



## **Equality Bodies: Promoting equality and fighting against discrimination of Roma**

### **An analysis on Seven Member States**

#### **Introduction**

The current analysis is an initiative of ERGO Network with partners associations in seven countries covered under its Framework Partnership Agreement with European Commission's Directorate General Employment. The aim is to analyse the functioning of the Equality Bodies (EBs) and their role in the promotion of equality and the fight against discrimination of the Roma community.

The analysis is based on two-folded research: a first phase focused on desk research, in which the partners conducted a review of public sources, information available on the website of the equality bodies and previous studies. A second phase, of field research, consisted of interviews conducted by the project partners with representatives of the equality bodies and other stakeholders related to these organizations. During the research, a series of case studies from the different countries were identified as relevant and have also been integrated in the analysis. A set of recommendations analysis to improve the functioning of equality bodies have been drafted as a result of this overall analysis. In annex, there are Case Studies of each National Equality Body collected by the partner organizations with outstanding initiatives involving the Equality Body and Roma.

The (pro) Roma organizations involved in the research are La Voix des Roms in France; Slovo 21 in Czech Republic; Pro Cserehat Association in Hungary; Rómske advokačné a výskumné stredisko, in Slovakia; Atanas Stoyanov - external expert for Bulgaria; Policy Center for Roma and Minorities in Romania and Fundación Secretariado Gitano in Spain (also in charge of the coordination of the analysis).

#### **Setting up of the Equality Bodies**

The transposition of the Racial Equality Directive 2000/43 (RED) in the Member States (MS) covered by this analysis is a process that has been carried out in different ways. On the one hand, those Member States that acceded to UE after the existence of the RED (Bulgaria, Romania, Czech Republic, Slovakia, Hungary) had the legal transposition of this directive as a previous requisite to get in the EU.

On the other hand, those MS that were part of the UE when the RED became effective (France, Spain), had a maximum time assigned of three years to fully transpose the Directive. In the case of Spain, the process was finally carried out on Dec 30<sup>th</sup> 2003. In the French case, the full transposition took even longer and after some amendments, the process finished in March 4<sup>th</sup> 2005.



The Racial Equality Directive obliges EU Member States to implement a series of measures to maintain a legal and procedural framework for the promotion of equality for racial and ethnic minorities. For some Member States, this has meant the introduction, for the first time, of a detailed non-discrimination regime covering the grounds of racial and ethnic origin. These include Bulgaria, Hungary, Romania, the Slovak Republic and Spain.

As stated by the FRA in its publication “The Racial Equality Directive application and challenges”, *“There was a tendency from those Member States with pre-existing non-discrimination regimes (predominantly the Member States that formed the EU prior to enlargements in 2004 and 2007) to question the practical contribution of the directive, given that national law was already in place. (...) In Member States with less detailed regimes (principally Member States joining the EU from 2004 and 2007), there was a tendency to question the necessity of the directive because it was considered that discrimination was not actually a significant problem.*

The accomplishment of the RED required a specific and independent body for the promotion of anti-discrimination policies. In some MS a new structure was created, as in the cases of Romania (National Council for Combating Discrimination), Hungary (Hungarian Equal Treatment Authority), Spain (Council for the Promotion of the Equal Treatment and No Discrimination) or Bulgaria (Commission for Protection from Discrimination). In the rest of the MS included in this analysis, the EB is attached to an already existing structure: France (Ombudsman, former HALDE), Slovakia (Slovakian National Centre for Human Rights), and Czech Republic (Ombudsman). In those cases where the EB is attached to an already existing structure, the setting up of the body was faster than in those cases where the Equality Body needed of a new structure.

Dialogue with Civil Society appears as a crucial element in the setting up and development of EB. Indeed, this dialogue should have been established even before the inception of the body. In this regard, there were two models: those countries where there was a consultation process for the setting up of the Equality Body (as it happened in Romania or Hungary), and those other countries (France, Spain, Slovakia, Bulgaria, and Czech Republic) where there was no consultation process or if it happened, the result of it was not really taken into account.

