its "suggestions and general

recommendations" to the General Assembly, this information can be made public, and if necessary, criticised.

In contrast, a prime example of a treaty that does contain a provision allowing NGOs to submit information in relation to the reporting mechanism is the European Charter on Regional or Minority Languages.

The Committee of Experts for Regional or Minority Languages

Though the European Charter for Regional or Minority Languages was adopted in 1992, it has not yet come into force. This Charter explicitly recognises the so-called non-territorial languages such as Romany and Yiddish. It also has a reporting system and a committee of experts to examine reports and make proposals to the Committee of Ministers of the Council of Europe regarding recommendations to one or more of the States Parties. Of particular importance is the provision in Article 16 (2):

Bodies or associations legally established in a Party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that Party under Part II of this Charter....These bodies or associations can furthermore submit statements concerning the policy pursued by a Party in accordance with Part II.

The principles contained in Part II of the Charter are those that should be applied to non-territorial languages. The influence of NGOs is in this case established in the Charter itself. Although Roma and Sinti face more serious problems than those involving language, this procedure nevertheless does provide NGOs with the possibility to direct attention to the problems of Roma and Sinti.

INDIVIDUAL COMPLAINTS

Individual complaints, the third and final mechanism for enforcement of human rights laws, are possible under the Optional Protocol of the International Covenant (CCPR); Article 14 of the Racial Discrimination Covenant (CERD); Article 22 of the Convention Against Torture (CAT); and Article 25 of the European Convention (ECHR). Two of these four procedures are not widely used. To the present, only 22 of the 147 States Parties to the Racial Discrimination Convention (CERD) have officially recognised the competence of the Committee on Racial Discrimination to receive individual communications. Prior to 1992, the Committee had considered only two communications on their merits. Furthermore, to date, only 36 of the 96 States Parties to the Convention Against Torture have declared their intention to recognise the competence of the Committee Against Torture. Prior to 1993, the Committee had received a total of four communications, only one of which was declared admissible.

Consequently, on a universal level the sole procedure remaining is that provided for by the UN Human Rights Committee, which deals with violations of the International Covenant on Civil and Political Rights. This is the most important mechanism both for victims of discrimination and for minority protection. Of the 134 States Parties to this Covenant, 88 have ratified Option 1, recognising the competence of the Human Rights Committee to receive individual applications.

In comparing the European Convention and the International Covenant with respect to discrimination, it becomes clear that the International Covenant contains a general protection against discrimination (Article 26), while the protection offered by the European Convention is limited to the provisions of the Convention. The Human Rights Committee can, for example, additionally deal with cases of discrimination with respect to social or economic rights (Broeks case - Communication No. 17211984). Also relevant to Roma and Sinti is Article 27:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Such a general protection of minorities is lacking in the European Convention. Information regarding the facility of the Human Rights Committee with respect to minority protection may be found in the General Comments of the Committee, which are quite authoritative and indicate which case law can be expected. The General Comment on Article 27 was published in 1994 (CCPR/C/21/Rev.1/Add.5). The Committee clearly sees a relation between the Articles 26 and 27: prohibiting discrimination on the grounds of ethnicity, language or religion is a precondition for minority protection, but it is not enough. According to the General Comment, States should take measures toward protection not only with regard to acts of the State itself, but also against the acts of other persons within the State. Such measures should ensure that the minority can maintain and develop its culture, language or religion, thus enriching the society as a whole. The idea that minorities are to be protected and encouraged to promote their identity was established two years prior in the UN Declaration on Minorities.

Of prime importance to Roma and Sinti in the General Comment is the stipulation that minority rights are human rights, therefore inalienable and not dependent upon citizenship. In the words of the Committee, "Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights." Roma and Sinti live and constitute a minority in all European countries, and therefore are entitled to minority rights, whether they have lived in the particular European country for the whole of their lives or have arrived as tourists one day earlier. The Committee further states that, "The existence of a minority in a given State party does not depend upon a decision by that State, but requires that it be established by objective criteria."

Finally, regarding the admissibility of communications, the Committee will declare a communication admissible in the case that the national remedies have been exhausted; the communication is not anonymous; and the communication is not an abuse of the Covenant or incompatible with the Covenant. Moreover, the same subject should not be undergoing concurrent examination by another international institution. Further, the Covenant does not demand that the communication be submitted within a certain period of time following exhaustion of the local remedies. Thus, a matter which has been examined through the use of one international procedure can subsequently be submitted to the HR Committee. Several Member States of the Council of Europe have, however, declared that they will only consider cases brought before the European Court or the European Commission which have never been submitted for consideration by another body. Finally, it must be noted that the procedure before the HR Committee in Geneva is conducted entirely in writing.

CONCLUSION

Three monitoring systems for human rights in the international sphere can be distinguished. First, the inter-state complaint is a mechanism which is generally ineffective. Second, the state report is a frequently used mechanism in which the view of the State overshadows that of the NGO, resulting in a one-sided picture. Utilization of this mechanism limits the role of NGOs, though not as much as may be concluded from the text of the treaties. The role of NGOs in reporting has been formalised by the Committee on Economic, Social and Cultural Rights, while the other Committees may be approached informally by NGOs. The European Charter for Regional or Minority Languages is the first agreement to directly guarantee the contribution of NGOs in the treaty language.

