



Civil society monitoring report on implementation of the national Roma integration strategies in Denmark

Focusing on structural and horizontal
preconditions
for successful implementation of the strategy

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LIST OF ABBREVIATIONS

CPR	Personal Identification Number
DIHR	Danish Institute for Human Rights
DRC	Advisory Centre on Racial Discrimination
ECRI	European Commission against Racism and Intolerance
ERRC	European Roma Rights Centre
NRIS	National Roma Integration Strategy

EXECUTIVE SUMMARY

This report monitors the Danish approach to Roma inclusion in response to the EU Framework for National Roma Integration Strategies up to 2020. Denmark's National Roma Integration Strategy is a set of integrated policy measures that do not include Roma-targeted initiatives, but rather states that Roma are included within general integration initiatives. Consequently, there are no specific initiatives or specific funding opportunities for Roma at governmental or municipal level. Roma inclusion is not mainstreamed as a specific issue across the ministries and there are no Roma-targeted initiatives concerning anti-discrimination (including addressing antigypsyism). This report recommends the design of specific initiatives for Roma inclusion as well as the allocation of specific budgets for Roma-targeted activities. The report particularly recommends initiatives regarding data collection on the situation of the national Roma population in Denmark.

The report provides examples of antigypsyist rhetoric against EU citizens of Roma origin by Danish politicians in debates preceding the processes of amendments to the national legal framework. It illustrates how legislative amendments in the year 2017 that concern prohibition of camping in public spaces, as well as enhanced penalties for begging activities in certain areas, particularly target foreign nationals, and how Romanian nationals comprise the vast majority of those who are arrested on the grounds of this revised legislation. The report concludes by recommending an independent examination of current practices of implementing Danish law enforcement in Denmark to evaluate whether ethnic profiling is taking place of Romanian nationals and of Romanian Roma in particular is happening. Furthermore, the report encourages a critical examination of whether and how the current implementation of the revised national legislation and related practices are in line with domestic and EU legislation (including EU Directive 2004/38/EC).

INTRODUCTION

In December 2012, Denmark presented the National Roma Inclusion Strategy (NRIS) in response to the EU Framework for National Roma Integration Strategies adopted by the EC and the European Council in 2011. The Danish NRIS is not a strategy as such, rather, it is an integrated set of policy measures, but since the Danish Government and the EC refer to the document as the NRIS, this report continues to adopt this terminology.¹ The Danish NRIS does not include specific programmes or measures for Roma in Denmark, but rather states that Roma are included into broader national integration policies. Since the adoption of the NRIS, no Roma-targeted initiatives have been developed at governmental or municipal level.

The Roma population in Denmark can largely be distinguished into two categories; national Roma and other EU citizens of Roma origin. There are no official statistics on the national Roma population in Denmark since ethnic data is not registered by Danish authorities and institutions.² Estimations of the population size range between 1,500-10,000 national Roma in Denmark.³ The national Roma population is (again roughly) comprised of migrant workers who arrived from the former Yugoslav republics in Denmark in the 1970s and their families, as well as former refugees from the Balkan war who arrived in the 1990s and their families.⁴ In regards to other EU citizens of Roma origin, there are no official statistics on the numbers who reside in Denmark.⁵ There are currently no active Roma NGOs in Denmark and national organisations and institutions that work with human rights and the social inclusion of minorities do currently not have Roma-specific activities.⁶

Roma who hold national citizenship or permanent residency in Denmark are entitled to rights and state services on an equal footing with the majority population in Denmark. This includes access to public education, public health care, social housing, labour market assistance, etc. The national Roma population, for this reason, has access to social housing, education, employment measures, etc., although (as this report highlights) it is necessary to study in depth whether and how discrimination against Roma occurs within these sectors respectively. For this reason, the situation of the national Roma population in Denmark diverts significantly from the situation of Roma in other EU member states, including in Romania, Hungary and Bulgaria, where many Roma live on the margins of society with little or no access to housing, quality education and labour market integration. However, as this report will show, there are challenges in regard to the structural and horizontal preconditions for Roma inclusion in a Danish context.

¹ See information on the Danish NRIS available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-denmark_en (accessed 08.01.2017) and Danish government's presentation to the EC of Denmark's NRIS available at: https://ec.europa.eu/info/sites/info/files/roma_denmark_strategy_en.pdf (accesses 16.07.2018).

² Danish legislation concerning personal data collection available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=828> (accessed 08.01.2018).

³ Danish Institute for Human Rights (DIHR) 2012:4; Committee on Legal Affairs 2002:Appendix 1; Danish website about Roma developed by Biljana Muncan and Johannes Laursen: http://romnet.dk/spg.html#_antal (accessed 08.01.2018).

⁴ DIHR report 2012:5; Jørgen Anker et al. 2011:4; and Muncan and Laursen at: http://romnet.dk/spg.html#_antal.

⁵ Statistics from year 2016 at: <http://ujm.dk/nyheder/integration-i-tal/integration-i-tal-nr-3-september-2016/eu-borgere-i-danmark> (accessed 08.01.2018).