According to the opinion of Civil Society representatives interviewed for this analysis, in order to achieve a good functioning of the EBs and to meet a structure that truly works, it is crucial to have a fluent dialogue with the Civil Society, and take into account their recommendations, as they know first-hand the needs of the people who suffer discrimination. In addition, this cooperation between the EBs and the Civil Society can drive the initiatives and strategies of Equality Body towards the needs of the target population.

In those cases where the setting up of the Equality Body didn't include the opinion of the Civil Society it seems the operability and impact of the body was reduced. As commented before, it is not possible to have a properly working EB if key stakeholders' opinion and monitoring are not taken into account.

The EBs covered by this study are financed mainly by National State funds by a budget assigned by the Government; in some cases the Equality Body also have access to EU funds (Bulgaria, Romania, Czech Republic, and Hungary). Nonetheless, more important than where the funds are coming from is whether the funds are enough or not to ensure the work of the EBs at its full capacity. Based on the interviews made by our partners, the funds assigned are not enough to cover the expenses of the full working capacity Equality Body. This lack of funding causes a limitation in the potential impact of the activities tackling discrimination (such is the case of Spain, Romania and Slovakia, Bulgaria and Czech Republic). In few other cases (Hungary, France) the assigned budget seems to be enough to cover the functioning of the body. Therefore it may be argued that the lack of funding in Equality Bodies may directly affect the attainment of the full enjoyment of human rights, as stated in the European Directive.

### **Independence**

Independence is considered a key factor in the effectiveness and impact of Equality Bodies. The need for the independence of equality bodies is stated in a variety of official documents: the Equal Treatment Directives, the United Nations Commission on Human Rights Resolution 1992/54 (Paris Principles) and the Council of Europe's European Commission against Racism and Intolerance (ECRI) Recommendation No. 2.

Following the classification of [“Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC”](#) (pag.43-44) on predominantly promotion type and predominantly tribunal type:

- Predominantly tribunal-type equality bodies are impartial institutions, which spend the bulk of their time and resources hearing, investigating and deciding on individual instances of discrimination brought before them.
- Predominantly promotion-type equality bodies spend the bulk of their time and resources on a broader mix of activities that include supporting good practice in organizations, raising awareness of rights, developing a knowledge base on equality and nondiscrimination, and providing legal advice and assistance to individual victims of discrimination.

The information obtained in the research coincides with the conclusions of the [“Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC”](#) (pag. 11): predominantly tribunal-type bodies (Hungary, Bulgaria, Romania Czech Republic) enjoy more independence in personnel management than predominantly promotion-type bodies (Spain, France, Slovakia). However, promotion type bodies reported higher levels of independence in financial management than the tribunal-type ones, particularly regarding shifting the budget between personnel and running costs.

Regarding the level of independence in their political positioning and affiliation, some tribunal type bodies as Czech Republic or Hungary reported to enjoy full independence of the government. E.g. Hungarian EB can't be instructed with respect to the decisions it makes on complaints and there's no higher body that the case can be taken to.



However, other tribunal type bodies as in Romania or Bulgaria present some concerns about their independence since the board of the EB are politically appointed. In the case of Bulgaria, the Parliament and the President nominate EB Commission members, which may directly prevent the Commission to take action against ministries or politicians. The independence of the Romanian EB has also been criticized since the Steering Committee members are politically appointed by the Parliament. However, despite the existing political interference, it is possible to find examples of EBs taking action and complaining against important institutional bodies. [See Study Case Romania](#).

Promotion Type body as French Equality Body (Ombudsman), appear as an independent body. Though in sensitive cases it has been interfered by the government as it happened in 2011 under Sarkozy's mandate. Then, the "defenseur" decided not taking the cases of discrimination faced by "Roma and Travellers" as the Prime Minister told her not to do it.

EB top management composition seems an important factor for the independence of the bodies. Boards with a collegiate board seem to be more political than boards governed by a single head. EB with collegiate boards that may include representatives from government, stakeholders or target/discriminated groups seem to be more involved in public debates and/or more affected by political parties, debates within the media, (controversial) court decisions, and public opinion.

