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AVRUPA BİRLİĞİ SİYASETİ VE ULUSLARARASI İLİŞKİLER ANABİLİM DALI

THE EUROPEAN UNION POLICIES AGAINST RACISM, DISCRIMINATION AND XENOPHOBIA AND THEIR IMPLEMENTATION IN MEMBER STATES

DOKTORA TEZİ

Pınar SAYAN

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Danışman: Yrd. Doç. Dr. N. Aslı ŞİRİN ÖNER

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ONAY SAYFASI

Enstitümüz AB Siyaseti ve Uluslararası İlişkiler Anabilim Dalı Türkçe / İngilizce Doktora Programı öğrencisi Pınar Sayan, **The European Union Policies Against Racism, Discrimination and Xenophobia and Their Implementation in Member States** konulu tez çalışması 21.07.2017 tarihinde yapılan tez savunma sınavında aşağıda isimleri yazılı jüri üyeleri tarafından **OYBİRLİĞİ / OYÇOKLUĞU** ile BAŞARILI bulunmuştur.

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ÖZET

Avrupa Birliği özellikle son dönemlerde insan hakları ve demokratik değerlerin savunulmasında öncü olmuştur. Hukukun üstünlüğü, insan haklarına saygı ve demokratik sistemlerin varlığı AB'nin dış ilişkilerinde, özellikle genişleme sürecinde, en önemli önceliklerinden biri haline gelmiştir. İnsan haklarına verdikleri büyük öneme rağmen AB üye devletleri, ırkçılık, ayrımcılık ve yabancı düşmanlığı ile doğrudan ilgili olan "eşitlik" ve "ayrım gözetmeme" ilkeleri de dahil olmak üzere, insan hakları ihlallerinden uzak değildir. İkinci Dünya Savaşı sonrası alınan tüm önlemlere rağmen etnik ve ırksal kökenli ayrımcılık, üye ülkelerde en çarpıcı insan hakları ihlali alanlarından biri olmaya devam etmektedir. Bu araştırmada, Avrupa Birliği'nin bu süreçteki rolünün incelenmesi amaçlanmaktadır. AB'nin etnik ve ırksal ayrımcılık karşıtı politikaları; AB'nin bu alandaki yetkileri ve yetkilerini nasıl kullandığı değerlendirilerek incelenmiştir. AB ve kurumlarının bu alanda geliştirdiği politikaların, maddi etkenler kadar özellikle İkinci Dünya Savaşı sonrasında geliştirilen fikir, norm ve kuralların da etkisinde olduğu fakat AB'nin yetkilerini kullanmasının sınırlı olduğu iddia edilmektedir.

Anahtar Kelimeler: Avrupa Birliği, Irkçılık, Kurumsal Irkçılık, Ayrımcılık

ABSTRACT

The European Union became a pioneer of the promotion of human rights and democratic values especially during the last decades. The rule of law, respect for the human rights and the existence of a democratic system have become one of the most important priorities of the EU in its external relations, especially in the enlargement process. Although positioning itself on the grounds of fundamental human rights, the members of the European Union is not immune from the human rights violations including the areas of "equality" and "non-discrimination" that are related to racism, discrimination and xenophobia. Ethnic and racial discrimination continue to be among the most challenging human rights areas for the member states despite all initiatives after the Second World War. In this research, it is aimed to analyze the role of the EU in this process. The EU policies against racial and ethnic discrimination are analyzed through assessing the competences of the EU in the area and how those competences are used. It is argued that the ideas, norms and rules developed especially after the Second World War, as well as the material factors, have influenced the EU and its institutions to develop policies in this area however, the use of the competences are limited.

Key Words: European Union, Racism, Institutional Racism, Discrimination

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ABBREVIATIONS

ARDI	Anti-Racism and Diversity Intergroup
CAHROM	Ad hoc Committee of Experts on Roma and Traveller Issues
CEAS	Common European Asylum System
CEECs	Central and Eastern European Countries
CERD	Committee for the Elimination of Racial Discrimination
COHRE	Centre on Housing Rights and Evictions
CRD	Convention on the Rights of the Child
CSCE	Conference on Security and Cooperation in Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	European Commission against Racism and Intolerance
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EJC	European Court of Justice
ENAR	European Network Against Racism
EP	European Parliament
ERIO	European Roma Information Office
ERRC	European Roma Rights Center
ESCS	European Economic and Social Committee
EU	European Union
EUMC	European Monitoring Centre on Racism and Xenophobia
EuroDac	European Dactyloscopy
FPÖ	Freiheitliche Partei Österreichs
FRA	Fundamental Rights Agency
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
LIBE	Committee on Civil Liberties, Justice and Home Affairs
MEP	Member of European Parliament
NGOs	Non Governmental Organizations
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OSF	Open Society Foundation
PACE	Parliamentary Assembly of the Council of Europe
ROMED	European Training Programme for Roma Mediators
RVRN	Racist Violence Recording Network
SRSG	Special Representative of the Secretary General of the Council of Europe for Roma Issues
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UK	United Kingdom
USA	United States of America

1. INTRODUCTION

> "What would a 'typical European' be like? he [Alexander Wat] asked. And answered: 'Delicate, sensitive, educated, wont break his word, wont steal the last piece of bread from the hungry and wont report on his inmates to the prison guard…' And then added, on reflection: 'I met one. He was Armenian'.
>
> You can quarrel with such description (after all, it is in the character of the Europeans to be unsure, disagree and quarrel about their character), but you would hardly dispute, as I suppose and hope, the two propositions implied by Wat's moral tale. First: the essence of Europe tends to run ahead of the 'really existing Europe', and it is the essence of 'being European' to have an essence that always stays ahead of reality and a reality that always lags behind the essence. Second: that while the 'really existing Europe', that Europe of politicians and cartographers, may be geographical notion and a spatially confined entity, the 'essence' of Europe is neither the first nor the second. You are not European just because you happen to be born or live in a city marked on the political map of Europe. But you may be European even if you have never been to any such cities." (Bauman, 2005, p. 15).

The European Union has become a pioneer of the promotion of human rights and democratic values, especially during the last decades. The rule of law, respect for the human rights and the existence of a democratic system have become one of the most important priorities of the EU in its external relations, especially in the enlargement process. Although positioning itself on the grounds of fundamental human rights, the members of the European Union are not immune from human rights violations. In this research, it is aimed to analyze the violation of two particular principles; "equality" and "non-discrimination" that are related to racism, discrimination, and xenophobia. Ethnic and racial discrimination continue to be among the most challenging human rights areas for the member states despite all initiatives after the Second World War.

After the Second World War, European states tried to prevent the same horrors to occur again by committing to liberal ideas like human rights and international institutions and creating some of the most sophisticated regional intergovernmental and supranational systems. While they have founded institutions, codified laws, ratified conventions, and given competence to supranational institutions in order to prevent racism to surge again; they, at the same time, restricted citizenship and immigration rules,

segregated children in schools, ordered discriminatory actions to the law enforcement officers, and evicted "unwanted" groups. These two dimensions of state policies have been creating dichotomies and dilemmas since and raising the question about the effectiveness of the international and regional anti-racism regime in Europe. How is it possible that there is still racism in Europe despite all of the commitment of the European states to human rights and the systems they have created to protect them?

In this research, it is aimed to analyze the role of the EU by examining the EU competences in the area of racial and ethnic discrimination and the use of competences. It is argued that the ideas, norms, and rules developed especially after the Second World War, as well as the material factors, have influenced the EU and its institutions to develop policies in this area, however, the use of the competences remains limited.

1.1 The Purpose and the Research Problem

Despite their discursive and legal commitments to equality and non-discrimination, the member states of the European Union are not immune from racism, discrimination, and xenophobia. The current forms of racism, ethnic and racial discrimination, and xenophobia in the EU member states have many dimensions mainly evolving around immigration and minorities. The vulnerable groups targeted by racism, ethnic and racial discrimination and xenophobia are often named as Roma, immigrants, asylum-seekers, refugees, third country nationals, descendants of immigrants, Muslims, Jews, minorities; although many of these terms are contested, politicized and sometimes intersected.[1] [2]

Table 1 and Table 2 demonstrate the results of the surveys conducted in some of the member states about the negative or unfavourable views of the respondents on

1 "Roma" means "people" in Romanes and used as an umbrella term in this research to include Sinti, Travellers, Gens

2 Refugee is defined as "a person who fulfills the criteria of Article 1 of the 1951 Convention relating to the Status of Refugees (1951 Geneva Refugee Convention or Geneva Convention), namely a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality (or stateless person outside his/her country of habitual residence) and unable or, owing to such fear, unwilling to avail him/herself of the protection of that country". Asylum-seeker is defined as "In EU law referred to as 'applicant of international protection'. A third-country national or a stateless person who has made an application for international protection in respect of which final decision has not yet been taken (Asylum Procedures Directive (2013/32/EU); Article 2 (c))."". Migrant is defined as "a broader term, referring to a person who leaves one country or region to settle in another" (Fundamental Rights Agency, 2016, p. 8).

different groups. Although the numbers differ, these researches show a clear pattern of discrimination against Roma, Muslims, black people[3] and Jews.

Table 1 Negative Impression on Different Groups (%)

	Roma/Gypsies	Muslims	Black people	Gay people	Jewish people	Average
Denmark	72	45	11	7	8	29
Finland	53	45	20	15	10	29
France	55	40	14	14	10	27
Britain	58	40	8	9	7	24
Germany	42	36	10	12	9	22
Norway	40	37	11	11	10	22
Sweden	45	36	8	7	6	20

Source: (Yougov, 2015)

Table 2 Unfavourable Views of Different Groups (%)

	Roma	Muslims	Jews
Italy	82	69	24
Greece	67	65	55
Hungary	64	72	32
France	61	29	10
Spain	49	50	21
Poland	47	66	24
UK	45	28	7
Sweden	42	35	5
Germany	40	29	5
Netherlands	37	35	4
MEDIAN	48	43	16

Source: (Pew Research Center, 2016)

Similarly, the surveys of the Fundamental Rights Agency (FRA) indicate that in 2007 64%, in 2008 62%, in 2009 61%, in 2012 56% and in 2015 64% of the respondents stated that they had perceived discrimination in the EU member states (Fundamental Rights Agency, 2016a). Analyzing the limited data available in the EU about anti-Semitism between 2004 and 2014, FRA concludes that anti-Semitism continues to be a concern in the EU (Fundamental Rights Agency, 2015). In 2008, the FRA conducted a survey with 23.500 people from various minority and immigrant groups in 27 member states of the EU (Fundamental Rights Agency, 2009). The key findings can be summarized as follows:

3 The original terminology of the research are used.

- 50% of Roma, 41% of Sub-Saharan Africans, 36% of North Africans, 23% of Turkish, 23% of Central and Eastern Europeans, 14% of Russians, and 12% of former Yugoslavs stated that they were discriminated against because of their immigrant or ethnic minority background at least once in the last 12 months;
- 38% of Roma, 22% of Sub-Saharan Africans, 20% of North Africans, 12% of Turkish, 11% of Central and Eastern Europeans, 8% of Russians, 8% of former Yugoslavs indicated that they were discriminated against because of their ethnicity at least once in the last 12 months while looking for work;
- 43% of Roma said they had paid-employment in the last five years; it is 90% for Central and Eastern Europeans;
- 19% of Roma, 17% of Sub-Saharan Africans, 16% of North Africans, 13% of Central and Eastern Europeans, 10% of Turkish, 4% of Russians, 4% of former Yugoslavs said they had been discriminated at work because of their ethnicity at least once in the last 12 months;
- Similarly in the housing, healthcare, social services, education, service sector Roma is the most discriminated group;
- 82% of those who were discriminated against in the past 12 months did not report;
- 33% of North Africans, 30% of Roma, 27% of Sub-Saharan Africans, 22% of Central and Eastern Europeans, 22% of former Yugoslavs, 21% of Turkish, 20% of Russians were stopped by the police at least once in the last 12 months; and
- 18% of Roma and 18% of Sub-Saharan Africans indicated that they had experienced at least once "racially motivated" incident in the last 12 months.