⁶ Several minor activities have been carried out over the years including photo exhibitions (see e.g. <https://globalnyt.dk/content/fotoudstilling-be-beautiful-gypsy>). Amnesty International in Denmark held a national Roma campaign in 2013 see: <https://amnesty.dk/nyhedsliste/arkiv-2014/europas-ledere-svifter-romaerne>. In 2018, the Danish National TV organized a Roma cultural event on the international Roma day (8 April 2018), see: <https://drkoncerthuset.dk/event/verdensemusikariet-roma-musikfestival/>

This report is written by the author as an independent researcher in consultation with institutions and experts who work within fields of relevance. Their comments and suggestions are incorporated into the final report. Despite there currently being no active Roma organisation in Denmark, the report was consulted with two persons of Roma origin who define themselves as Roma activists, and quotations from those interviews have been inserted upon their consent.⁷ The methodology rests on the triangulation of data including the author's own ethnographic research, desk research, and an analysis of relevant legislation and policies. The ethnographic data consists in participant observations as well as informal conversations and semi-structured interviews with Romanian women and men who self-identify as Roma.⁸

There are limitations in the findings of this monitoring report, primarily related to the lack of ethnic data concerning the Roma population in Denmark, as well as to the absence of Roma-targeted measures and initiatives. These limitations are discussed throughout the thematic chapters.

⁷ The organisations that have been consulted in connection with this report include: the Danish Institute for Human Rights; the Street Lawyers (legal aid organization that support street workers and homeless); Biljana Muncan (historian, Roma activist and founder of the Romnet.dk webpage); Admir Ismanovski (Roma activist), Simona Barbu (researcher on Roma issues), Betina Svinggaard (member of the city council of Elsinore), Roma Contact Point representative at the Ministry of Immigration and Integration.

⁸ See list of bibliography, Camilla Ida Ravnbøl 2015, 2017, 2018.

GOVERNANCE AND OVERALL POLICY FRAMEWORK

Mainstreaming Roma inclusion across public authorities

The Danish NRIS establishes that it adheres to the prescriptions of the Danish Integration Act, which has as its primary goal support for the full integration of immigrants into Danish society.⁹ Three components for Roma inclusion are identified by the NRIS, including:

- Fully realising the integration tools available for the benefit of Roma inclusion
- Continuing and strengthening efforts towards combating poverty and social exclusion in general
- Disseminating knowledge about the best practices and agreed principles for Roma inclusion at the municipal level

It is stated that these components are to be implemented as part of broader integration policies at municipal level and that, as is the usual practice in Denmark, no differentiation will be made according to ethnicity, neither in general nor for the Roma.¹⁰ The NRIS defines the Danish approach towards Roma inclusion through general inclusion policies concerning education, employment, health care and housing as well as social service provisions. It states under every component that Roma persons who hold legal residence or Danish citizenship are eligible for integration programmes on equal terms with other immigrants under the National Integration Act. The integration programmes are estimated to last three years and no longer than until the immigrant obtains a permanent residence permit. Thereafter, the person is entitled to measures and services just as are all other citizens in Danish society. In other words, no particular initiatives or measures are defined for Roma within the NRIS, who are rather subsumed under general integration initiatives. This includes that there are no specific integration tools for Roma and there are no "outreach" activities to ensure that the Roma population is included into broader integration initiatives.

In 2014, an assessment was made of Denmark's efforts regarding Roma integration.¹¹ It concluded that Roma may benefit from general integration measures but that no Roma-specific initiatives had been developed and no specific budgets had been set aside for them. The assessment concluded that there is a need for enhanced data collection concerning the situation of the Roma population. However, no such initiatives have been launched subsequently to the assessment of 2014.

Consequently, there are currently no specific initiatives or funding opportunities for Roma either at governmental or at municipal level. The European Structural and Investment Funds that Denmark receives are not allocated for Roma-targeted activities.¹² The NRIS has officially been translated into Danish but is only available in English on the Government's relevant webpage. The Danish-language version of the NRIS is therefore not available in online searches, but it was sent to the author of this report upon contacting the National Roma Contact Point.

⁹ See the Danish National Roma Integration Strategy available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-denmark_en (accessed 08.01.2017).

¹⁰ *Ibid*, p. 5.

¹¹ See assessment at: https://ec.europa.eu/info/sites/info/files/2014_1.pdf

¹² There are private Danish foundations that support programmes in other EU countries where Roma are the beneficiaries, including the Velux Foundation, which, for example, supports a range of activities in Romania where Roma are among the beneficiaries. However, these private funds are not allocated for Roma-targeted initiatives in Denmark. See <http://veluxfoundations.dk/da/sociale-indsatser/sociale-indsatser-i-udlandet>

The National Roma Contact Point is established within the Ministry of Immigration and Integration. At the time of writing, it was one person who represents Denmark in meetings at EU level concerning the Danish NRIS. During the interview with this contact person, it was clarified that the role of the Roma Contact Point at this stage primarily involves participation in EU meetings as a representative of Denmark. Furthermore, there is very little information available online concerning the Roma Contact point in Denmark. The lack of information and contact details enhance the difficulties for Roma people in Denmark (or any other person for that matter) to reach out to the Roma Contact Point.¹³

Roma inclusion is not mainstreamed as a particular component across ministries and other public authorities at national level. To the extent that could be researched for this report, it was found that Roma are not mentioned in documents and programmes concerning social inclusion at municipal level.

Ethnic data is not available on the national Roma population and there is a general lack of knowledge about their situation, including their access to education, employment, housing and health care.