EB top management composition varies from country to country. There are single headed bodies as in the cases of Czech Republic, France or Romania, while in other cases, such as Spain, the Equality Body have a collegiate board. There are also other cases with a combination of both managerial systems: Slovakia (combined single and collegiate-headed equality body led by an Executive Director and an Administrative Board); Bulgaria and Hungary (combination between a single headed EB led by a director and a collegiate-headed body led by a distinct board).

The vicinity to a parent minister (Spanish EB), as is the case for equality bodies without a legal personality, matters as well. These bodies report higher levels of influence from the parent minister than bodies that have their own legal personality.

### **Activities and Competences**

Although the wording slightly differs between directives (i.e. depending on the grounds which the directive covers), they all refer to the independent performance of their functions. They should be able to:

1. Provide independent assistance to victims of discrimination in pursuing their complaints of discrimination;
2. Conduct independent surveys concerning discrimination;
3. Publish independent reports and make recommendations on any issue relating to such discrimination.



These requirements are very general and leave too much discretion to the Member States. The result of having such a wide range of discretion can mean reducing their activities to the minimum. For example, related to one of the competences to be carried out by the bodies (“Assistance to Victims, including providing information about the existence of anti-discrimination law and the possibility to take legal action to seek remedy or compensation for an act of discrimination”), the Spanish EB translated it into only giving advice but not legal accompaniment or strategic litigation. Other promotion type bodies may mediate between the parts to help them to come to an amicable settlement as happens in Slovakia where the Body also carries out legal representation for discrimination victims or France where the Ombudsman has the possibility to order administrative sanction. Tribunal-type bodies (Hungary, Bulgaria, Romania, Czech Republic) can act as a judicial part.

In all the cases, EBs conduct independent surveys on discrimination, release independent reports, make recommendations on issues related to discrimination or undertakes information campaigns targeting general public.

Regarding the grounds covered by EB, in almost all the cases analyzed, besides the ethnic and racial origin, EBs cover other grounds of discrimination as gender, age, sexual orientation, religion, disability... Only in the case of Spain, the EB covers exclusively Racial or Ethnic discrimination. However, given the fact that its mandate does not allow litigation, its scope of action is limited, having the risk of having victims disappointed or with a feeling of impunity in front of the discriminator.

While it could be argued that the exclusivity of action of an Equality Body on only one ground of discrimination, reduce significantly its action possibilities (as it happens in the Spanish case). The diversification of the grounds covered by EB (as it happens in the rest of EB covered in this analysis) may, on the other hand, leave the ethnic and racial discrimination in a disadvantage position in relation to the other kinds of discrimination with greater public acknowledgement (e.g. gender or age). Overall, in the case of the fight against discrimination of Roma, the exclusivity of action towards ethnic cases can be seen as an advantage as it concentrates all the resources for this ground of discrimination within the Equality Body.

All grounds of discrimination are important at same level but it is crucial not to downplay some kinds of mistreatment (unfortunately discrimination against Roma often is not receiving the same importance as others). EB must ensure to be active and give the most of its possibilities to all kinds of discrimination: MS should ensure enough funding for its proper functioning.

All the EB included in this study have national level scope for their activities and covering their services. However, it is crucial for this service to reach the local level. In most of the countries (except Czech Republic) there are regional offices covering the local level. Nonetheless, there are examples of EB where, despite having regional/local offices, the lack of resources affect their regional implementation and therefore its capacity of action. One example is Bulgaria where the EB has only 18 regional representatives for 28 administrative units due to lack of budget. Also Romania, where there is only one regional office (Targu Mures) besides the national office in Bucharest. The only case where the EB has only one



national representation is the Czech Republic where the Ombudsman is present only at national level.