The recent FRA research, repeating the European Union Minorities and Discrimination Survey in Bulgaria, Czech Republic, Greece, Spain, Croatia, Hungary, Portugal, Romania, Slovakia in 2015, revealed the results related for Roma (Fundamentals Rights Agency, 2016b). The key findings about Roma summarize the racism and discrimination they face:

- 80% of Roma continue to live below the at-risk-of-poverty threshold of their country;
- every third Roma lives in housing without tap water;
- one in 10 Roma live in a household without electricity;
- 27% of Roma and 30% of Roma children live in a household that faced hunger at least once in the previous month;
- the employment rate of Roma men is 34%, while women is 16%;
- paid work rates for Roma aged 20-64 years to be 30%, while the EU average is 70%;
- the rate of Roma aged 16-24 who are not in employment, education or training is 63% (72% women, 55% men), while the EU average is 12%;
- 53% of the Roma children receive pre-school education;
- 18% of Roma between 6 and 24 years of age attend an educational level lower than their corresponding age;
- 41% of Roma felt discriminated in the public life in the past five years;
- 12% of Roma reported discrimination to an authority;

As the research indicates, many people face discrimination in the fields of education, employment, housing, healthcare, and receiving services in the EU on the basis of their ethnicity or race. They are faced with poverty and social exclusion, segregation, forced evictions, inadequate housing conditions, misconduct of law enforcement officers, hate crimes and hate speech while Roma is often stated as being the largest and the most discriminated among them.

The discrimination in education mostly occurs as segregation either through different sitting plans within the classroom or separate classes or schools for different groups. In addition to segregation, transferring some of the minority kids to special schools (designed for mentally disabled) through biased tests is also a common implementation (Fundamental Rights Agency, 2016a). Children also face discrimination from their teachers and classmates. In some countries wearing headscarf in the schools and universities is banned. Moreover, parents of the children who wear a headscarf are

also discriminated (ENAR, 2016). A young Roma woman talks about the discrimination she faced during the primary school in the Czech Republic as follows:

> "Back at school, I sometimes heard anti-Roma abuse yelled at me because I am Roma. I first went to primary school in Bruno [Czech Republic] where I studied until Year 3. My class teacher was a racist and she bullied me as the only Roma child in the class to the extent that I was so anxious, stressed out and nervous about school every morning that I vomited.
>
> I have tried to forget about it so I don't remember much; but I was a keen, enthusiastic child and an involved pupil; I kept raising my hand and she would never ever call me. She never acknowledged me or gave me an opportunity. She ignored me. I realised she really disliked me.
>
> In Year 1, there was another Roma girl who started school at the same time as I did and we were sat together from the first day. After a week, the class teacher sent her away and referred her to a special school for the mentally disabled. She was normal, so I didn't understand why she had been sent away and I remember asking myself why this had happened.
>
> In Years 1 and 2, my non-Roma classmates asked me if I was a Gypsy. I always admitted I was. It wasn't a pleasant feeling though because I always had to defend myself and it has stuck with me ever since. I started to differentiate between Roma and non-Roma at primary school because I was constantly reminded of the fact that I was a Gypsy. My classmates often reminded me of the fact that I was different from them because I was Roma. I was not bullied or anything but they treated me differently. This has impacted on my low self-esteem. This whole issue of low self-esteem runs in our family as a generational trauma. My father is the same and before my mum took up her current job, she, too, had low self-esteem" (Council of Europe, 2014, p. 33-34).

The discrimination in the labour market occurs in two dimensions. The first one is the discrimination in the hiring process. If a person has visible characteristics of a specific group such as skin tone, headscarf, clothing or their name do not sound native, or their address can be connected to a specific group; they face discrimination in the hiring process even if they have the same qualities with others (ENAR, 2016; Fundamental Rights Agency, 2016a). A Roma man from Hungary, who lives in the UK, explains his employment conditions as follows:

> "My mother was a housewife and my father was unemployed after he lost his job as all of the factories had been closed in the area. We did not have

> enough money to live on. The amount of money that the school required from families to buy equipment for the pupils was simply too much. I stayed at home. I was lost. As we did not have enough income, I had to work despite the fact that it was prohibited for minors to work. However, I was able to join men from the Roma settlement who worked in smaller groups, mainly at construction sites. Employers were happy with my work, especially as they realized that I worked hard. I was short and thin but I could do the same job as a man who was twice my size. Most of the work I did was illegal, involving many disadvantages. If you worked, you had income. If you did not work, you had nothing. If you were unable to work because you had had an accident while you were working or you feel ill because of the work, nobody was interested. This was the only kind of job you could find as Roma" (Council of Europe, 2014, p. 59).

Another form of discrimination in the labour market is the discrimination from employers, co-workers or customers. Women with headscarf from Sweden and Denmark explain the situation as follows:

> "I have not experienced any discrimination by my employer, not that I can recall. But I have experienced discrimination by colleagues. My former colleagues have used racist and offensive expressions such as the n-word, others have questioned my choice of wearing the headscarf, while others have reproduced stereotypes that my parents would probably force me to marry against my will. There are also colleagues who have tried to make me into this suspicious subject by associating me with people traveling to Syria" (ENAR, 2016, p. 19).

> "One of the clients had written to my boss that she did not trust that I could be impartial in her case given that I probably come from a culture where women are hated" (ENAR, 2016, p. 19).

> "A customer ignored me and walked out. He came back another day and said 'you provoke me just by standing in front of me, I am Christian', so he threw the money at me and walked out. It shocked me. I didn't dare to confront him; I just went out and cried" (ENAR, 2016, p. 19).

A Roma man from Hungary, who lives in the UK, shares the discrimination he faced at the workplace and impunity against it as follows:

> "Recently I had a bad experience with my boss. The job description emphasizes that nobody can be disadvantaged because of sexuality or ethnicity. Since a number of my East European colleagues harassed me without a reason, I decided to report them. It was not an easy decision because it might mean the end of your career. If you tell the truth you may become a traitor. My boss suggested that I tolerate the behavior 'unless it

> becomes more serious'. I do not understand him. If an English man complained about similar problems, his case would be investigated, I am sure. But I am just a migrant Roma who is despised by his migrant colleagues; according to my boss, it is better not to deal with my problems" (Council of Europe, 2014, p. 61).

The discrimination in the housing sector might occur as segregation or not renting places to specific groups. Some of the groups have been traditionally living in segregated areas. While some of them might have actual houses with all amenities; some of them are lacking basic amenities such as electricity, water, heating, sewage system, garbage collection, etc. The houses might be made out of mud, tins or they are just tents (ERRC, 1999c). These segregated areas are often targeted by the states, and their residents are forcefully evicted. A Roma woman from Romania explains the living conditions of her family:

> "My name is Gianina; I come from a Roma family that consists of three girls, three boys and my parents. Until 2006, we had been living in a disused building, also known as the "phantom bloc" due to its very precarious state. We didn't have electricity, methane gas, heating, running water, or drainage and we had to use a public bathroom which was located in the hallway of our floor. As many as ten families shared the same bathroom, so you can imagine the state it was in. There was a lot of dirt, lice and all sorts of filth, and the stench was unbearable. Now we live in a block of flats with one-room apartments for single people near the "phantom block". Here, the conditions are better than in our previous home but there are still many things we lack, such as heating, gas, and well, space in general. We all sleep in one room, the only one that we have. Now, in winter we use the stove to heat our home, which is fuelled by a gas tank" (Council of Europe, 2014, p. 63).

The discrimination in healthcare occurs when some groups are denied care or equal attention from the healthcare professionals (Fundamental Rights Agency, 2013b). There are also structural barriers such as the cost of the medical treatment and not knowing the language. A cardiac specialist from Austria tells as follows:

> "It is true that it happens from time to time that the last ones to wait have names such as 'Said' or 'Yılmaz'. That is true, but there are many reasons [such as communication issues and interaction] for this situation and it is not primarily a question of discrimination, although it is clear that one should always reflect whether on a latent level such a thing still exists. If I could choose between Mr. Hofer and Mr. Yılmaz, I am not sure, or I am sure, who is chosen first" (Fundamental Rights Agency, 2013b, p. 66).

In the former Czechoslovakia, Roma women faced systematic forced sterilization. Although the practice was formally abolished in 1993, it practically continued until 2007 in several forms (ERRC, 2004a). The victims of the practice are still waiting for justice to be restored. Roma women share their experiences as follows:

> "I was totally misinformed. A social worker who came to visit me told me it would only be for five years and I would be able to have children afterwards. She said all the other women of the community already had it done" (AlJazeera, 2016).

> "When I was giving birth to my fourth child, they handed me a black paper to sign. I was in a lot of pain, so I just did what they asked. After that I was anaesthetised and then they strelised me. I only found out what had happened because afterwards there was a scar on my abdomen" (AlJazeera, 2016).

> "I was pressured by a social worker. First she promised me money. When I refused, she threatened that they would take my children away. She said my husband would lose his job. In the end I gave in to stop her pressuring me" (AlJazeera, 2016).

Another form of discrimination occurs in the service sector. When a person has visible characteristics of a group such as skin tone, headscarf, or clothing; they might be denied service by the establishments. A young Roma man from the Czech Republic gives an example of discrimination in the service sector and the behavior of the law enforcement officers as follows:

> "Back in 2005, I experienced discrimination when a Roma female friend of mine and I tried to get into club in Plzen [Czech Republic]. We were the first guests and thus knew that the club would be empty. We were refused entry. There was a second couple who were non-Roma and were let inside immediately after us. The bouncers spoke very openly about the reasons for which they did not allow us to go in: we were Roma. We both showed them our Charles University student cards but that did not help. We tried to gain access to the club and another club owned by the same owner several times, but each time we were turned down. On one occasion, they were very vulgar. At this part of testing, everything was being recorded onto a hidden camera. I called the police at 11 pm after we had been refused entry into the Arena club. The police arrived in approximately 25 minutes. First they spoke with me and at times raised their voice and shouted at me. When I explained the situation to them, they said that I should not tell them how to do their job; they knew better. Then they went inside and asked the bouncers about the reason for not letting us in. The

> bouncers wrongfully accused me of stealing several handbags from their customers in the past. This was nonsense because I had never been into the club before. The police did not question this at all, nor did they ask for a police report of the alleged incident or the name of the perpetrator. After the police had been informed that everything had been recorded on a camera, they said they were investigating the case but they never called me or my friend to give evidence. However, the conduct of the police officers was called into question by the Department of Control and Complaints at the Plzen Police Directorate" (Council of Europe, 2014, p. 45-46).

The behaviors of the law enforcement officers are especially alarming. The most widespread examples of the mistreatment are the ethnic profiling and violence, and impunity against those behaviours. Ethnic profiling is defined as:

> "the use by police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin - rather than individual behaviour or objective evidence - as the basis for suspicion in directing discretionary law enforcement actions. It is most often manifest in police officers' decisions about whom to stop for identity checks, questioning, searches and sometimes arrest" (ENAR, 2009).

While there are many complaints and reports about ethnic profiling all over Europe, the UK is the only member state that systematically collects data (Open Society Foundations, 2011). In 2015, it was revealed that black people were more likely to be stopped and searched than any other group (Fundamental Rights Agency, 2016a). A Roma man from Romania explains the situation as follows:

> "The police often stopped me just for walking down the street. They would just stop me at night and make me go to the police station. They gave me fines for every imaginable thing. I was too afraid to tell my parents so every time this happened I ripped the paper into little pieces. I knew I was innocent. One day, before New Year's Eve, I was approaching the end of our street with some boys who live on the street, too. One of them has some fire-crackers and we lit two of them. I don't know why, but one of the boys saw a police car approaching and for no reason he yelled, "Police!" and started running. I started to run too. The police car started chasing us, and then the policemen in the car yelled, "Stop or I will fire!" I stopped and fell onto my knees. They got out of the car and started beating us, hitting me in the head with the gun, and they were yelling, "Damn you Gypsies, you good for nothing Gypsies, stay down!" They gave us a heavy fine and I had to stay in a cell for one day. I don't understand why they acted so cruelly" (Council of Europe, 2014, p. 56).

19-year-old boy from Sudan and a 25-year old woman from Eritrea, who arrived in Italy in 2016, explain the police violence they faced, while trying to take their fingerprints, as follows:

> "I arrived by boat from Libya, a big boat from Germany came to rescue us. They took us to the port of Bari… Then in groups of 22 we were taken to a police station by bus. It took about 45 minutes… The police were asking us to give the fingerprints. I refused, like all the others, including some women. Ten police came and took me, first, and hit me with a tick on both the back and right wrist. In the room there were 10 police, all uniformed. Some took my hands back, some hold my face. They kept hitting me, perhaps for 15 minutes. Then they used a stick with electricity, they put it on my chest and gave me electricity. I fell down, I could see but not move. At that point, they put my hands on the machine. After me, I saw other migrants being beaten with a stick. Then another man told me he also had electricity discharged on his chest. They just left me on the street, they said I could go wherever I wanted. I stayed there for three days, almost unable to move" (Amnesty International, 2016d).