Promoting empowerment and participation of Sinti and Roma

Prior to the adoption of the NRIS in 2011, the Danish Ministry of Social Affairs consulted several organisations and institutions about this issue.¹⁴ In this connection, the Danish Institute for Human Rights encouraged a more concrete, visionary strategy for Roma inclusion compared to the general approach followed under the National Integration Act.¹⁵ The Ministry of Social Affairs also consulted a few Roma organisations that were active at the time (but no longer active at the time of writing). One of these, which is not an NGO, but rather an online information database (www.romnet.dk), concerning Roma in Denmark established by Biljana Muncan and Johannes Laurson, recommended the recognition of Roma as a national minority in Denmark. They also recommended the establishment of a national resource centre for Roma; translation of the NRIS into Danish; and cooperation with Roma organisations in the collection of data on the Roma population's experience with access to education, health, employment and housing.¹⁶ None of these recommendations were included in the final version of the NRIS.

The empowerment and participation of Roma in politics is not promoted explicitly at governmental level or municipal level.

¹³ See only available information at: https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-denmark_da#national-contact-point

¹⁴ The Ministry received comments from the following organisations and institutions: Roma Foreningen i Danmark, Romano, Romnet.dk, The Danish Institute for Human Rights; and Dokumentations- og rådgivningscenteret om racediskrimination (DRC). The Roma organisations that were consulted at the time are no longer active.

¹⁵ Public consultations brief, Ministry of Social Affairs, 30. December 2011. The consultations brief has been removed from the webpage during the writing of this report. It is now only available online as an annex to a Master thesis (see p. 15, annex 1): http://studenttheses.cbs.dk/bitstream/handle/10417/3258/louise_lehmann_eqvang.pdf?sequence=1

¹⁶ Public consultations brief (see footnote 13). p. 2

ANTI-DISCRIMINATION

Denmark has a history of anti-Roma legislation that was largely abolished in 1953.¹⁷ However, institutional practices that discriminated against the Roma population continued up until the mid 1960s and even beyond in some municipalities. For example, the municipality of Elsinore received criticism in 2005 for ethnic discrimination against Roma residents (see the section on segregation in education, page 13).

In the governmental consultation process leading up to the development of the final NRIS, Biljana Muncan and Johannes Laursen recommended the recognition of Roma as a national minority in Denmark.¹⁸ The European Commission against Racism and Intolerance (ECRI) has in several reports, most recently in 2017, also encouraged recognition of Roma as a national minority and called for Roma-targeted initiatives and budgets, as well as the general data collection on the situation of Roma in Denmark.¹⁹ In an interview with Admir Ismanovski, a Danish Roma man who defines himself as a civil society activist, he highlights the limitations that he sees in the current political approach towards Roma inclusion as part of the general integration policies and not as Roma-targeted initiatives. Ismanovski also describes his view concerning the limitations of not being recognised as a national minority:

"If we could have national minority status, everything would be different. Then we could do a survey of how many Roma we are in Denmark, how many have employment, and of the problems that Roma experience. Because I think that we are among 12, 000-14, 000 Roma in Denmark, but as it is now, there are no budgets that we can apply for to do Roma activities. When I ask the authorities, they tell me that I need to apply for other large funds such as the Nordea Fond and the Carlsberg Foundation, but I don't know how to do that." (Admir Ismanovski)

Implementing the Racial Equality Directive

There are no public initiatives or programmes established that specifically address discrimination against Roma or antigypsyism. The institutional settings for combating discrimination and hate speech against Roma are the same as for other ethnic minorities in Denmark. This includes the National Social Appeals Board, an independent authority under the Ministry of Interior and Economy that serves as a national complaints authority. It is the Secretariat for six different Boards, including the Board of Equal Treatment, which deals with cases concerning discrimination.²⁰

According to the data that the author has been able to access, three complaints have been submitted to the Board of Equal Treatment concerning discrimination on the grounds of Roma ethnicity. The complaints were made in 2011²¹ and 2012²² and were all rejected. Two of these complaints (in 2011) were presented by an organization that works against racial discrimination and ethnic equality in Denmark. The complaints concerned

¹⁷ Enevig 1975: 51-68; Høiris 1983: 26-32; Koch 1998: 99-117; and: <http://www.romnet.dk/romafolketdk.html>

¹⁸ Ministry of Social Affairs, Public consultations brief, 2011:2

¹⁹ ECRI report 2017:27

²⁰ <https://ast.dk/om-ankestyrelsen/hovedopgaver>

²¹ (Case no. 2500133-10 (9505, 10/06/2011) and case no. 2500132-10 (KEN nr 9488, 10/06/2011) see: <https://www.retsinformation.dk/Forms/R0710.aspx?id=166720> and <https://www.retsinformation.dk/Forms/R0710.aspx?id=166719>

²² In 2012, a law student filed a complaint with the Board of Equal Treatment concerning the rejection of a Roma student association that he represented to attend a joint seminar organized by the university. He also complained about failing his bachelor project at the university. The Board found that in both instances there was no information that indicated that the person had been discriminated against on grounds of race or ethnic origin. Complaints were therefore rejected Case no. 7100071-12, (KEN nr. 9538, 22/02/2012), see: <https://www.retsinformation.dk/Forms/R0710.aspx?id=167144>

discrimination on the grounds of ethnicity on a campsite in Denmark. It was argued that a newspaper article had revealed that the accused campsite owner refused to grant Roma persons entry to the campsite. The Board of Equal Treatment rejected both complaints because they were not submitted on behalf of a complaining person with his or her permission, nor were they submitted in support of such a complaint. However, in 2006 the then-National Complaints Committee on Ethnic Equal Treatment issued a statement affirming that denying entry of Roma to a campsite constitutes discrimination on the grounds of ethnic origin and is in violation of national as well as international legislation.²³

In 2016, a Roma man Gimi Levakovic (a Croatian citizen who has lived in Denmark most of his life) was convicted for committing several criminal offences and sentenced to deportation by the Supreme Court.²⁴ The deportation was, however, revoked by two other courts, most recently by the Supreme Court, which found that despite the severity of the man's criminal involvement, the request for deportation would constitute a disproportionate infringement of his right to family life (Article 8 of the European Convention on Human Rights). Discrimination on the grounds of race or ethnicity had no relevance to this particular case, but the European Roma Rights Centre (ERRC) did, however, submit comments to the case underlining that Levankovic belongs to the Roma population and, in this connection, the ERRC expressed concern over antigypsyist sentiment in Denmark.²⁵

It is important to underline that not all court decisions are publicly available but require disclosure requests. Hence, it is possible that there are additional discrimination cases of relevance to this report that have not been identified in the research process.