The individual complaint procedure is the most important mechanism for the individual victim of a human rights violation. While the procedure before the European Commission and European Court of Human Rights is the most widely known and the most extensively developed, the procedure before the UN HR Committee should not be overlooked, particularly in cases of discrimination and violation of minority rights. Moreover, the procedures before the Committee on the Elimination of Racial Discrimination and the Committee Against Torture can also be used when appropriate.

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EUROPEAN ROMA RIGHTS CENTER: COMBATING RACIAL DISCRIMINATION AGAINST ROMA

Note from the editor: The European Roma Rights Center is an international public interest law organisation which defends the legal rights of Roma. Its purpose is both to act as a public advocate on behalf of the transnational, geographically diverse Romani community and be a legal resource center for the effective protection and the advancement of Roma rights.

The ERRC commenced operations in January 1996 under the direction of Dimitrina Petrova, a Bulgarian philosopher and human rights advocate who received the American Bar Association's Human Rights Award in 1994. Since then, five different activities have been developed within the framework of the organisation: research, legal defence, education, public advocacy and documentation. Through these activities, the ERRC works to provide Roma with tools to combat discrimination and win equal access to government, education, employment, health care, housing and public services.

The ERRC Research Program consists of a staff of three: Claude Cahn (USA), Petra Kovacs (Hungary), and Veronika Leila Szente (Finland/Hungary/Sweden). The Research Program staff monitors the human rights situation of the Roma through fact-finding missions and through its network of local correspondents. Its concomitant task is to publicise, as quickly as possible, information gathered on violations of Roma rights in the form of reports, press releases and the ERRC Newsletter Roma Rights.

In 1996, ERRC researchers conducted field missions in Albania, Austria, Belarus, the Czech Republic, Greece, Hungary, Romania, Slovakia and Ukraine to investigate the human rights situation of Roma in those countries. A large-scale research project was launched in May with the aim of documenting war-time abuses and the present human rights situation of Roma in the former Yugoslavia. The ERRC Research Program also addressed the issue of Roma currently settled in Western European countries, who face deportation under recent stringent anti-foreigner legislation.

During its first year, the ERRC published three country reports, "Divide and Deport: Roma and Sinti in Austria," "Sudden Rage at Dawn: Violence Against Roma in Romania," and "Time of the Skinheads: Denial and Exclusion of Roma in Slovakia." The first issue of our newsletter Roma Rights was published in November 1996. The ERRC also publicises its information via the Internet. Reports and other ERRC publications can be found on our homepage:

(<http://www.ceu.hu/errc/errcmain.html>).

The ERRC's Documentation Center, currently operating within the Research Program, seeks to systematise the information generated by the various programs of the ERRC in order to share it with the public. The purpose of the Documentation Center is to create a library on Roma and human rights issues in order to raise awareness of the human rights problems faced by the Roma communities throughout the region.

The newly appointed head of the Legal Defence Program is James Goldston (USA), an attorney with extensive experience in criminal prosecution and human rights in the Americas and Europe. Mr. Goldston and attorney Nikolai Gughinski (Bulgaria) constitute the current staff of the Legal Defence Program, the overall purpose of which is the empowerment of Roma through the vehicle of law.

The Legal Defence Program aims to support public interest litigation to defend the rights of Roma and to promote legal reform on issues of concern to Roma by:

(i) developing a central archive open to researchers, lawyers, and human rights activists of domestic and international case law and legislation on human rights issues related to Roma;

(ii) building a network of European public interest lawyers and NGOs involved in representing Roma or working on issues of concern to Roma;

(iii) providing network members with legal research and advice on issues of comparative and international law and legal practice;

(iv) offering financial support, in the form of grants, to cover costs incurred in individual cases, and/or to support the development of legal defence centers focused on the defence of Roma rights. In January 1997 in Budapest, the Legal Defence Program organised a symposium entitled "Legal Defence of the Rights of Roma," attended by more than 50 advocates from over a dozen countries, primarily in Central and Eastern Europe. Participants discussed various public interest litigation strategies and shared experiences in defending the rights of Roma.

The Educational Program was launched in November 1996 within the framework of the Legal Defence Program. Nidhi Trehan (India/USA) is the coordinator of the Educational Program, which aims to assist and support young Roma in becoming competent advocates for Roma rights. The Educational Program awards scholarships to Romani law students, offers human rights-related internships to Romani individuals at its Budapest headquarters or with partner NGOs abroad, and organises training programs for lawyers and activists involved in legal representation of Roma or working on issues of concern to Roma.

When new reports are published by the ERRC or when serious violations of the human rights of Roma occur, the ERRC devotes energy toward gaining wider coverage in the local and international media. Csilla Der (Hungary), the Public Relations Coordinator, maintains close contact with journalists and other important public figures for the purpose of gaining timely publicity on Roma rights issues. Executive Assistant Laszlo Kemeny and Receptionist Rita Vasarhelyi (both from Hungary) complete the staff of the ERRC.

The ERRC hopes to promote a better understanding of the specific problems with which Roma are faced, to provide Roma with access to justice and to enable the effective redress of human rights violations. Through its concrete work on Roma rights, the ERRC aims to contribute to a new, multicultural Europe, free of racism, racial discrimination and intolerance.

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