> "When we were disembarked, police came at the port by car to take me and a friend of mine. Until we left our fingerprints, the police were checking on us all the time, even when we went to the toilet. Then they took our fingerprints by force. I said I didn't want to. They put my hand on [the machine], I retracted it. There was a woman behind a computer, and four men – all in police uniform. One of the men slapped me on the face, I don't remember how many times. I was too scared, so I gave my fingerprints" (Amnesty International, 2016d).

The behavior of police, and their impunity have direct consequences for the increasing hate crimes and racist attacks as the victims often refrain from reporting. In Germany, 1610 racist attacks were recorded against asylum-seekers, 1031 of which with a right-wing motivation in 2015 (Fundamental Rights Agency, 2016a). In 2016, the number increased to 3729 attacks (ENAR, 2017). A black man who was attacked in 2013 in Germany tells as follows:

> "Although I was the one who had been beaten up and suffered injuries, I was treated as if it had been my fault… as soon as a police officer came on site, I was asked about my identity documents and then accused of disturbing public order… he didn't talk to people around or anything… then he told me to go away" (Amnesty International, 2016e, p. 23).

Attacks on refugee camps are also widespread in Greece. A woman, a 19-year-old boy and an unaccompanied 15-year-old boy from Syria talk about the attack on the Souda camp in Chios on 16-18 November 2016 as follows:

> "If I knew that the situation was like that here… I would stay in Syria under the bombs… In the night, I cannot go outside… [Last week] I saw with my eyes that the stones were coming from the houses of the locals… For two nights, I slept under the trees and for five nights in the street…" (Amnesty International, 2017, p. 24).

> "… When the attack happened, we were afraid for our lives and we ran out of the camp… People were screaming, children were crying… we do not need that stuff in our lives again…" (Amnesty International, 2017, p. 24).

> "There are fights here, during the night there are some people who drink… During the [hate motivated] attack, last week…, my tent was burnt. All my clothes, shoes, papers; they got burnt… I do not want to stay here. I hate my life here" (Amnesty International, 2017, p. 25).

Most of the attacks against Muslims target women as they are more visible. 63.6 % of the attacks against Muslims in Belgium between 2012 and 2015, 81.5% in France in 2014, 70% in Sweden in 2008, 90% in the Netherlands in 2015, targeted women (ENAR, 2016). A woman with headscarf from Sweden describes her state of mind as follows:

> "Basically, I've become this person who constantly evaluates risks and potential dangers. I feel like I have to look around when I'm on the go. I'm busy making sure that I know what to do, just in case something would happen. It's exhausting" (ENAR, 2016, p. 26).

Another dimension of racism and discrimination is the hate speech. Especially with the widespread use of the internet, and the anonymity it provides, hate speech in the European Union increased. Moreover, the increasing visibility and popularity of the far-right political parties, and mainstreaming of the far-right ideas contributed to the increase in hate speech and hate crimes. Following the Brexit referendum, it is reported that the record levels of hate crimes are recorded in the UK (BBC, 2017). Some of the hate speech of the politicians can be summarized as follows:

Dominique Baettig, Former Member of the Swiss Parliament, speaking about the minaret ban in Switzerland:

"It is like the veil, it is a symbol of non-integration. We hope that his initiative sends a clear signal that we are calling a halt to the Islamization of Switzerland. Our hard-won individual liberties are being eroded and that is not acceptable" (Amnesty International, 2012a, p. 80).

Josep Anglada, President of Platform for Catalonia:

"We are against mosques because they are not only places of worship. They are places where social and political rules are imposed. The Muslim world does not distinguish between social, religious and political aspects of life so that mosques become a nest of Islamism and radicalism. We are against mosques because Islam is incompatible with our European culture based on tolerance, freedom, democratic values and equality between women and men" (Amnesty International, 2012a, p. 84).

Lars Barfoed, former Justice Minister and Deputy Prime Minister of Denmark:

"It is completely unacceptable that we have people who evidently reside illegally in Denmark in order to commit crime. There will be a whole series of police actions and there will be no softness. If the Roma have no money on them when apprehended, they should be expelled immediately" (Public Radio International, 2013).

Pavel Louda, Mayor of Novy Bydzov Czech Republic:

"They are shouting in the streets, threatening people, including with knives, and committing theft and rape. While all decent people are at work, the Gypsies hang out on the benches on the town square, contentedly shooting the breeze" (Public Radio International, 2013).

Traian Basescu, former President of Romania:

"We have one more problem which must be stated and which makes the integration of nomadic Roma difficult – very few of them want to work. Many of them, traditionally, live off what they steal" (Public Radio International, 2013).

Zsolt Bayer, co-founder of the Fidesz Party of Hungary:

"A significant part of the Roma are unfit for coexistence. They are not fit to live among people. These Roma are animals, and they behave like animals. When they meet with resistance, they commit murder. They are incapable of human communication. Inarticulate sounds pour out of their bestial skulls. At the same time, these Gypsies understand how to exploit the 'achievements' of the idiotic Western world. But one must retaliate rather than tolerate. These animals shouldn't be allowed to exist. In no

way. That needs to be solved – immediately and regardless of the method" (Public Radio International, 2013).

In 2016, the Czech President Milos Zeman said that the integration of the Muslims community was impossible and described the arrivals of refugees as "organized invasion" (Politico, 2016a). He continued "It follows that those refugees mainly from the Islamic religion treated German women like they were accustomed to in their home countries. Let them have their culture in their countries and not take it to Europe, otherwise it will end up like Cologne" (Politico, 2016a).

Marine Le Pen, the leader of the Front National in France, compared the arrival of refugees to "barbarian invasion of the fourth century" and also said "Germany probably thinks its population is moribund, and it is probably seeking to lower wages and continue to recruit slaves through mass immigration" (Politico, 2015). Viktor Orban, the Hungarian Prime Minister, said, "We shouldn't forget that the people who are coming here grew up in a different religion and represent a completely different culture. Most are not Christian, but Muslim" (Politico, 2015). Marton Gyongyosi, Jobbik member, said, "[It is] timely to tally up people of Jewish ancestry who live here, especially in the Hungarian Parliament and the Hungarian government, who, indeed, pose a national security risk to Hungary" (Washington Post, 2014).

While speaking about the refugees, the former MEP from Freedom Party of Austria, Andreas Molzer claimed, "What will happen to Europe, a conglomerate of negroes, total chaos" (Washington Post, 2014). Gilles Bourdouleix, a MP from France, said about Roma "Maybe Hitler didn't kill enough of them", and Marian Kotleba, Leader of People's Party in Slovakia said "With your trust, I can … do away with unfair favouritism for not only Gypsy parasites" (Public Radio International, 2013). Riccardo De Corato, Deputy Vice Mayor of Milan said about Roma "There are dark-skinned people, not Europeans like you and me… Our final goal is to have zero Gypsy camps in Milan" (Public Radio International, 2013).

A Roma woman from Slovakia explains the effects of this widespread racism on her and family as follows:

> "I never looked Roma but I was afraid that they [schoolmates] would find out about my origin. I never wanted them to come to our house because I felt it was better to hide it. My father has a light complexion, unlike my mother who is a bit darker. It was my father who always attended parent's evenings; my mother did not want to go. As a family, we felt it was safer for our dad to go; we did not arrive at this decision by accident; there was a good reason for it. Since my mother is darker, she was exposed to verbal abuse at work due to her Roma ethnicity… My father was always seen as a Gadzo [non-Roma]. When I was younger, he told me that I should always avoid having darker partners so that I could have lighter-skinned children. I grew up knowing full well that it is good to be white and it is bad to be dark. Like me, my sister has never looked Roma; in later years, we agreed actually it is better when you are Roma and look Roma because people do not make unpleasant, vulgar and racist remarks about Roma in your presence" (Council of Europe, 2014, p. 49-50).

Thus, it is seen that the racial and ethnic discrimination and xenophobia against certain groups persist in the member states of the European Union despite all local, national, international and supranational efforts. One of the efforts of the member states is to give competence to the EU to fight against racial and ethnic discrimination. The problem of this research is about the role of the EU in this fight. It is aimed to understand the motivations of the member states to give competence to the EU in the fight against racial and ethnic discrimination, analyze the competences of the EU and how they are used. It is important to examine the EU's role in this fight to understand why this problem still exists in Europe despite the existence of many mechanisms against ethnic and racial discrimination.

1.2 Theoretical Framework: Historical Institutionalism

In this study, the role of the EU in the fight against racism, discrimination and xenophobia is examined from an historical institutionalist perspective. As a part of new institutionalist approaches, historical institutionalism claims that the institutions are not simple vessels, but they rather have an impact upon the political outcomes.[4] Historical institutionalism does not deny the role of rational calculations of the actors, however it rather focuses on the effects of the institutions over time. Accordingly, the decisions taken in the past makes institutions to lock into place and create path dependencies. Path-

[4] For new institutionalism see (Hall & Taylor, 1996; Rosamond, 2000).

dependency implies that the more the states integrate, the more the future options are constrained (Pierson, 1996). Levi explains the path-dependency as:

> "Path dependence has to mean, if it is to mean anything, that once a country or region has started down a path, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct easy reversal of the initial choice. Perhaps the metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other – and essential if the chosen branch dies – the branch on which a climber begins is the one she tends to follow" (Levi, 1997, p. 28).

Pierson argues that the decision-makers make short-term decisions rather than long-term decisions, therefore they are not likely to control the long-term implications of their decisions (Pierson, 1996). As a result, especially in the context of the European Community, it is a certainty that "unintended consequences" will occur (Pierson, 1996, p. 5). Moreover, even if the actors are willing to back up in time, they are not able to do so as any policy reversal to their long-term commitment might cause "sunk costs" (Pierson, 1996, p. 19).

Historical institutionalism also takes the context and structure into consideration while analyzing preference formation of the actors. It tries to structure the relations between the actors, their interests, and power within the given context (Thelen & Steinmo, 1992). From this perspective, the change is tended to be explained with "critical junctures," which is defined as long continuities that are interrupted with radical ruptures (Pempel, 1998; Capoccia & Keleman, 2007). However, there are also historical institutionalist studies, which try to conceptualize the gradual transformations of the institutions by considering different factors as socialization, preference formation, outside and inside pressures (Streeck & Thelen, 2005; Hall & Thelen, 2009; Greif & Laitin, 2004).

Historical institutionalism provides a strong explanation for the European integration. Accordingly, specific contexts of post-Second World War and Cold War made it possible for supranational institutions to be formed. Once they were formed with particular powers, competences, and agenda, the supranational institutions were locked

into their paths throughout time, which caused the consequences that were not necessarily intended at the beginning (Rosamond, 2000).

Although based on rational-choice, some historical institutionalist studies do not deny the role of the mutually constitutive nature of institutions and claim that the institutions can shape "people's ideas, attitudes, and even preferences" (Weir, 1992; Thelen & Steinmo, 1992). Moreover, Thelen and Steinmo argue that actors are more likely to pursue socially defined goals than the rationally calculated roles (Thelen & Steinmo, 1992). Armstrong and Bulmer go further and suggest that the institutions are normative and "the carriers of beliefs, knowledge, understandings, values and established ways of doing things" (Armstrong & Bulmer, 1998). In this way, they shape the behaviours of actors over time and make it possible for different institutional cultures to coexist within the same system (Armstrong & Bulmer, 1998). This perspective makes some historical institutionalist accounts to approach "sociological institutionalism."

Influenced by social constructivist approaches; sociological institutionalism argues that the informal rules, norms, and shared systems of meanings shape the interests of political actors (March & Olsen, 1998; Risse, 2000). The actors act through the mechanisms of "socialization" and "social learning." While socialization entails a gradual process that includes actors internalizing the rules and altering their attitudes and beliefs; social learning implies that the actors and their identities and interests change through argumentation, deliberation, and persuasion (Checkel, 2006; Risse, 2000). This is not only a gradual but also a mutually constitutive process. Institutions shape the identities and interests of the actors, and actors shape the identities and the interests of the institutions (Adler, 1997; Jupille, Caporaso, & Checkel, 2003).