The limited number of reported discrimination cases does not signify that discrimination against Roma does not occur in the Danish context. On the contrary, experiences of discrimination in society and antigypsyist media rhetoric are the primary reasons many national Roma seem to hide their ethnic origin and refrain from organising in Roma organisations in civil society. This was highlighted by Admir Ismanovski in the interview:

"We are different Roma. We are not the family that has been shown on TV [in a programme called 'The Gypsy Boss' concerning the above-mentioned Levankovic family that has been criticized for its discriminatory portrayal of Roma]. My father always told me that it was my choice to come forward as Roma or not, and for many years no one in my family came forward. I have many family members who would still not tell people who they are because they are afraid, but when we are alone and have our family celebrations, then we are Roma; we have our dances, our food, our clothes and we express our cultural background. I think it is a shame that our children have to hide who they are and say that they are something else. [...] I have now come forward and try to get others to join Roma events, but many do not come. They are afraid that if they come forward as Roma they will lose respect from the others, that they will lose their dignity in the eyes of other people. For example, my cousin saw me on TV and she was scared because they wrote my last name. She was afraid of what people would say. It is hard to always hide where you come from and you feel bad inside for doing it. [...] The problem is that we are a minority within a minority. We are immigrants to Denmark, but if I then talk to another immigrant, such as a person of Arabic or Turkish origin, and tell them that I am Roma, then they give me a sceptical look and I can feel all their prejudice... but they are not any better than I am! It's like I have to convince people twice [as an immigrant and as a Roma], to prove to them twice over that I am good enough."
(Admir Ismanovski)

²³ <https://www.retsinformation.dk/Forms/R0710.aspx?id=170170>

²⁴ <https://www.b.dk/nationalt/juraprofessor-levakovic-sagen-ligger-lige-paa-vippen>

²⁵ <http://www.errc.org/article/levakovic-v-denmark/4609>

In this quotation, Ismanovski expresses concerns about being associated with the media's negative portrayals of Roma and the fear that he could lose respect in the eyes of the public to such an extent that it would affect his personal dignity (in Danish "værdighed"). He also highlights his concerns about experiencing multiple forms of discrimination due to his family's national background (e.g., Serbian, Macedonian, Kosovan, etc.) as well as on the basis of his Roma ethnicity.

Ismanovski is not alone in his experiences. A small sample of studies indicates that Roma experience discrimination in the educational system and in the labour market in Denmark.²⁶ A YouGov poll from 2015 found that Roma are the least-tolerated minority group in Denmark, with 72 per cent of respondents reporting they have a negative impression of Roma.²⁷ Antigypsyist rhetoric and the implementation of recently-amended legislation (discussed below) illustrate how other EU citizens of Roma origin experience very concrete antigypsism against their own bodies and livelihoods. There is, however, a great need for comprehensive studies to document the situation of the national Roma population and to investigate their experiences of discrimination within the educational system, employment, healthcare and housing. It is in light of this need for further knowledge that the generic approach taken by the Danish NRIS toward Roma inclusion seems inadequate, since it does not include concrete initiatives to investigate the particular situation of the national Roma population in Denmark.

Educational and residential segregation

Educational segregation of Roma children does not take place currently in Denmark. However, over the period 1982-2004, the municipality of Elsinore, where a significant percentage of the national Roma population is estimated to live, established Roma-specific school classes as well as a Roma-specific social service office. The municipality argued that these exclusive programmes for Roma were designed with the intention to support the population, but in practice the initiatives showed they had the opposite effect of further enhancing Roma social exclusion.²⁸ This Roma segregation received significant criticism for discriminating on the grounds of ethnic origin, including by the then-National Complaints Committee on Ethnic Equal Treatment,²⁹ as well as by the Danish Ministry of Education³⁰ and the Council of Europe.³¹ The Roma school classes were deemed unlawful and were finally abolished in 2004. According to the communication with a member of the city council in Elsinore, all segregation practices have been stopped and there are currently no specific initiatives in place for the Roma population in Elsinore.

Studies indicate that ethnic segregation is connected to social housing in Denmark.³² It is, however, impossible to estimate how many of the families who live in social housing have Roma backgrounds, since ethnic origin is not registered in Denmark. If any data is registered, it is the citizenship of the tenants (e.g., as Macedonian, Serbian, etc.). There is a need for data collection about national Roma women and men's experiences with access to housing.

Discriminatory behaviour by police, misconduct by prosecutors or courts

As mentioned above, ethnic data is not registered in Denmark. Consequently, the ethnicity of national Roma who come into contact with Danish law enforcement is not registered. It

²⁶ Jensen 1995; ECRI 2017:27.