Examples of EBs with good implementation at local level are Spain where the Victims Assistance Service is subcontracted with a group of 8 NGO's with experience in fighting against racism and discrimination that offer their offices in 87 localities across the country. France, where the Ombudsman has 397 representatives spread in 542 localities. Other countries that are covering the local level are Hungary where a county level network was developed or Slovakia where the local level is also reached by the Equality Body. [See Hungary Study Case](#)

### **National Roma Integration Strategies and Equality Bodies**

National Roma Integration Strategies (NRIS) define the roadmap for public policies in the area of the social inclusion of Roma. In defining policies focused on the gradual elimination of poverty and social exclusion among marginalized Roma communities, in particular in the areas of education, employment, health and housing, the strategy recognizes the importance of developing local action plans corresponding and reflecting the needs of individual communities. Special attention is also paid to changing the attitudes of non-Roma towards Roma communities. However, anti-discrimination towards Roma is not defined in the strategy as a specific area of intervention; it is considered as a transversal issue to be included in the four areas. This fact has led to many NRIS not to define indicators of discrimination nor antigypsyism in the monitoring of the strategy.

Since antigypsyism is, unfortunately, a common attitude and a rising problem in the times of economic crisis, European Institutions, such as the European Commission or European Parliament are calling the attention to tackle this human rights attack. In this context, antigypsyism should be incorporated in the National Roma Integration Strategies, either as a separate area in the strategy or by including indicators about discrimination in the four key areas, since fighting discrimination is necessary within education, employment, housing and health. MS and EBS should work in close relationship.

In this sense the involvement of EBS in the NRIS seems essential. However, it has been acknowledged that there was a limited involvement of the EBS in the drafting of the strategies. There are only few cases (Spain, Romania and France) where the EBS participated in the drafting of the Strategy. However, this involvement couldn't find continuity during the implementation and monitoring phases. In the other cases, (Slovakia, Hungary, France) the involvement in any of the phases of the strategy is nonexistent.

For a proper development of the Strategy in its different phases (drafting, implementing, monitoring) it is necessary to have all the key actors involved (Member States Governments, EBs, NRCP, Civil Society, Roma Community); a lack of any of these elements would translate into an incomplete functioning of the Strategy. In addition, the inclusion of discrimination and antigypsyism indicators within the monitoring of the strategy would be necessary to address the rising problem of the racial discrimination that the Roma community is facing in Europe.



A fluent relationship with the National Roma Contact Points is needed for a real implementation and monitoring work. The indicators that EBS and Civil Society handle about antigypsyism (where applicable) should be included in the strategy in order to tackle this issue. Shadow reports of the monitoring of the strategy are very much needed.

### **Capacity and contribution of Equality Bodies in tackling Discrimination faced by Roma**

The possibilities of action tackling discrimination for Roma that an Equality Body can offer are wide and with great potential. However, too often these possibilities are not exploited sufficiently. In all the cases included in this analysis, EBS seem to have experience and expertise in tackling discrimination for Roma, whether directly from their resources or throughout the entities hired for this service (Spanish case).

These experiences and expertise are used to conduct researches, investigations, recommendations and statements regarding discriminatory situations. Besides, these materials, information and best practices are shared with the (pro) Roma Civil Society (RCS) and stakeholders at national and EU level. All EBS analyzed provide guidance, orientation or training to key stakeholders such as judges, prosecutors, lawyers or police forces. These actions are vital for the spreading of the knowledge of anti-discrimination laws in combating discrimination of Roma. However, a greater involvement of the judicial sector in the defense of equality is required.

All the EBS analyzed are also making awareness rising campaigns and providing trainings for Roma oriented to improve their knowledge of programmes combating discrimination. This is a task foreseen among the basics and fundamental functions of the EBS, however the impact of these activities on the ground is considered low and limited due to the little knowledge or trust that Roma have in the EBS in most of the countries analyzed (Romania, Bulgaria, Hungary, France, Czech Republic, Spain). ([See Bulgaria Study Case](#) creating awareness of the hate speech against Roma in Media).

The capacity and contribution of EBS in tackling discrimination of Roma can be strengthened by increasing their knowledge on the situation of Roma as a needed step to adapt the dissemination activities to the developed. Such knowledge of the target group (those Roma susceptible of suffering discrimination) could be achieved by establishing greater cooperation between these bodies and Roma organisations. The strategy aimed at making the Roma aware of the EBS and receiving training must be therefore reconsidered to guarantee an impact at ground level.