The actors act by "logic of appropriateness" by following the norms, ideas, and values rather than maximizing their interests, which is explained through the "logic of consequentalism" by rationalist approaches (March & Olsen, 1989; March & Olsen, 1998; Risse, 2000). The logic of appropriateness is explained as follows:

> "In establishing appropriateness, rules and situation are related by criteria of similarity or difference and through reasoning by analogy and metaphor. The process is mediated heavily by language, by the ways in

> which participants come to be able to talk about one situation as similar to or different from another; and the assignment of situations to rules is made at the same time as the rules change. Although the process is certainly affected by consideration of the consequences of action, it is organized by different principles of action, a logic of appropriateness and a comparison of cases in terms of similarities and differences. The process maintains consistency in action primarily through the creation of typologies of similarity, rather than through a derivation of action from stable interests or wants" (March & Olsen, 1989, p. 26).

Despite favoring appropriateness over consequentalism, March and Olsen claim that these two actions are not mutually exclusive (March & Olsen, 1998). They acknowledge that political actions might include elements of both logics (March & Olsen, 1998). Similarly, it is often suggested by conventional constructivists the complex process of European integration can only be understood in this way (Parsons, 2002; Wiener, Christiansen, & Jorgensen, 2001; Adler, 1997; Checkel, 2006; Jupille, Caporaso, & Checkel, 2003).

As it is demonstrated in the forthcoming chapters, the research reveals certain elements that are underlined by sociological institutionalism such as socialization, social learning, mutual constitutiveness of the institutions and acting on the basis of the logic of appropriateness. However, it is also revealed that these processes are not sufficient to create institutional change because of the rational calculations of the actors. Therefore, historical institutionalism provides a better theoretical understanding for the integration in the area of combatting ethnic and racial discrimination. As put by Armstrong and Bulmer, historical institutionalism can provide an analytical background to:

> "[…]'multi-level governance' and to the interaction between systemic and sub-systemic governance in the EU. Moreover, it can throw light on:
> - the pattern of policy evolution;
> - the interaction of the all-important political and legal dynamics of integration and policy;
> - the ability of the supranational institutions to exploit institutional opportunity structures in order to set the policy agenda and influence policy;
> - the important normative and cultural dimension of integration;
> - the strategic and tactical responses of interests and national governments to the EU's institutional rules; and

- the differing patterns of governance across different policy areas arising from different institutional roles, rules and norms (governance regimes)." (Armstrong & Bulmer, 1998, p. 316).

The different policy areas of European integration are analyzed through historical institutionalism such as European Social Policy (Pierson, 1996), merger controls (Bulmer, 1994), banking regulations (Schimmelfennig, 2016), EU's response to the financial crisis (Verdun, 2015), single European market (Armstrong & Bulmer, 1998), security (Georgescu, 2014), common agricultural policy (Lasan, 2012), trade policy (Ville, 2013), integration (Bulmer, 2009), and institutions of the EU (Büthe, 2016).

However, there is not any study to explore the policies against ethnic and racial discrimination through historical institutionalism. Among the very few existing studies on the issue, Bell investigates the effectiveness of the policies of mainstreaming in combatting racism in the EU (2008). Givens and Case analyze the reasons of integration in the area and question the transposition and future of the legislation (Givens & Case, 2014). There are also studies that focus on the characteristics of the Race Directive regarding the protection it provides (Howard, 2007; Howard, 2010; Brown C. , 2002; McInerney, 2003). Although some of these studies compare the EU legislation with the UN and the Council of Europe legislation, they mostly exclude the dimension of policies and actors (Howard, 2010). Moreover, there is not any study on the enforcement of the EU legislation in the area of protection against racial discrimination yet.

1.3 Methodology and Methods Used in the Study

The researcher believes in the intersubjective nature of knowledge and that the social researchers are the part of the world that they are trying to analyze; that interpretive methods are necessary in order to understand causal mechanisms; and most importantly that it might not be possible to have an over-arching theory in social sciences. Therefore, two basic statements should be made. Firstly, the researcher has a normative position on the necessity of restoring social justice by providing formal and substantive equality regarding racial and ethnic relations. Secondly, the research only aims to provide an understanding of the area it chooses to work on, namely the area of racial and ethnic discrimination.

As the integration in the area of combatting ethnic and racial discrimination is analyzed solely, the research is considered as a singly policy study. As conceptualized by Kronsell and Manners (2015), single policy studies, that aim to trace the policy developments over time through analyzing the relations between the actors and their ideas, is a common field of research in the EU studies. It is even seen as a form of case study that enables to gain "in-depth knowledge of the processes, actors and factors that have been relevant for a particular policy" (Kronsell & Manners, 2015). Within the single policy studies, Richardson conceptualizes four stages to be analyzed; agenda-setting, policy formulation, policy decision, and policy implementation (Richardson, 2006). In this research, all four stages are analyzed in the area of combatting ethnic and racial discrimination from an historical institutionalist perspective with a qualitative methodology. Maxwell and Reybold define the basic characteristics of the qualitative research as:

> "… understanding research participants' meanings, investigating the influence of the specific contexts in which the individuals and activities studied are situated, elucidating the processes by which these meanings and contexts lead to particular features or outcomes, and explicitly incorporating the subjectivity of the researcher" (Maxwell & Reybold, 2015, p. 685).

The basic feature of the qualitative research is its focus on the meanings, context, process and intersubjectivity. While the basic data sources of the qualitative researcher are interviews, observations and (written, visual, audio, etc.) texts; the data is analyzed through "inductive, holistic and narrative strategies" as the main goal is to understand rather than to generalize (Maxwell & Reybold, 2015, p. 686). This logic constitutes the methodology of this research.

The researcher started the data collection with the secondary sources, which are the documentations of the United Nations (UN), the Council of Europe and the European Union (EU) and their institutions; media; the reports of the international and regional human rights organizations (European Agency for Fundamental Rights, Amnesty International, European Network Against Racism, European Roma Rights Center, Worldwide Human Rights Movement, International League of Human Rights, The International Movement Against All Forms of Discrimination and Racism, The

International Center for the Legal Protection of Human Rights, Minority Rights Group International, European Network of Independent Legal Experts, Statewatch and Human Rights Watch). The secondary sources are obtained through online research and analyzed through interpretive textual analysis.

First of all, the legislation of the EU since its establishment was accessed. The legislation includes directives, regulations, statements, declarations, joint declarations, treaties, committee reports, special committee reports, opinions, communications, summit conclusions, case law of the EU, Council of the EU, European Commission, European Court of Justice (ECJ), European Parliament and other EU institutions. The development in the area of ethnic and racial discrimination was traced down historically by paying a special attention to the role of the actors and the language used by them.

When it was seen that the anti-racism systems of the UN and the Council of Europe play an important role for the development and the implementation of the EU policies in this area, it was decided to include them in the research. The history, legislation, institutions, and policies of the UN and the Council of Europe were researched through their conventions, agreements, summits, declarations, and statutes. The anti-racism systems of all three institutions were analyzed and compared in detail to understand their coverage and interrelations. The secondary research by the EU institutions and NGOs are used for analyzing the implementation of the EU policies in the member states.

In order to identify the infringement cases, media review on the online media outlets as Euractive and EU Observer; and review of the newsletters of Non-Governmental Organizations (NGOs) were conducted. The results were later confirmed with the information obtained from the European Parliament Research Service. When the cases were identified, data was collected about them through media coverage, reports and statements of the NGOs and the EU. In order to analyze the enforcement mechanisms of the EU on this particular topic, six cases were compared. Three of the cases, Greece, France, and Italy, were selected by being the *key* cases under their topics. The other three cases, Czech Republic, Slovakia, Hungary, were the *all* cases under their topic.

The secondary data was complemented with primary sources. The primary resources of values, beliefs, and attitudes of the people were obtained through the elite interviews and informal site visits, trainings, study trips and international meetings. 12 elite interviews were conducted with academics, journalists, EU officers, NGO workers, activists, and the UN and Council of Europe consultants. The researcher visited Brussels (Belgium) in June 2015 and conducted seven semi-structured, in-depth, face-to-face interviews.[5] A semi-structured, in-depth, face-to-face interview was conducted in İstanbul (Turkey) in June 2015 and another semi-structured, in-depth, face-to-face interview was conducted in Happenheim (Germany) in May 2017. Three semi-structured, in-depth, Skype interviews were also conducted in 2015-2016. While all face-to-face interviews were recorded, Skype interviews were not.

For identifying the interviewees from the European Parliament, the parliamentary questions and the committees of the Members of the European Parliament (MEPs) were searched, and the most active ones about the issues of ethnic and racial discrimination from each of the political groups were identified. Similarly, European and national NGOs active in the area of ethnic and racial discrimination were identified for the interviews with NGO representatives and activists. The names of the Committee on the Elimination of Racial Discrimination (CERD) and European Commission against Racism and Intolerance (ECRI) members and the Commission officers were obtained as well as that of the journalists and academics who were familiar with the EU and writing on the issues of ethnic and racial discrimination. In sum, more than 70 people were contacted, and interviews were conducted with people from each of these groups. The representatives of the Council of Ministers were also contacted but it was not possible to reach them. Therefore, the Council is the only main actor that is not represented in the elite interviews.

The researcher attended numerous meetings, site visits, trainings and study trips and interacted with many experts on the subject in Turkey, Greece, Germany, the Netherlands, Denmark, the United Kingdom (UK), Poland, and Belgium between 2012 and 2017. The researcher spent a semester at the Otto Suhr Institute of Freie University

[5] See Annex 1 for the interview questions.

Berlin and a year at the Government Department of London School of Economics. In both institutions, she specifically monitored or took the courses on the EU and its migration and minority policies as well as nationalism and ethnic politics in general. She benefited not only from the courses but also from the regular interactions with the prominent scholars working on EU and nationalism, libraries, and academic events. She also took active part in the Association for the Study of Ethnicity and Nationalism events and interacted with its members. The theoretical part of the research was mostly shaped during this period through those interactions and rich resources.

The researcher completed a fellowship at the European Parliament in 2016. As a part of the fellowship, she worked at the office of a MEP. The fellowship took place during the refugee flow and the "migration deal" between Turkey and the EU. The researcher found opportunity to monitor the related developments closely as a part of her duties. She attended and monitored many closed and open meetings; panels, committee and group meetings; and plenaries about the issue not only in the Parliament but also in other institutions in Brussels. She also attended almost all of the events, talks, presentations in Brussels related to racism and discrimination. Similarly, she monitored all sessions and events of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and Anti-Racism and Diversity Intergroup (ARDI). The fellowship was also complemented with weekly visits to human rights and minority rights NGOs in Brussels. During the fellowship, the researcher met almost all of the major figures working in the area of ethnic and racial discrimination in the European Parliament, European Commission, and European NGOs in addition to the representatives of national NGOs, activists, academics, and journalists. She found valuable chance to discuss her research questions with them. These discussions were informal and not recorded, however they were very informative for the researcher for the confirmation of the results of the elite interviews. Therefore, no other elite interviews were conducted, as the responses were repetitive. She also contributed to the speeches, letters, parliamentary questions, events of the MEP office and his group, thus gained valuable insights about the daily working of the Parliament and its relations with the other EU institutions. Lastly, she could use the European Parliament Research Service and the library of the European Parliament during this period, which were also crucial to provide valuable resources.

The researcher took part in various non-formal trainings, seminars and conferences. Among them; the course on European and International Human Rights given by human rights scholars and practitioners by the Middlesex University in London (the UK) for a semester in 2013-2014; an human and minority rights academy by Humanity in Action in Copenhagen (Denmark) in June 2013; a study trip for the situation of minorities and refugees in Greece by Humanity in Action in Athens (Greece) in October 2015; a seminar on the Nazi Genocide and dealing with the past policies of Germany by Robert Bosch Stiftung in Berlin and Nürnberg (Germany) in December 2016; and two international conferences by Humanity in Action focusing on minority rights and Nazi genocide in Warsaw (Poland) in June 2013 and international justice mechanisms in the Hague (the Netherlands) in June 2015 are noteworthy. All of those programs included lectures, small-group work, field trips, site visits given by academics, experts, officers from the international and regional institutions, and representatives of the states with the participation of academics, activists, practitioners, civil society, and journalists all over Europe. The field trips and site visits included the local and national NGOs working on human rights, minority and immigration issues; minority or immigrant neighbourhoods; international criminal courts; Nazi Headquarters; Nürnberg trials courtroom; concentration and extermination camps of Nazis; prisons; refugee centers; museums and documentation centers focusing on the Nazi genocide; exhibitions on the colonial past of European states; memory and oppressed memory sites; and monuments. The researcher gathered valuable data and insights during those programs from the experts, participants and site visits.