²⁷ <https://yougov.dk/news/2015/06/05/european-attitudes-minorities/>

²⁸ Jensen 1995; and: <http://romnet.dk/romaklasser.html>

²⁹ <https://ast.dk/naevn/ligebehandlingsnaevnet/afgorelser-fra-ligebehandlingsnaevnet/#?FreeTextSearch=roma&AdmMyndighedNavn=Klagekomit%C3%A9en%20for%20Etnisk%20Ligebehandling>

³⁰ <https://politiken.dk/indland/art4898007/Ministerium-Romaklasser-er-ulovlige>

³¹ Council of Europe, ResCM, 2005:9.

³² Andersen et al. 2016: and the Danish Institute for Human Rights 2015:22

is impossible to find information about ethnic origin. Furthermore, no study has so far been made concerning the experiences of the national Roma population with law enforcement. Hence, it is impossible to estimate whether the national Roma population experiences discriminatory behaviour by police, prosecutors or courts.

What can be added, however, is that studies from 2001 and 2003 highlight concerns with ethnic bias within the Danish criminal justice system. The studies illustrate how persons who are immigrants or descendants of immigrants are overrepresented in statistics on arrests and also overrepresented in statistics on groundless arrests, withdrawal of charges, and subsequent acquittal. More specifically, for Danish persons the withdrawal of charges and acquittal percentage was 44 per cent in 2001, whereas for persons with immigrant backgrounds the percentage was 63 per cent, and for descendants of immigrants the number was as high as 78 per cent.³³ The statistics highlight problems with ethnic bias among the police, where young men who are descendants of immigrants seem to be particularly targeted.³⁴

The following section sheds light on the situation of other EU citizens who are of Roma origin in regards to discriminatory behaviour by the police.

Right to free movement

Denmark ensures the right of EU citizens to free movement according to EU Directive 2004/38/EC. This includes ensuring their access to rights and services on an equal footing with nationals if they fulfil certain criteria related to employment conditions, housing conditions, and/or educational and financial status. A Danish personal identification number, which is part of the civil registration system (termed the CPR number in Danish), is available to all national citizens born and/or residing in Denmark as well as to EU citizens and third country nationals who have legal residence in Denmark. In the case of other EU citizens, the CPR number is obtained with their registered status as an EU worker, or as a student at a recognised educational programme, or as a self-employed business owner, or as being self-supporting (including economically non-active persons) with the funds to self-maintain.³⁵ The Danish authorities request that an EU worker must have a registered residential address plus an employment contract with an estimated employment period of more than 10-12 weeks and more than 10-12 hours per week in order to issue a CPR number.³⁶ If the conditions set forward by the Danish State Administration to obtain a CPR number are not met, a general taxation number can be issued instead. However, the taxation number does not, like the CPR number, grant access to a number of public services such as public health care and public education. Although not proscribed by law, many private services are also conditioned on the CPR number. For example, many banks request a CPR number to open a bank account and private landlords often request a CPR number for validation of identity. Many companies have a field for typing in the CPR number on their online job application forms, meaning that if a person does not hold such a number, their online job registration may be deemed incomplete. In this sense, requirement for a CPR number can potentially generate mutually-reinforcing barriers, because if an EU citizen from another Member State does not have a Danish CPR number, then it is difficult to

³³ Holmberg and Kyvsgaard 2003; Kyvsgaard, Britta, 2001:6. New statistics that illustrate a similar over-representation in arrests and subsequent withdrawal of charges and acquittals were discussed in the media in May 2018.

³⁴ Kyvsgaard, Britta, 2001:11

³⁵ See the Danish State Administration: <https://www.statsforvaltningen.dk/site.aspx?p=6116> and <https://international.kk.dk/artikel/how-do-i-get-cpr-number> The funds to self-maintain must at a minimum correspond to the sum of the benefits to which the person is entitled pursuant to Section 25, sub-section 12, and Section 34 of the Active Social Policy Act (available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=19124>).

³⁶ See the Danish State Administration: <https://www.statsforvaltningen.dk/site.aspx?p=6116>. These requirements are inspired by case law from the European Court of Justice that set the minimum employment conditions at 10 to 12 weeks of more than 10 to 12 working hours per week; see the judgement Kempf (C-139/85) and Megner and Scheffel (C-444/93).

access housing, work, schools and other services, and at the same time it is impossible to access a CPR number as a worker from another EU member state without an employment contract and a residential address.

Destitute EU migration

The interpretation of EU Directive 2004/38/EC in the Danish context reflects Article 7 (1) (b), which limits the possibilities for residency by persons who lack the financial means to be self-supportive, who are not enrolled in a course of study, or who do not have the possibilities to access housing and formal employment contracts. This particularly affects people who come from conditions of poverty and who are low-skilled with no official prior employment record. Consequently, destitute citizens of other EU member states have frequently resorted to living in the streets, including rough sleeping in parks and green areas. The Romanian Roma who have been interviewed in connection with this report live under such circumstances, as do a broad range of non-Roma citizens of other EU member states as well as irregular migrants from third countries. The migration by EU citizens of Roma origin to Scandinavia, including to Denmark, particularly intensified in the aftermath of the economic crisis and the Eurozone crisis that began in 2008.³⁷

The majority of the Roma who were interviewed in connection with this report had previously worked in Italy, Spain and Portugal. Many had worked for the same employer for up to 12 years in construction, agriculture or elder care, most often without a formal employment contract and being paid a lower salary compared to their formally-employed colleagues. In other words, they were part of Italy's informal economy and amongst the first to lose their informal employment during the financial crisis. Several also reported that they had arrived in Denmark with the initial aspiration of searching for informal employment on similar terms as they did in Southern Europe, and were surprised to be confronted with a more regulated labour market in Denmark, including difficulties in obtaining rights for residency beyond the initial three-month period. These people have limited language skills, no prior formal employment record, and no financial means to cover the costs of accommodation. They found themselves caught up in the mutually-reinforcing barriers of the CPR number and, with time, the vast majority resorted to living in the street and working in the informal street economy, e. g., by scavenging trash and refundable bottles and cans.³⁸ In other words, while the right of free movement is not formally infringed by the limitations set by the Danish requirement to obtain a CPR number, in reality the difficulties that destitute citizens of other EU member states experience in meeting such requirements generate a context where they frequently resort to living in homelessness and working in the informal economy. The next section discusses the legal implications of homelessness.