Having the EBS known by the target population is one of the main challenges that Equality Bodies face. Specifically in all the cases studied, it seems very unlikely that Roma turn to the EBS in a case of discrimination. Nonetheless, Civil Society organizations can act as link between target population and EBS. Although these bodies are conceived to protect Roma rights in case of discrimination, in practice there seems to be a great ignorance of the work of EBS and the possibilities it offers. This is an indicator of the great distrust that Roma have on the institutions, which leads to a high underreporting of the majority of cases of discrimination.



Increasing the confidence level of the Roma community in the equality body is essential to address the problem of under-reporting. In cases where Roma declared to know the equality body, they manifested not feeling confidence in the possibilities of denouncing discrimination to this body. To resolve the issue of underreporting, victims that turn to the EBS need to trust the action possibilities of denouncing it before this body. If the victims come to the service and the support offered to them does not help to get remedy or correct the damage (including litigation) the perception of the people towards the EBS capability will translate into mistrustfulness.

### **Relation of the Equality Bodies with Roma Communities and (pro) Roma Civil Society Organizations**

In most of the cases, the relationship established between the EBS and (pro) Roma Civil Society is common but informal (Slovakia, France, Romania, Czech Rep, Hungary). In the other cases, (Bulgaria, Spain) the relation is formal through partnership agreements or contract services (as the Spanish Victim's Assistance Service). [See Spain Study Case](#)

As said before, social awareness-raising actions need to be developed to promote awareness of the heterogeneous reality of the Roma community and to make the negative consequences of discrimination more visible. These actions need of the involvement of the whole society and of Roma Civil Society. A practice of awareness raising action including Roma population directly [See Czech Republic Study Case](#)

Formal relations between EBS and RCS are very much needed. Too often these relations do not happen because of ignorance of both parts: Roma Civil Society don't know EBS or don't have much trust in their work as in previous cases the body didn't meet their expectations (slow process in the judicial type bodies or lack of competences in promotion type bodies). On the other hand, EBS don't know much about Roma organizations that work on the ground, organizations that are in direct contact with the population that often suffer discrimination, know the environment, have the trust of these people, and could be the recipient of the complaints.

### **Equality Bodies and Antigypsyism**

All the EBS included in this analysis (both tribunal and promotion type) tackle discriminatory behavior towards Roma in their work. ([see France Study Case](#): a coordination between Roma Civil Society and Equality Body around an antigypsyism case). However, antigypsyism is not considered as a defined category of discrimination, and it is taken as any other case of discrimination. Categorizing and recording this racist behavior would provide useful indicators for improving the work of EBS and for awareness purposes towards the society in general.

European institutions and national bodies are making steps forward in including this kind of mistreat as a category itself in the European and National legislations. As previously mentioned, anygypsyism/discrimination should also be included in the National Roma





Integration Strategies, preferably as a separated area with the establishment of clear objectives (indicators) or at least within the horizontal antidiscrimination approach. Creating a separate category seems to be the needed step given the rising problem that Roma are facing around this issue (often coming from the institutions). Registration of clear indicators on antigypsyism would certainly give us a picture of the European Antigypsyism problem.

Moreover, in those EBS shaped as a tribunal type body, the definition of antigypsyism as a defined category of discrimination has even more importance. Specific training modules and legislation on this subject would help to promote awareness within the legal sector (judges, prosecutors, lawyers). Protecting the right to non-discrimination should be a priority for law enforcement officials, courts, education and labor inspection services, consumer and user offices, ombudsmen, etc.

For those EBS shaped as promotion type body, they should generate information promoting the idea of antigypsyism, including researches and statements reinforcing the idea of this human rights infringement that often receive an indifferent response. In addition, cooperation between EBS and media becomes essential in order to influence public perception of the existence of antigypsyism and overall, to raise awareness of the unfair treat that Roma too often suffer.

## **Recommendations**

### *Grounds of discrimination*

Whether the EBs address exclusively discrimination based on race and ethnic origin or addressed among other grounds of discrimination, what is important is to ensure that Roma are actually reached and not left aside giving more importance to other grounds of discrimination maybe easier to address or that are higher on the agenda at a particular moment.