The researcher joined a European project as a trainer, which aims to train Roma youth all around Europe about the genocide, commemoration, and antigypsyism that is organized in Auschwitz and Krakow (Poland) every year in August. She attended the meetings and met the Roma rights activists and representatives of Roma NGOs across Europe. She discussed her research questions with them, as well. Only one of these discussions was recorded as the elite interview. However, valuable data was collected about Roma genocide and the problems of Roma.

During the period the researcher lived in the UK, Germany, and Belgium, and during her travels to European Union member states, she came across with many people from the groups that are subjects of this research. She found chance to discuss many dimensions of discrimination and racism with them apart from the research questions. As the dissertation is limited to institutional racism and the EU policies about it, many of those discussions are not used in this dissertation. Although only a small portion of data is directly used in the dissertation as a result of this "informal" data collection; indirectly they were very crucial to shape the course of the research, providing insights and understanding to the researcher, and validating her observations and findings.

1.4 The Structure of the Thesis

The thesis consists of seven chapters. After the introduction chapter, the second chapter discusses the development of the idea of "race" in Europe. This discussion is also combined with the interconnected developments of two ideas; "human rights" and "nation-states" within the historical context that they have emerged. The chapter then tries to clarify the concept of "racism" and discusses the current forms of racism.

The third chapter introduces and compares the systems of two institutions that the EU member states are also members; namely the United Nations and the Council of Europe. Their legislations, institutional structures, procedures, and policies against institutional racism are discussed. The fourth chapter tracks down the development of the EU legislation against racial discrimination and attempts to provide an understanding for the integration in this area.

The fifth chapter analyzes the implementation of the EU legislation against racial and ethnic discrimination, actors, and policies in detail. The sixth chapter discusses the enforcement of the legislation and the role of the actors in it by comparing the cases. The chapter attempts to provide an understanding for the European Commission to use its competence. The last chapter discusses and summarizes the findings.

2. "RACE" AND "RACISM" IN EUROPE

The concepts of "race", "human rights" and "nation-states" were all developed in Europe[6] influenced by the transformations brought by the geographical expeditions, slavery, colonialism, the Enlightenment, scientism, and modernity. In this chapter, it is aimed to discuss these historical and theoretical transformations that led to the birth of "racism" in Europe. In the second part of the chapter, the current forms of racisms and the attempts to formulate them theoretically are discussed. It is questioned whether the current forms of racism in European societies are inherited from the past and still find their reflections in the state policies.

2.1 The Construction of the Idea of "Race" in Europe

The protection against racial discrimination is provided under the international and regional human rights systems after the Second World War. However, "human rights" has also been a controversial concept and the way it was constructed was even discriminatory in itself. There had been many transformations until it included equality and non-discrimination principles, as we understand today. Moreover, the construction process of human rights is also in parallel with the construction of "nation-state" and "racism" concepts. They had been the products of interrelated transformations that Europe was facing. While the modern nation-states were being created, racism and human rights were also flourished. In this part, these historical and theoretical developments are discussed to underline the relationship between these three concepts that continue to shape the societies in Europe today.

2.1.1 Proto-Racism in the Medieval Europe

In the medieval Europe, the source of division was mostly the religion. The racism in this era called as "proto-racism" as it is seen different from the later racisms developed in the 19th and 20th centuries (Richards, 2004). The first violent incidents

6 The researcher has no intention to use the term "Europe" to reinforce essentialism. She is very much aware of the differences and diversity within Europe and ambiguity of the term itself. Yet the research is about the European Union, and the term is mainly used to refer to the geography it occupies.

against Jews were the massacres of 1096 in France, Germany and England following the First Crusade. After the 13th century, the discrimination and violence that Jews faced started to increase especially because they were blamed for the death of Jesus. Related to that negative framing, the myths about Jews that declare them as accomplices of "the Devil", started to spread within this period (Fredrickson, 2002, p. 22).

Iberian Muslims, on the other hand, had a perception for a connection between blackness and servitude, which might have an effect on the Iberian Christian views about blackness and slavery in the later periods (Fredrickson, 2002, p. 29). Jackson and Weidmen suggest:

> "The Iberian Muslims supplied two facets of racial ideology: that outer physical signs indicated person's inner, moral worth and that races could be ranked in a social hierarchy. Yet these ideas were not held universally and were seen as rather minor facts in a world of faith. Moreover, the notion that race-based status is fixed and permanent, what Aristotle would call *essential*, was missing. Over the next few centuries, however, scholars would look more to the body rather than the soul for a person's essence. Once the body became a person's essence, a great barrier to racial thinking dropped away." (Jackson & Weidman, 2004, p. 6).

When the Islamic rule fell, Spanish inquisition targeted Jews and Muslims in 1492. They were either converted to Christianity or expelled. However, the converts were not considered as equals, as they were not "pure Christians". In the 16th century, "purity of blood" of the Jewish and Muslim converts was often questioned and this questioning was sufficient for them to be considered as inferiors (Fredrickson, 2002; Rattansi, 2007).

The proto-racism in this era expanded beyond the Jews and Muslims, and included Irish and Slavic people in Europe. The laws banning marriage between Germans and Slavs; denying guild membership to non-Germans in the Eastern Europe and to Irish in the Western Europe can be given as examples (Fredrickson, 2002, p. 24). During the same period, the military triumph of Islamic countries also made them "others", and they were seen as barbaric whereas Christian Europe was not (Said, 1979; Rattansi, 2007, p. 18).

Another discriminated group in this era was Roma. The predecessor of the term "antigypsyism"; "antitsyganizm" emerged in 1920s in Russia, however antigypsyism was

common in Europe much before that.[7] The myth of "Roma stealing children" is rooted back to this period (Baar, 2014). The slavery of Roma started in Romania in the 15th century and was only abolished in the mid-19th century. Throughout Europe, rulers passed laws to deport Roma, banned them to enter their territories, and punished them if they do the opposite such as Germany (1501); France (1504, 1539, 1561, 1666); Sweden (1637); the Netherlands (18th century); England (1554, 1714); Spain (1747); the Austro-Hungary Empire (1773) (Council of Europe, 2015).

The geographical expeditions and following colonization and enslavement were started in this era and had a drastic effect in the development of the ideas about "race". The people in Africa, Asia, and Americas were all affected by the geographical expeditions, colonization and enslavement. The European powers were transferring the generated income to their own countries through colonization and the slavery was at the heart of this system as the slaves were used as labour. The enslavement of Africans was justified through "the Curse of Ham" story in the Bible. Accordingly, Noah cursed his son Ham and his descendants with black skin and eternal servitude. Although the slavery had been existent for thousands of years, people were not enslaved because of their physical appearances before, only when they lost wars or had debts - with the exception of Roma as discussed above (Jackson & Weidman, 2004).

Rattansi underlines different kinds of proto-racism in this era through different opinions between Bartolome de Las Casas (1484-1566) and Juan Gines de Sepulveda (1494-1573) (Rattansi, 2007). While Sepulveda argues that the indigenous population in the Americas were not rational and rather closer to the apes than humans, therefore could be enslaved; Casas argues that they were rational and could be converted to the Christianity and made subjects of Spain (Rattansi, 2007, p. 22). The Catholic Church and Spanish monarchy also agreed that the indigenous populations were different from Jews or Muslims as they had never encountered with Christianity before, contrary to Jews or Muslims (Rattansi, 2007, p. 22).

7 Antigypsyism is defined as "... a historically constructed, persistent complex of customary racism against social groups identified under the stigma 'gypsy' or other related terms, and incorporates: 1. a homogenizing and essentializing perception and description of these groups; 2. the attribution of specific characteristics to them; 3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracizing effect and which reproduce structural disadvantages" (Alliance Against Antigypsyism, 2016).

Therefore, there were stereotypes and discrimination in the societies; but geographical expeditions, and colonial ambitions started to shape the opinions on essentialist differences in this era and used as a justification for slavery.

2.1.2 Two Sides of the Enlightenment: The Construction of "Human Rights" and "Race"

In the European narrative, Magna Carta of 1215 is considered to be the basis of the development of the "human rights". Magna Carta was signed between the English monarch and aristocrats in order to settle taxes and gave the right to trial to men, and exclusively to the property-owning men. Thus, the human rights were first issued to protect the wealth of the noble white men against their rulers.

The subject of rights became more prominent during the Enlightenment. Hugo Grotius (1583-1645) is one of the most important scholars on the subject. Three innovations associated with Grotius are:

> "1) to regard justice as a matter of respecting and exercising individual rights; 2) to separate the study of rights from theology; 3) to turn political philosophy away from the quest for the ideal form of government by admitting the possibility of different, equally legitimate forms, derived from different people's exercise of rights in different circumstances." (Edmundson, 2012, p. 20).

Grotius is also considered as one of the founders of the international law based on natural law. Grotius's contribution to the development of international law is recognized by the concept of "Grotian Moment" by Richard A. Falk (1981). His emphasis on "international society" based on morality, law, and mutual agreements to enforce those laws instead of warfare was influential on the development of the concept.

Thomas Hobbes (1588-1679) is influenced by Grotius for the concept of "natural rights". Hobbes suggests that the "Men are equal in nature and have rights to everything". Since the resources are limited, and men have right to everything; the state of nature is constant chaos. In order to control the chaos, men surrender their rights to the necessary evil of "Leviathan"; the state. While establishing the social contract theory, Hobbes designates the basis of the state as the will of people, however he does not necessarily argue that the state is answerable to people. States can use this legitimacy for

authoritarian purposes. Hobbes recognizes the right of survival as the only right, which can be retained by men.

Thirty Years Wars (1618-1648), which led Grotius and Hobbes to think about the state of nature, was ended with the Treaty of Westphalia (1648), which established a relative peace in Europe. Samuel Pufendorf (1632-1694), writing at that relatively peaceful period, worked elaborately on the writings of Grotius and Hobbes and modified certain aspects. Pufendorf became one of the first thinkers to establish the "'correlativity of rights and duties', which implies that the no right can be attributed to one person without at the same time attributing certain correlative duties of noninterference to others" (Edmundson, 2012, p. 25). Thus, the principle suggests that a natural right becomes a real right when it interferes with the moral situation of other humans. The property rights, in this respect, are conventional rules since it is based on the first occupancy rather than the natural law. He also challenged Hobbes' view of state of nature as a state of war. He suggested that the real state of nature is the state of peace, and a supreme authority is needed to protect it.

Another social contract thinker, John Locke (1632-1704) also departs from Hobbes' views. Accordingly, men have right to life, liberty and estate. If the government systematically abuses its power, the people have the legitimate right to overthrow to government. Jean–Jacques Rousseau (1712-1778), on the other hand, suggests that men should be "forced to be free", if their private will contradicts with the collective will. However, it was Immanuel Kant (1724-1804) whose works constitute the basis of the contemporary human rights understanding. Kant argues that there is a universal moral system based on autonomy, dignity and equality that should be shared by all rational human beings. Another important contribution was made by Thomas Paine (1737-1809) as he defends natural rights and their inalienable character.

The works of the thinkers both reinforced by and reinforced the several legal documents of the era. *The English Bill of Rights* of 1689, which was signed between the Parliament and the King, was another cornerstone for the acknowledgement of some rights as "no excessive fine be imposed; nor cruel and unusual punishment infected". However, it also included certain parts of society, therefore, not accessible for all. The

18th-century texts such as *the American Declaration of Independence* states in 1776 "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness." *The Constitution of the United States America* defined the basic rights of the citizens in 1787. Following ten amendments, known as *the Bill of Rights* came into force in 1789 and guaranteed the rights as freedom of speech, freedom of religion, freedom of assembly and freedom to petition not only of the US citizens but also residents and visitors. *The French Declaration on the Rights of Man and Citizen* in 1789 claimed, "Men are born and remain free and equal in rights." Inalienable rights of men were stated as liberty, property, security, and resistance to oppression.