Criminalization of homelessness

In 2017, amendments were made to the Danish Code on Public Order in order to enhance the legal means for the police to arrest homeless persons who camp in public spaces.³⁹ The amendments enhanced the penalty for begging in pedestrian areas, railway stations and means of public conveyance, requiring two weeks of unconditional imprisonment upon a first-time offence.⁴⁰ The amendments came as a response to political debates about homeless Roma in Copenhagen (see below), and criticised the limitations that exist for the

³⁷ Fafo report 2015; Preoteasa et al. 2012.

³⁸ Ravnbøl 2015 and 2017.

³⁹ See the new Section 3[4] and Section 6[4] of the Code on Public Order no. 511, 20 June 2005, announced on 31/03/2017: <https://www.retsinformation.dk/Forms/R0710.aspx?id=188528> (accessed 08.01.2018).

⁴⁰ See the proposal for amendments to Section 197 of the Danish Criminal Code, No. 1052, 4 July 2016, proposed on 02/06/2017: http://www.ft.dk/ripdf/samling/20161/lovforslag/l215/20161_l215_som_fremSAT.pdf (accessed 08.01.2018).

expulsion of other EU citizens from Denmark. Several legal cases involving citizens from other EU member states had demonstrated those limitations.

For example, there were two cases from 2010 concerning the arrest and subsequent expulsion of 23 Romanian nationals from Denmark due to their allegedly constituting a threat to public order and public health. The cases received significant criticism due to a debate about a potential conflict with EU legislation and because the authorities had specifically referred to the Roma ethnicity of the convicted persons. Subsequent to a complaint from the European Roma Rights Centre, the then-Danish Ministry of Integration annulled the administrative expulsions. It concluded that rough sleeping does not amount to a serious threat against society as established in EU Directive 2004/38/EC and that collective expulsions are unlawful according to that EU Directive.⁴¹

In another case from 2014, a Romanian woman was arrested for violating the Code on Public Order. Subsequently, the Danish Immigration Service ordered her immediate expulsion and banned her re-entry with reference to the Danish Aliens Act. However, the expulsion was deemed unlawful under Danish legislation as well as according to EU Directive 2004/38/EC.⁴² The City Court found that at the time of her arrest the woman had not resided in Denmark for more than two months, and that sleeping in a public space could not be interpreted as a genuine, present or sufficiently serious threat to society as established in EU Directive 2004/38/EC.

These cases constitute two examples of the limitations that the politicians quoted below are criticising, examples that influenced proposals for legal amendments in 2017. The amendments include additional sections to the Code on Public Order that prohibit a presence in a public space that "*resembles camp-like conditions suitable for creating discomfort*" (Section 3[4]) and allows the police to establish "prohibition of entry" zones for persons who have violated Section 3 [4] and who are regarded as contributing to, or as suitable for contributing to, the generation of "discomfort".⁴³ It is important to underline that "discomfort" is a translation of the Danish term "*utryghed*" applied in the legal provisions by the author of this report.

Furthermore, legislation prohibiting begging was also strengthened by Parliament. Begging is illegal according to criminal law and in 2017 the penalty for begging in designated public spaces was doubled to two weeks' unconditional imprisonment upon a first-time offence.⁴⁴ In the proposal for enhancing the penalty for begging, it is directly stated that it is designed to target foreign nationals.

Despite the vague formulations of these new provisions in the Code on Public Order (that define neither "camp-like conditions" nor "discomfort"), the new provisions serve to insinuate that homeless persons constitute a potential danger to other citizens. Together with the enhanced penalty for begging, the new provisions serve to enhance the

⁴¹ The Danish Institute for Human Rights 2016: 44; and the European Roma Rights Centre at: <http://www.errc.org/cms/upload/file/denmark-submission-un-upr-19112010.pdf>

⁴² The City Court found that the expulsion was not in coherence with the EU directive 2004/38/EC (article 27, para. 2 and article 28). It also found that it was not in conformity with national legislation since this must adhere to EU legislation (cf. the Danish Aliens act para 2, sub. para 3.). Subsequently, a legal aid office, called the Street Lawyers, assisted the woman in filing a complaint regarding the initial grounds of arrest. It argued the grounds were unlawful since the woman was sleeping at the time of arrest and therefore not involved in activities that can be regarded as constituting a threat against public order as it is defined in the particular legal provision that she was charged with. The State prosecutor acknowledged the complaint, repealed the conviction and provided financial compensation to the woman (This summary is based on the author's reading of the legal case to which the author has been granted access).

⁴³ The author's translation of the new Section 3[4] and Section 6[4] in the Code on Public Order, no. 511, 20. June 2005, announced on 31/03/2017: <https://www.retsinformation.dk/Forms/R0710.aspx?id=188528> (accessed 08.01.2018).