### *Regional/local level*

Reaching the regional and local level is a key aim for the EBs. In those cases where it is difficult to access to the services of the EBs, the effectiveness of the body may be affected and not offer the service as foreseen in the RED. This is a point that should be taken into account in order to encourage those MS where the implementation at regional level is not fully accomplished.

### *Funding and staff*

Almost all EBs reported insufficient financial resources. Since lack of funding may affect the development of the tasks assigned to the EBs, the allocation of sufficient human and financial resources is a key issue. Both aspects, human and financial, are relevant to avoid the deficiencies derived from situations where there may be enough assigned staff but with no specific budget allocated to activities.

It is of special relevance for EBs to have sensitized and knowledgeable staff in order to properly tackle Roma discrimination. The provision of specialised training for the staff or the



inclusion of experts or counsellors to provide expertise on the issue is of great importance to assure the correct performance of the EBS in relation to Roma discrimination.

Having staff specifically working on discrimination of Roma avoids dispersion as in the case of EBs with personnel dedicated to many other concerns.

### *Independence*

A high level of independence is key for the EBs to be able to carry out their mission effectively and to achieve the full potential provided by Racial Equality Directive 2000/43. It seems essential to have an “independent status” (i.e. in terms of structure, administrative functioning and political affiliation) but mostly, that it can function independently.

### *Relation with NRCPs and NRIS*

EBs need to be aligned and closely coordinated with NRCPs; The work of EBs should be aligned with the priorities and actions in the fight against discrimination established in NRIS. Indeed, close involvement of EBs in the definition, implementation and monitoring of the strategies seems essential for making the most of the fight against discrimination.

The inclusion of antigypsyism in National Roma Integration Strategies is conceived as a step forward in tackling the rising phenomenon in Europe. Either as a separate area in the strategy or including indicators about discrimination in the four key areas seems a necessity. EBs’ work should support the fight against antigypsyism.

### *Competences and activities*

Underreporting is one of the challenges EBS need to overcome. Increasing the confidence level of the Roma community to the equality body is essential to address the problem of under-reporting. There’s a feeling of inefficiency of the EBS and impunity in cases of discriminators. European Commission and EU institution should encourage EB to make a more determined work against antigypsyism.

Many EBS should include one of the competences established in the Directive: “providing independent assistance to victims of discrimination in pursuing their complaints”, since not all of them are actually developing it: some EBS limit their scope of competences to advice and assistance to victims, but nothing more. A comprehensive accompaniment of victims of discrimination throughout the whole process is urgently needed, including support to complainants in judicial or administrative proceedings or for having redress.

One-step further would be to include “deliver decisions on discrimination cases”, imposing sanctions (fines and soft penalties), investigating complaints of discrimination and compelling compliance with their investigations (e.g. recommendations, mediation, and present observations to courts...).

Awareness raising and involvement of all relevant actors in the fight against discrimination is essential (e.g. employers, police forces, lawyers, teachers, media...). EBS should play an active role in providing guidance and orientations to these key actors. There is much scope for improvement in this field.



Greater involvement of the judicial sector in the defense of equality is required and a specific module on this subject, with particular reference to European case law in combating discrimination, should be included in the training programmes of judges, prosecutors and lawyers.

EBS should devote resources to gather data on cases of discrimination and to make them visible in relevant materials on discrimination or Roma (reports, guides...).

#### *Target group*

EBS should be able to reach potential Roma victims of discrimination. In this sense more efforts are needed in designing sensitizing campaigns and training among Roma, adaptation in the services, cooperation with NGO working on the ground... For those potential victims that may be more difficult to reach (e.g. in more isolated or segregated areas, in irregular situation...) special measures need to be considered.

#### *Relationship with NGO*

(Pro) Roma Civil Society organizations can act as link between target population and EB. Partnership among different stakeholders is essential in the fight against discrimination of Roma. EBS agreements with civil society organisations contribute to achieving the goals of promoting equal treatment and fighting against discrimination and antigypsism. Some good experiences show the benefit of such collaboration for all parts: EBS fulfill their mission and civil society theirs. Roma too. It's a win-win situation.

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