On the other hand, the idea of "natural rights" is strongly criticized by the conservative thinker Edmund Burke (1729-1797). With *the Reflections on the Revolution in France* (1790), he referred to those rights as "abstract" and "speculative" and rather argued the existence of "inherited right", which are coming from the tradition. The utilitarian thinker Jeremy Bentham (1748-1832) also criticized the concept of natural rights as "nonsense upon stilts" in his text of *Anarchical Fallacies*. He argues that there is no logical ground for natural rights, and it is actually dangerous for the society as it leads to individualism instead of the collective good.

Those texts were also criticized for the exclusion of women; reflecting the interests of privileged classes; and ignoring the rights of the indigenous populations or the people in the colonies (Bantekas & Oette, 2013). A feminist objection came from Mary Wollstonecraft (1759-1797) through *A Vindication of the Rights of Woman* (1792). She criticizes the lack of "women" in this understanding, and argued that the French Constitution should be revised in accordance with the women rights. Similarly, Olympe de Gouges (1748-1793) advocated a "Declaration of the Rights of Women" in 1790. Karl Marx (1818-1883), on the other hand, criticized the emphasis on the right to property and claims that "rights" are used for the interests of the capitalist classes in *On the Jewish Question*. In his view, in a communist society there would not be a need for human rights, as everybody would be provided of their needs.

It was not only a distorted equality approach that was flourishing in Europe during the Enlightenment, but also the ideas on "race" were developed in this era. It is thought the term "race" is firstly used in the 16th century in Europe, having a connotation to "family, lineage and breed" (Fredrickson, 2002, p. 53; Rattansi, 2007, p. 23). However, it is in the 18th century that the term "race" gained a scientific meaning with the Enlightenment. Influenced by the scientism of the era, the first attempts of theorizing of racism were directly related to biological determinism and aiming to categorize humans into races in accordance with their "essential characteristics" derived from their appearances.[8] Moreover, "superiority" was attributed to "the European race."

With the Enlightenment rationality, the "civilization" discourse on otherization replaced the religious discourse. The idea of superior European civilization is directly related with another prominent Enlightenment idea of "progress," which can be described as "… the belief that humankind had progressed from a 'rude' and barbaric stage to the contemporary stage of refinement, political liberty, freedom from superstitious forms of religion, and commercial prosperity" (Rattansi, 2007, p. 25). The idea of progress still has its reflections on the European thinking, but it also has an effect on the development of racism as argued by Jackson & Weidman:

> "The medieval world, in many ways, was a static one. Not only was the world unified, but it was also unchanging. In the seventeenth and eighteenth centuries, by contrast, many believed that not only was the world changing, it was getting better. This was especially so in the realm of people and society. Europeans believed that their societies were more advanced, were *better* than those of other parts of the world. Part of their mission, therefore, was to help these "primitive" people progress toward the European ideal. The barbaric outsiders of the ancient Greeks, for example, became merely those who had not yet advanced to the "enlightened" stage of the Europeans. Although the European colonial powers have doubted the racial inferiority of non-European peoples at times, they never doubted the superiority of their own society and way of life. This notion of superiority justified the European conquest of non-European peoples around the world –it was justified because of the superior religion and culture of Europe" (Jackson & Weidman, 2004, p. 13).

8 See (Young, 1999) for a discussion on "essentialism" and its mechanisms in the modern era.

The first theories of racism attempted to classify human beings into races. The physical appearances, intellectual capacities, abilities, and characteristics were accepted as essential for each category, and they were often ranked in their worth, where European race was always found superior. Early theories claim the "polygenesis," which argues that the different races are coming from different ancestors. This approach underlines that the superior races cannot possibly share common ancestors with inferior races. However, the suggestion is against the Christian belief of the common ancestry. The other theories claim "monogenesis", which argues that all races have common ancestors and the inferior races degenerated from the superior races. Some believed that the degeneration is caused by environmental and climate factors, while some others believed it was the civilization levels that caused the differences.

A friend of John Locke and a traveler, Francois Bernier (1625-1688), was one of the first to classify people into races in *The New Divisions of the Earth*. He claimed that "… the 'first race' that included Europeans, North Africans, Middle Easterners, Asian Indians, and American Indians; second, Africans; third, East and Northeast Asians; fourth, the Lapps" (Jackson & Weidman, 2004, p. 14).

Carl Linnaeus (1707-1778), the founder of modern biological classification, claimed all humans are belonged to same species but there are four varieties:

1. "Americanus: Reddish skin, black hair, scant beard, obstinate, merry, regulated by custom.
2. Asiaticus: Sallow skin, black hair, dark eyes, severe, greedy, covered with loose garments, ruled by opinions.
3. Africanus: Black skin, black, frizzled hair, indolent, women without shame, governed by caprice.
4. Europaeus: White, long, flowing hair, blue eyes, gentle, inventive, covers himself with close-fitting clothing, governed by laws" (Jackson & Weidman, 2004, p. 16).

These kinds of classification that accept races as "fixed" was criticized by Comte de Buffon (1707-1788). Buffon contrarily argued in *Histoire Naturelle* (1749) that the fertility among different organisms are possible. He also used "race" instead of "varieties." Buffon classified races as Lapps, Tartars, South Asians, Ethiopians, Americans however, he thought these can change as he believed different pigmentation

was the result of the climate differences (Jackson & Weidman, 2004, p. 17). His criteria for races were skin colour, stature, intelligence, and face shape (Jackson & Weidman, 2004, p. 17). Similar to Bernier, he argued that the Europeans are the original race and the others are degeneration from it (Jackson & Weidman, 2004, p. 17). Samuel Stanhope Smith (1751-1819), Robert Knox (1791-1862) and John Hunter (1728-1793) were also the proponents of the explanations based on the differences of climate and environment. British ethnologist James Cowles Prichard (1786-1848) rejected polygenesis and climate theories but claimed that mental and physical differences were caused by the civilization levels as the Europeans were more civilized (Fredrickson, 2002, p. 66).

Johann Friedrich Blumenbach (1752-1840) defined five races: "first, Caucasians – that is the 'European' race, for once including the Lapps; second, Mongolian – the residents of Asia; third, Africans; fourth, Americans; fifth, Malay – the newly discovered people of the South Pacific" (Jackson & Weidman, 2004, p. 19). Like Buffon, Blumenbach believed that the races are not fixed however; he also attributed moral judgments to the races. He argued that the Caucasian race is the original race and the others are degenerated from it (Fredrickson, 2002, p. 57). Blumenbach was not the first to use the term "Caucasian race." It was Christopher Meiners (1747-1810) who used the term for the first time in *The Outline of History of Mankind* in 1785. Meiners claimed the existence of two races: Caucasians and Mongolians from which the Caucasians are "whiter" therefore more attractive as well as more sensitive and virtuous (Fredrickson, 2002). Blumenbach spread the term, as he also believed that the Caucasians were the most beautiful people. George Cuvier (1769-1832) classified races into three as Caucasian, Mongolian and Ethiopian and agreed that the "Caucasian" was superior in terms of beauty and intellectual capacity.

The proof for polygenism came from the scientism of the era by the measurement of skull and brain size by Pieter Camper (1722-1789), Paul Broca (1824-1880), Samuel George Morton (1799-1851), Josiah Nott (1804-1873), George Gliddon (1809-1857), William Ripley (1867-1941), Joseph Deniker (1852-1918), Herbert Hope Risley (1851-1911), Anders Retzius (1796-1860). It was believed that the larger brains

had more mental capabilities; thus men were smarter than women, and white races than others.

More strikingly, the very same philosophers who led the development of the rights approach also contributed to the development of racism. John Locke, for example, made investments in slave trade companies (Glausser, 1990). While defending civil liberties and challenging religious system and slavery; Voltaire was (1694-1778) also openly racist against Jews and blacks (Fredrickson, 2002). David Hume (1711-1776), known as a humanist, wrote *On National Characters* (1754):

> "I am apt to suspect the negroes in general and all species of men (for there are four or five different kinds) to be naturally inferior to the whites. There never was a civilized nation of any other complexion than white… No ingenious manufactures amongst them, no arts, no science. On the other hand, the most rude and barbarous of the whites, such as the ancient Germans, the present Tartars have still something eminent about them… Such a uniform and constant difference could not happen … if nature had not made an original distinction between these breeds of men" (Rattansi, 2007, p. 27).

However, it was once again Kant who was not only racist; but also had a theory of race that was very influential in the development of racism. He argued that humans were coming from the same ancestor, but some were deviated. He published pieces on the issue *Of the Different Human Races* in 1775 and *Determination of the Concept of Human Race* in 1785. In 1764 he argues:

> "The Negroes of Africa have by nature no feeling that rises above the ridiculous. Mr. Hume challenges anyone to adduce a single example where a Negro has demonstrated talents, and asserts that among the hundreds of thousands of blacks who have been transported elsewhere from their countries, although very many of them have been set free, nevertheless not a single one has ever been found who has accomplished something greater in art or science or shown any other praiseworthy quality" (Kant, 2011, p. 58).

In 1788, he argues:

> "That their [native Americans] natural disposition did not achieve a perfect suitability for any climate can be seen from the circumstance that hardly another reason can be given for why this race, which is too weak for hard labor, too indifferent for industry and incapable of any culture –

> although there is enough of it as example and encouragement nearby- ranks still far below even the Negro, who stands on the lowest of all the other steps that we have named as differences of the races" (Kant, 2007, p. 211).

While in 1775, Kant categorizes the races as "1. The races of whites 2. The Negro race 3. The Hunnish (Mongolian or Kalmuckian) race 4. The Hindu race" (Kant, 2007, p. 87), in 1785 he argues the races are "whites, yellow Indians, Negroes and copper-red Americans" (Kant, 2007, p. 147).

Mills analyzes the social contract theories of Hobbes, Locke, Rousseau and Kant and concludes that the state of nature and social contract they portrayed was also a racial contract as they were reserved for non-whites whereas Europeans were always accepted as civilized (Mills, 1997).

Georg Wilhelm Friedrich Hegel (1770-1831) found African culture inferior, slave trade justifiable, and contributed to the Eurocentrism, and the idea of European mission of civilization (Moellendorf, 1992; Buck-Morss, 2009; Purtschert, 2010). In *the Philosophy of History*, he wrote:

> "… But with the Negro this is not the case, and the devouring of human flesh is altogether consonant with the general principles of the African race; to the sensual Negro, human flesh is but an object of sense – mere flesh" (Hegel, 2001, p. 113).

> "Another characteristic fact in reference to the Negroes is Slavery. Negroes are enslaved by Europeans and sold to America. Bas as this may be, their lot in their own land is even worse, since there a slavery quite as absolute exists; for it is the essential principle of slavery, that man has not yet attained a consciousness of his freedom, and consequently sinks down to a mere Thing – an object of no value. Among the Negroes moral sentiments are quite weak, or more strictly speaking, non-existent." (Hegel, 2001, p. 113-114).

> "What we properly understand by Africa, is the Unhistorical, Undeveloped Spirit, still involved in the conditions of mere nature, and which had to be presented here as on the threshold of the World's History" (Hegel, 2001, p. 117).

All Founding Fathers of the USA were in favour of slavery and had slaves. Thomas Jefferson (1743-1826) who wrote the inalienable rights of all men to the

American Declaration of Independence claimed "Nothing is more certainly written in the book of fate that these people [the slaves] are to be free nor is it less certain that the two races, equally free, cannot live in the same government" (Jackson & Weidman, 2004, p. 23).

The Enlightenment ideas challenged religion and superstitions with its rationality and scientism, and defended equality and rights while at the same time created new inequalities through the same rationality and science by creating racial categories.[9] This understanding led "scientific racism" to develop in Europe.

2.1.3 Racism and Nation-States

An unintentional contribution to the scientific racism came from Charles Darwin (1809-1882) through his theory of natural selection and evolution (Darwin, 1991; 2013). The ideas of Darwin were not quite compatible with scientific racism at first as scientific racism was fixed whereas evolution was obviously not. However, two ideas then merged as "Social Darwinism" in 1880s in Europe and spread to the US as well. Social Darwinists adopted the laws of nature to the laws of society and led the way to the eugenicists (Drouard, 2015, p. 686).