⁴⁴ The designated areas include pedestrian areas, railway stations, and means of public conveyance. See the proposal for amendments to Section 197 of the Danish Criminal Code, No. 1052, 4 July 2016, proposed on 02/06/2017: http://www.ft.dk/ripdf/samling/20161/lovforslag/l215/20161_l215_som_fremsat.pdf (accessed 08.01.2018).

criminalization of homelessness in the Danish context. However, it also appears, from the direct formulations in the proposal for enhancing the penalty for begging and in the subsequent actions of the police that in particular homelessness of foreigners is the focus.

Concerns about ethnic profiling in the implementation of legislation against rough sleeping

Since their adoption in 2017, the new sections of the Code on Public Order have become the main provisions applied in the arrest and applications for expulsion of citizens from other EU member states who sleep in public spaces. The initial numbers presented to the media in June 2017 showed a significant increase in police clearings of homeless camps, with 32 clearings, where 141 persons were arrested and charged according to the new legal provisions during three months in 2017 (1 April to 20 June) compared with a total of 29 clearings during 2016. They were all of foreign nationality, the vast majority Romanian.⁴⁵ The latest numbers received from the police authorities, in December 2017, list the numbers to be: charges of 249 persons, 25 expulsions, and 32 zone prohibitions. Although the author did not have access to information on the nationality of those arrested, it is presumable that a vast majority are foreign nationals, most likely Romanian, in line with the numbers from June 2017.

Later in 2017 the Government expanded entry zone prohibitions to include entire municipalities, meaning that people who are convicted of establishing “camp-like conditions” can be banned from entering the municipality for a period of up to two years.⁴⁶ The Danish Institute for Human Rights (DIHR), which had also previously criticised the Government for criminalising homelessness, expressed significant concern over the expansion of the entry zone prohibitions to include municipalities. It was argued by the DIHR that the penalty is potentially disproportionate to the crime (of rough sleeping in “camp-like conditions”) and therefore potentially in conflict with EU Directive 2004/38/EC establishing the free mobility of EU citizens. Furthermore, the DIHR criticised the fact that the revised legislation seems only to be implemented in relation to foreign homeless persons and not equally against all persons who engage in practicing “camp-like conditions” in public spaces.⁴⁷

The conformity of the revised legislation with EU Directive 2004/38/EC was tested recently. On 19 December 2017, the Supreme Court ruled that the arrest and subsequent expulsion of a Romanian EU citizen for violating the revised code on Public Order was in conformity with national legislation as well as with EU Directive 2004/38/EC.⁴⁸ Whereas previous such cases were ruled by the Danish courts as not constituting acts that pose a genuine, immediate and serious threat to public safety and health, this recent case from the Supreme Court confirmed that such conditions were the case. Hence, the Supreme Court ruled that the expulsion of the Romanian citizen was in conformity with EU Directive 2004/38/EC (article 27). This opens the question as to whether this recent ruling may potentially set a new line of precedence that increases the legal possibilities for expulsions of such citizens on the grounds of camping in public spaces.

The national legislation does not mention ethnicity and remains neutral in its application. The described court cases also do not mention ethnicity. However, it remains highly relevant, in light of the current negative political discourse about Roma (which will be

⁴⁵ See statistics in newspaper article: <http://www.dr.dk/nyheder/indland/politiet-rydder-mere-end-30-hjemloeselejre-paa-under-tre-maaneder> (accessed 08.01.2018).

⁴⁶ See law proposal: <https://prodstoragehoeringsspo.blob.core.windows.net/f7edcc82-ae75-4c0a-af5c-24fd74d5f65b/Udkast%20-%20lovforslag.pdf> and the response by the Danish Institute for Human Rights at: https://menneskeret.dk/sites/menneskeret.dk/files/11_november_17/hoeringssvar_til_udkast_til_forslag_til_lov_om_aendring_af_lov_om_politiets_virksomhed.pdf

⁴⁷ See response by the Danish Institute for Human Rights at: https://menneskeret.dk/sites/menneskeret.dk/files/11_november_17/hoeringssvar_til_udkast_til_forslag_til_lov_om_aendring_af_lov_om_politiets_virksomhed.pdf

⁴⁸ See case at: <http://domstol.fe1.tangora.com/New-S%C3%B8geside.31488.aspx?recordid31488=1506>

elaborated in the next section), as well as in the light of the statistics on the arrests and expulsions of primarily Romanian nationals, to consider whether ethnic profiling is taking place in the implementation of the amended Code on Public Order. It would be relevant to further investigate how the recent judgment of the High Supreme Court affects the Danish commitment to EU Directive 2004/38/EC and the implementation of EU citizens' rights, including EU citizens of Roma origin.

ADDRESSING ANTIGYPSYISM

Institutional settings for fighting discrimination and addressing antigypsyism

As mentioned in the above sections, there are no entities working specifically to counter antigypsyism. Rather, the Board of Equal Treatment deals with all complaints concerning discrimination. Furthermore, the Danish Institute of Human Rights also works with matters concerning racial and ethnic origin and gender equality, and the Documentation and Advisory Center on Racial Discrimination (DRC) is an independent organization that works against discrimination. The DRC also receives complaints concerning racial or ethnic discrimination.⁴⁹

In a recent report from 2017, ECRI reconfirmed its previous criticisms (from 2012 and 2014) of the Danish Government for not measuring the equal treatment approach's impact on the situation of Roma people.⁵⁰ Online research into governmental initiatives as well as interviews carried out in relation to this report indicate that no such initiatives for measuring the impact of the equal treatment approach on the situation of Roma are being carried out.