Ernst Haeckel (1834-1919) claimed that the struggle for life also includes humans (Haeckel, 1879). Ludwig Gumplowicz (1838-1909) argued that there is a race struggle between human beings (Gumplowicz, 1980). Herbert Spencer (1820-1893) introduced the idea of "the survival of the fittest" (Spencer, 1872). Walter Bagehot (1826-1877) argued there is a hierarchy between races and nations, based on the survival competition (Bagehot, 2001). Karl Pearson (1857-1939) used Social Darwinism as a justification for imperialism (Pearson, 1905). Clémence Royer (1830-1902) suggested eugenics for:

> "But also the law of natural selection, applied to humanity, surprisingly and painfully shows how false our political and civil laws as well as our religious morality have been so far. We thus have come to sacrifice what is very strong to what is weak, the good to the bad, the gifted mind and body to the puny and vicious. What is the result of this unintelligent protection

9 The Enlightenment thought also ignored women in their quest for equality see (Eisenstein, 2004).

> granted exclusively to the weak, the sick, the incurable, the bad, and finally to all of the disgraced beings in nature? The problem is that the suffering they experience tends to perpetuate itself indefinitely; that evil increases steadily instead of decreasing, and is increasingly growing at the expense of good" (Drouard, 2015, p. 688).

Eugenicists claimed that the natural selection was failing because of the level of civilization, so an artificial selection should replace it for the sake of the society and they introduced mechanisms for it:

> "'Negative' eugenics aims at preventing people with hereditary diseases and serious deformities from getting married, by resorting to means ranging from segregation to sterilization. 'Positive' eugenics aims at encouraging 'gifted' or 'strong' individuals – the carriers of favorable physical and intellectual characteristics – to reproduce themselves as much as possible" (Drouard, 2015, p. 689).

Francis Galton, Darwin's cousin, introduced the doctrine of "intellectual dysgenesis":

> "… which claimed to chart a process of intellectual degeneration in which less intelligent classes reproduced at a higher rate than more intelligent ones. Left unchecked, the result would be an overall dilution of intelligence and a collapse of social institutions. The 'solution' seemed obvious: selective breeding, encouraging classes with higher intelligence to more children" (Rattansi, 2007, p. 55).

Georges Vacher de Lapouge (1854-1936) similarly argued:

> "Individuals are not only unequal but their inequality is hereditary, classes and nations and races are not only unequal but each of them cannot undergo absolute improvement and the elevation of the average is the consequence of the extermination of the worst elements, of the spread of the best elements, in a word, of unconscious or subconscious selection. Human evolution is the result of this inequality" (Drouard, 2015, p. 689).

Social Darwinism and eugenics had an influence on Nazism. Otto Ammon (1842-1916) and Count Arthur de Gobineau (1816-1882) suggested: "regressive selection" causing gradual decrease in Germanic or Aryan elements, which is the superior race (Ammon, 1900; Gobineau, 1999). Eugen Fischer (1874-1967), Fritz A Lenz (1887-1976), and Erwin Baur (1875-1933), the authors of the *Human Heredity* discussed the racial hygiene (Rassenhygiene) and defended the prohibition of marriage between "races"

(Baur, Fischer, & Lenz, 1931). Hans Friedrich Karl Günther (1891-1968) also defended eugenics and declared Nordic race is the superior (Günther, 1927).

A major criticism to scientific racism came from Franz Boas (1858-1942) and his students at the Columbia University who were considered as the founders of American anthropology. In *The Mind of Primitive Man* (1911), Boas shifted the attention from evolution to the culture and introduced the concept of "cultural relativism" (Boas, 1965). He argued that no one is racially inferior or superior, but only have different culture. Boas's student, Ruth Benedict (1887-1948) similarly wrote about the equality of humans (Benedict, 1943). Boas's friend W. E. B. Du Bois (1868-1963) was a significant proponent of racial equality. Denying scientific racism and eugenics, he claimed that the problems of African-Americans caused by structural reasons of social inequality (Bois, 1945; 1999; 2007). On the other side of the Atlantic, once a eugenicist, Julian Huxley (1887-1975) later opposed the idea during 1920s and 1930s. With Alfred C. Haddon (1855-1940), they claimed that race is a pseudo-science and "ethnicity" should be used instead (Huxley & Haddon, 1938). Alain Locke (1885-1954) suggested that race was mainly "sociological", which can be transferred to today's understanding as a "social construct" (Stern & Locke, 1942).

Not only scientific racism, but also German Romanticism, that was equating race with the nation, had an effect on Nazism. After the Napoleonic invasions there was a rejection of everything related with Napoleon including the rights given to Jews during that era. It was also a reaction to the rationalism of the Enlightenment. The emphasis on the unity of the German-speaking people started to increase among intellectuals, and Jews were seen as the alien elements to the German culture. While before the German unification of 1870, there were thoughts that they could assimilate more; after the unification the conviction was that they were not capable of assimilating more to the German culture. The relative prosperity and citizenship rights of German Jews created suspicion and Anti-Semitic racism after the unification.

The term "Anti-Semitism" was not used before the 1870s, instead anti-Judaism was used before and had more of a theological connotation. Wilhelm Marr (1819-1904), who first used the term "Anti-Semitism" for his racist project, argued in *The Victory of*

the Jews over the Germans (1879), that "Jews were corrupt by nature and not because of their beliefs" and "Jews were innately evil and beyond redemption" (Fredrickson, 2002, p. 78-79). Moreover, the characteristics of the Jewish "race" is claimed to be intrinsically materialistic and scheming and not compatible with idealistic and generous German culture (Rattansi, 2007, p. 5). Anti-Semitism was developed by the works of the intellectuals as Karl Eugen Dühring (1833-1921) with *The Jewish Question as a Problem of Racial Character* (1880); Theodor Fritsch (1852-1933) with *The Handbook of the Jewish Question* (1893); Houston Stewart Chamberlain (1855-1927) with *The Foundation of the Nineteenth Century* (1911); and Paul de Lagarde (1827-1891) with *Jews and Indo-Germanics* (1887).

Similarly, Roma was also seen as alien elements across Europe. The surveillance of Roma population started in Germany in 1890 and it was ordered to take their photographs and fingerprints in 1922. In 1927, the Czech Republic banned Roma to move and forced them to apply for identification. In 1926, fingerprints started to be collected from Roma and "Gypsy card files" were prepared as much as for 8000 Roma in Austria. The pseudoscientific theories about their essential "impurity" and "criminal behavior" also started to be disseminated in this period (Council of Europe, 2017).

German Romanticists, on the other hand, claimed essential characteristics for Germanness and accepted Germanness both as a nation and race. Kohn claims, "It [Romanticism] never developed a program for a modern German nation-state, but with its emphasis on the peculiarity of the German mind it helped the growth of a consciousness of German uniqueness" (Kohn, 1950, p. 443). Johann Gottfried von Herder (1744-1803) was against slavery and colonialism however his theory on *Volksgeist*, that each nation has a unique and eternal soul, contributed to the development of cultural racism. He regarded alien elements as a source of contamination (Fredrickson, 2002, p. 70-71). Johann Gottlieb Fichte (1762-1814) claims in *Addresses to the German Nation* that the German nation is destined to save European civilization (Fichte, 2008). Friedrich Schlegel (1772-1829) claimed every nation bounded by common descent and language and it should stay as so (Kohn, 1950, p. 460). He wrote to his brother August Wilhelm Schlegel on 1791:

> "There is not much found anywhere to equal this race of men, and they have several qualities of which we can find no trace in any known people. I see in all the achievements of the Germans, especially in the field of scholarship, only the germ of an approaching great time, and I believe that things will happen among our people as never before among men. Ceaseless activity, profound penetration into the interior of things, very great fitness for morality and liberty, these I find in our people. Everywhere I see traces of becoming and growth" (Kohn, 1950, p. 456).

Adam Heinrich Müller (1779-1829) similarly argued:

> "I, too, expected revolutions and heroes and changes in the mentalities of peoples which would come and favor the realization of my dream. The great confederation of European nations will come some future day, and as truly as we live, will also wear German colors; for everything great, thorough and lasting in all European institutions is German – that is the only certainty which has remained from all those hopes" (Kohn, 1950, p. 471).

In addition to the Nazism, social Darwinism and eugenics contributed to the colonization, slavery, and atrocities in the colonies (Goldberg, 2009). Du Bois claimed that the First World War was caused by the imperial ambitions of the Great powers over racist and economic domination of African and Asian countries (Bois, 1915). The same argument was also underlined by Lenin (1870-1924) a year later (Lenin, 1996). Especially, Herero and Namaqua Genocide in Namibia (1904-1907) by Germany is argued to be the predecessor of the Holocaust in terms of ideology and methods used (Zimmerman, 2001; Madley, 2005).[10]

The accumulation of this racist thinking caused tragic results in the hands of the Nazis, who had the state apparatus. In 1933, the Office of Racial Policy was founded. In 1933, the law of *The Prevention of Hereditarily Diseased Offspring* made forced sterilization of Roma possible. In 1933, *Civil Services Act* forced "non-Aryans" to early retirement, and in the following years the employment of Jews and Roma was prevented. In 1935, The Nuremberg Laws were passed at Nazi party rally in Nuremberg. According to *The Law for the Protection of German Blood and German Honour:* marriage or sexual

10 Some other colonial atrocities, before and afterwards of the Holocaust, can be counted as Boer concentration camps in the South Africa (1899-1902), Amritsar Massacre in India (1919), Partitioning of India (1947), Mau Mau Uprising in Kenya (1951-1960), Famines in India (1943), The Great Irish Famine (1845-1852); Congo (1885-1908); Algeria (1954-1962); indigenous population in Americas (16th century onwards).

relations between Jews and "German or related blood" people were banned. Jew was described as having three or four Jewish grandparents, therefore included converts as well. Marriage ban was then extended to people who had "hereditary illnesses" and "racially suspected" lineage to include blacks and Roma. It also forbade German women under the age of 45 to work in the Jewish households. *The Reich Citizenship Law* stated only people with German or related blood could be Reich citizens and the others were only state subjects. Similar laws were passed in Italy, Hungary, Romania, Slovakia, Bulgaria and Croatia between 1938 and 1941. The law of 7 March 1936 deprived Roma and Jews from voting rights. In 1936, Racial Hygiene Research Unit was established under the Reich Ministry of Health in order to identify and index all Roma in accordance with the racial criteria. Starting from 1938, the children were expulsed from the schools, and adults from the military service.

The laws were not sufficient for Nazis and they made several plans to eliminate the alien elements. Some of the plans included relocation. Adolf Eichmann's Madagascar Plan to relocate Jews to the French colony failed due to the logistical reasons. On 9 November 1938, known as *Kristallnacht*, Nazis started to implement their plans to send Jews to the camps, however the transfer of Roma to the camps started as early as 1936. In 1938, Himmler published *Decree for Basic Regulations to Resolve the Gypsy Question as Required by the Nature of Race* to start the preparations for the extermination of Roma. During the Wannasee Conference in 1942, the Nazis decided to implement *the Final Solution* (Endlösung), which was the execution of Jews, Roma, homosexuals, mentally disabled and other unwanted population in the camps. They also faced mass shootings, deportations, medical experiments, racial research, forced sterilization, sexual harassments, violence, torture, and forced labour.

It is assumed that there had been 6 to 11 million victims of the Nazi genocide. Among them, there were around 6 million Jews, which was 60-75% of the Jewish population at the time, and 500.000 Roma, which was 80% of the Roma population at the time (Rose, 1995). In 1930, Magnus Hirschfeld used the term "racism" for the first time to define those ideas and actions in Europe.

As history seen as a progress with the Enlightenment influence, the Holocaust is tended to be accepted as a vicious deviation from the European higher civilization and values (Lemkin, 1947; Habermas, 1989). However, it was not. The Holocaust was the result of the modernity combining the nation-states with racist ideology, modern bureaucracy and technologies (Rattansi, 2007; Bauman, 2002; Smith R. , 1987; Briggs, 2002; Goldberg, 2009). Then, how can the relations between the nation-states and racism be explained?

The major factors and processes underlined by the modernist scholars for the emergence of nation-states can be summarized as the industrialization, language and culture (Gellner, 2006); uneven development (Hechter, 2000; Nairn, 1997); modern state structures and state power (Breuilly, 1993; Mann, 2005); intellectualism and diffusion of ideas (Kedourie, 1993); collective imagination and the role of print capitalism in it (Anderson, 2006), and invented traditions (Hobsbawm, 1992).[11] Therefore, the construction of the "nation-states" and "racism" and their instrumentalization in Europe occurred during the similar periods and was influenced by the similar processes. Moreover, both the nation and race are based on the criteria for belonging and non-belonging and those criteria are used for inclusion and exclusion. Both nation and race attributes essentialist characters to certain groups and claims superiority for its own.