Countering hate crime and hate speech against Roma, and antigypsyist rhetoric of politicians, public figures and media

"The Roma occupation must be stopped; they exploit us, they harass us and they destroy the street scene with their garbage and faeces." Member of the Danish Parliament, 22 May 2017

This is the headline of an opinion article published in a Danish newspaper and written by a Member of Parliament. The article concerns homeless Roma in Copenhagen, who are further referred to as a: *"Roma-plague that attacks Copenhagen every summer"*.⁵¹ The author describes camping in public spaces and begging as being particular activities carried out by homeless Roma that should be addressed through legislative means: *"The Parliament has already approved a strengthening of the legislation so that the police can eliminate Roma camps and we have raised the penalty for begging"*.⁵² The article is noticeable for its wording referencing a "Roma occupation" and "Roma-plague" which symbolically connotes both the German occupation of Denmark during World War II and the "Ten Plagues of Egypt" in the Bible.⁵³ The political discourse that the article entered into is, however, not new in Denmark. Since 2010 several politicians have raised a debate about destitute EU-citizen migration and criticised EU regulations for limiting the Danish authorities' possibilities for expelling other EU citizens.⁵⁴ The political discourse has, however, become harsher since 2011 and has developed from a discourse concerning destitute EU migration in general to a discourse particularly focused on EU citizens of Roma

⁴⁹ The author of this report has contacted the DRC to retrieve information on their litigation of cases concerning persons of Roma origin, but has not received a reply.

⁵⁰ European Commission against Racism and Intolerance (ECRI, 2017) *Report on Denmark (fifth monitoring cycle)*, p. 27. Available at: <https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/denmark/DNK-CbC-V-2017-020-ENG.pdf>

⁵¹ Newspaper article by a Member of Parliament: <https://www.b.dk/kommentarer/roma-besaettelsen-skal-stoppes-de-udnyttter-os-de-chikanerer-os-og-de> (accessed 08.01.2018)

⁵² *Ibid* (see footnote 24).

⁵³ See also article: <https://www.b.dk/kommentarer/formanden-og-greven-og-deres-smaaborgerlige-had-til-romaer> (accessed 08.01.2018)

⁵⁴ E.g. statements of the Mayor of Copenhagen at: <http://www.fyens.dk/indland/Frank-Jensen-kraever-loesning-paa-romaer/artikel/1833097> (accessed 08.01.2018).

origin.⁵⁵ In addition to debates in newspaper articles and on social media, explicit negative references to Roma were made on two occasions in public hearings in the Parliament by a Member of Parliament who asked the following question:

*"Which initiatives at Danish and European level does the Minister intend to take in order to limit the immigration of Roma from other EU member states to Denmark? [...] it is well known that Roma as a group are notoriously difficult to integrate, they live in destitution and have difficulties in making a living through legal means in Denmark" (18/11-2016).*⁵⁶

The contemporary political discourse explicitly refers to "Roma" as representing a societal problem. The camping of foreign homeless people is made synonymous with "Roma camps" without further investigation or consideration of the campers' actual or self-declared ethnicity, as well as without further explanation as to the relevance of involving ethnicity in the debate about Denmark's approach to destitute EU migration in the first place.

In none of these instances did the public authorities interfere with or criticise the quoted politicians for their use of discriminatory rhetoric or antigypsyist rhetoric in particular.

⁵⁵ See e.g. article by the current Head of Parliament at: https://puls.b.dk/roma-lejrene-i-koebenhavn-skalfjernes/?_ga=2.226146714.1079470250.1516712594-535555613.1515085188 (accessed 08.01.2018).

⁵⁶ The author's translation of the original. Question no. 231, 18 November 2016 at: <http://www.ft.dk/samling/20161/spoergsmaal/S231/index.htm> (accessed 08.01.2018).

RECOMMENDATIONS

Governance and overall policy framework

Make the NRIS available in both English and Danish online and promote the NRIS across the ministries as well as at municipal level.

Develop specific initiatives for Roma inclusion – for example, under the auspices of the Roma Contact Point at the Ministry of Immigration and Integration.

Ensure the allocation of specific budgets for data collection about Roma in Denmark and ensure that such a study is carried out with the involvement of people of Roma origin as central experts.

Roma civil society should be consulted in the design and implementation of any pilot activities to promote Roma participation in public life.

Anti-discrimination

Police activities in light of recent arrests and expulsions on the grounds of camping in public space should be critically investigated. An independent entity should investigate whether ethnic profiling targeting EU citizens of Romanian nationality, including of Romanian Roma in particular, is taking place.

It should be critically examined whether and how actions of camping in public spaces actually constitute a present and sufficiently serious threat to the fundamental interests of society in line with the conditions for expulsion set forward by EU Directive 2004/38/EC. This also includes investigating whether sanctions such as entry zone prohibitions issued for people who have been convicted of engaging in “camp-like conditions” in public spaces are proportionate to the crime and whether they do not constitute a potential violation of domestic or EU law (specifically, EU Directive 2004/38/EC).

Addressing antigypsyism

Given the current examples of antigypsyist rhetoric by Danish politicians cited above there is a need for enhanced data collection on the experiences of discrimination among national Roma as well as among other EU citizens of Roma origin. The data collection could be commissioned and funded by the Ministry of Immigration and Integration where the Roma Contact Point is located. This data collection should be carried out by an independent entity, preferably including researchers of Roma origin. This study should be designed with the particular aim to develop a set of best practices for combating hate speech and discrimination against Roma.

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