For German Romanticists, for example, race and nation were equal and fixed with essentialist characters. For Balibar, though, racism is internally supplementary to racism and he claims that the official nationalisms of the 19th and 20th centuries used racism to create a political and cultural unity by hierarchically ranking "minority" ethnicities (Balibar, 1991, p. 52-53). He also claims that racism can be "super-nationalism" to bring nation to its full potential:

> "Above all, however, it means that racism constantly induces an excess of 'purism' as far as the nation is concerned: for the nation to be itself, it

[11] While the prennialist (Reynolds, 2005) (Hastings, 1997) (Gorski, 2006) and primordialist (Geertz, 1973) schools claim that the nations predate the modernity, modernist school argues that the formation of the nation-states is directly related with the developments brought by modernism. Ethno-symbolists, on the other hand, suggest middle way by focusing on myth-symbol complexes (Armstrong, 2004), ethnic origins (Smith A. D., 2009) or cultural nationalism (Hutchinson, 1987). Accepting nation-states as the product of modernity, this part focuses on the relation between the nation-states and racism.

> has to be racially or culturally pure. It therefore has to isolate within its bosom, before eliminating or expelling them, the 'false', 'exogenous', 'cross-bred', 'cosmopolitan' elements. This is an obsessional imperative which is directly responsible for the racialization of social groups whose collectivizing features will be set up as stigmata of exteriority and impurity, whether these relate to style of life, beliefs or ethnic origins. But this process of forming the race into a super-nationality leads to an endless upping of the stakes. In theory, it ought to be possible to recognize by some sure criterion of appearance or behaviour those who are 'true nationals' or 'essential nationals', such as the 'French French', or the 'English English' (of whom Ben Anderson speaks with regard to the hierarchy of caste and the categorization of civil servants in the British Empire), the authentically 'Teutonic' German (cf. the distinction made by Nazism between *Volkszugehörigkeit* and *Staatsangehörigkeit*), or the authentic Americanness of the WASP, not the mention of course the Whiteness of the Afrikaner citizen. In practice, however, it has to be constituted out of juridical conventions or ambiguous cultural particularisms, by imaginarily denying other collectivizing features, other systems of irreducible 'differences', which sets the quest for nationality off once again through race towards an inaccessible goal." (Balibar, 1991, p. 59-61).

Miles and Brown similarly argues that racism is an excess of nationalism and it is inevitable for "nations" to identify themselves with particular "races":

> "In other words, the 'nation' will inevitably identify itself with the 'race', because historical, cultural, political and other distinguishing factors of a 'nation' are ultimately subsumed under the idea of 'race'. This inevitably leads to a nationalistic purism, an ideology that 'we' must not be contaminated by 'them' (whether 'they' are German Jews in the 1930s, Bosnian Muslims in the 1990s, or asylum seekers in early twenty-first century Europe), but this is contradicted by the supernationalistic ethos of racism –hence Balibar's 'blind pursuit'. At the same time, the ideology of nationalism, under the influence of racism, develops into an ethnocentric conception of humanity and, where the national unity is powerful enough, a programme of cultural imperialism. Importantly, racism is implicitly defined as an excess of nationalism, therefore dependent on nationalism for existence-as-such, while it also exerts influence on the ideology of nationalism, as we have seen" (Miles & Brown, 2003, p. 10).

Arendt does not agree that racism is an exaggerated form of nationalism; she rather sees it as a destruction of nationalism. However, the form of nationalism she refers to is what is now defined as "civic nationalism"; the idea that all people are bounded by

citizenship and equality in a nation. [12] [13] Arendt also shares the idea that it was a product of modernity:

> "For the truth is that race-thinking entered the scene of active politics at the very moment when the European peoples had prepared, and to a certain extent had realized, the new body politic of the nation. From the very beginning, racism deliberately cut across all national boundaries, whether these were defined by geographical or linguistic or traditional or any other standards, and denied national-political existence as such. Race-thinking, rather than class-thinking, has been the ever-present shadow which accompanied the development of comity of European nations, until it finally grew to be powerful weapon for the destruction of those nations." (Arendt, 1944, p. 41-42).

Goldberg argues the modern state is inherently a racial state:

> "Race is integral to the emergence, development, and transformations (conceptually, philosophically, materially) of the modern nation-state. Race marks and orders the modern nation-state, and so state projects, more or less from its point of conceptual and institutional emergence. The apparatuses and technologies employed by modern states have served variously to fashion, modify, and reify the terms of racial expression, as well as racist exclusion and subjugation" (Goldberg, 2002, p. 234).

He identifies two types of racial regimes; naturalist and historicist. While naturalist regimes define marginalized populations as inherently inferior and use subjection such as slavery, segregation, forced labour; historicist regimes are using the promise of equal citizenship rather than physical subjection such as assimilation and direct rule (Goldberg, 2002). Therefore, the tools are subtler, but still have a racial motivation. This point is also underlined by Mann. He argues that not only nation-states and racism, but also ethnic cleansing, genocides, and fascism are modern because they are the dark sides of democracy (Mann, 2005; 2004). He continues:

> "Stably institutionalized democracies are less likely than either democratizing or authoritarian regimes to commit murderous cleansing. They have entrenched not only elections and rule by the majority, but also constitutional guarantees for minorities. But their past was not so virtuous. Most of them committed sufficient ethnic cleansing to produce an essentially mono-ethnic citizen body in the present. In their past, cleansing

12 Hannah Arendt is also claimed to be a racist. See (Johnson, 2009).

13 The distinction between "civic" and "ethnic" nations is highly disregarded by the current scholarship. See (Kreutzer, 2006; Brown, 1999; Brown, 2004; Yack, 1996).

> and democratization proceeded hand in hand. Liberal democracies were built on top of ethnic cleansing, though outside of the colonies this took the form of institutionalized coercion, not mass murder" (Mann, 2005, p. 4).

The concepts of "race" and "nation" are both constructed through the similar processes in Europe, and they are inevitably connected. While this connection was sometimes equating nation with race, some other times it was much subtler and only practiced through discriminatory laws. In any case, both nation and race have been used for determining the "belonging" by the state.

2.1.4 Institutionalization of the Human Rights

At the same time, the Enlightenment idea of "rights" also led their institutionalization in the international sphere. For example, the Hague Conventions of 1899 and 1907 were the results of series of international peace conferences organized in the Hague with the participation of more than 25 states. The Hague Conventions were among the first attempts to codify the rules of war and based on the Lieber Code of 1863 issued by the US President Abraham Lincoln during the American Civil War. Although some countries wanted to establish an international court, it was not accepted and instead a Permanent Court of Arbitration was established.

During the First World War, the US President Woodrow Wilson became vocal about the self-determination of the groups seeking for independence or statehood. These were formulated into the Wilson's Fourteen Points and consisted the basis of the Paris Peace Conference, which established the League of Nations and the International Labour Organization. The League was not successful in preventing war and providing peace, but its contributions were in the areas of minority rights, labour rights, and the abolition of slavery. Japan delegate, Baron Makino, proposed a racial equality clause for the Covenant as "equal and just treatment in every respect, making no distinction, either in law or in fact, on account of race or nationality" however, it was not accepted by the UK and the US (Burgers, 2012, p. 59).

In order to prevent any other war in the new borders of the new states, minority protection was guaranteed within Albania, Austria, Bulgaria, Czechoslovakia, Estonia,

Finland, Greece, Hungary, Latvia, Lithuania, Poland, Romania, Turkey and Yugoslavia with similar treaties. However, those provisions were not recognized by negotiation, but rather imposition by the Great Powers; and they were not implemented by all member states of the League of Nations (Lauren, 1983, p. 3). Burgers states:

> "The states upon which these clauses had been imposed protested time and again that they were discriminated against since no other states had to observe similar international obligations. The only result of their protest was that the Assembly of the League of Nations adopted on 21 September 1922 a resolution expressing the hope that states not bound by such clauses would nevertheless observe in the treatment of their own minorities at least as high a standard of justice and toleration as required by these clauses. In 1925 some states bound by minority clauses proposed in the Assembly of the League the elaboration of a general convention among all League members determining their obligations towards minorities. This proposal was rejected. The same happened to similar proposal in 1930 and 1932" (Burgers, 2012, p. 60).

Similarly, national self-determination principle was not implemented for many of the member states, and colonialism continued after the end of the Second World War despite constituting many human rights violations.

The war was also effective for feminist and social movements in demanding women rights and labour rights. The International Labour Office was established in 1919, and turned into an UN organization later for setting minimum standards for working conditions and related matters. One of the greatest achievements of the League was the Slavery Convention. The League set up a Commission against slavery, and adopted the Slavery Convention in 1926. The abolition of slavery was a result of a centuries old transnational movement and it was effective to advocate the universality of human rights. There was also an activism of European intellectuals for an international human rights system during the inter-war years (Burgers, 2012).

The international system created after the First World War could not be sufficient to prevent the Second World War. Moreover, systematic destruction of Jews, Roma, homosexuals, people with disability, and political opponents led world powers to design another system to prevent those tragedies to occur again. Thus, the post-Second World War era was significant for the attempts of institutionalization of human rights

through international and/or supranational organizations (Moravcsik, 2000; Donnelly, 1986).

The Second World War led the adoption of the Universal Declaration of Human Rights in 1941, and the establishment of the United Nations in 1945. The further important developments were the establishment of the UN War Crimes Commission (1943-1948), the Nuremberg war crimes trial (1945-1949), the Tokyo war crimes trial (1946-1948), the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Geneva Conventions (1949), and the Convention Relating to the Status of Refugees (1951). The Geneva Conventions were followed by two Additional Protocols in 1977. Also in Europe, the institutions such as the Council of Europe (1949), the European Coal and Steel Community (1951), the Conference on Security and Cooperation in Europe (1972) were established.

In 1944, Raphael Lemkin (1944, p. 79) introduced the term "genocide" as "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" and the term was mentioned during the Nuremberg trials. In 1948, it was legalized with the Convention on the Prevention and Punishment of the Crime of Genocide by the United Nations. It is defined as:

> "Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> a) Killing members of the group;
> b) Causing serious bodily or mental harm to members of the group;
> c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> d) Imposing measures intended to prevent births within the group;
> e) Forcibly transferring children of the group to another group." (United Nations, 1948).

Nurnberg trials formulized the "crimes against humanity" for the first time as including murder, extermination, enslavement, deportation and persecution on political, racial or religious grounds. In July 1950, UNESCO published statement discrediting the

scientific racism and focusing on the equality, which was followed by revised versions in 1951, 1967 and 1978.

The major criticism to this human rights system is about the universality and relativism. By nature, human rights are considered as universal irrelevant of culture. They are supposed to be valid for every human being for everywhere in the world. However, this universalist approach is highly criticized for reflecting solely the Western experience based on liberal democracy (Mutua, 2014). Relativism, on the other hand, argues that the root of the moral rights is the culture. It is claimed that universalism fails to consider the cultural elements that could be specific to other parts of the world (Meijer, 2001).

What is called as "Anti-Western" critique continues with the "hierarchies" and "asymmetries" between different kinds of rights and underlines the power relations in their formulation and implementation:

> "…They amply suggest the ambivalence of human rights: their Janus-faced capacity for producing and cloaking privilege and yet, simultaneously, their capacity for the unveiling of oppression. Critical accounts of human rights underline the sense in which human rights are always (to borrow the words of Douzinas) 'floating signifiers: their promise constantly draws the human imagination forwards, but is ever-deferred, always 'not yet'. Meanwhile their meaning, as critical account stress, remains contestable, semantically unsettled, radically porous, open to co-option, colonization and, importantly never, ever above the interplay of power relations" (Grear, 2012, p. 24-26).

On the other hand, Clapham adds the role of anti-colonialism, anti-imperialism, anti-slavery, anti-apartheid, anti-racism, and feminist and indigenous struggle in the formation and implementation of human rights systems and reminds that the recent dedication of European states to the human rights does not necessarily make the human rights European (Clapham, 2015, p. 19). Nevertheless, the new world order built after the end of the Second World War disregarded the theories on scientific racism and built a system based on human rights.

2.2 Defining Current Forms of Racism

Despite the existence of human rights system and discrediting scientific racism, racial discrimination such as segregation and marriage bans in the US, and the South

Africa; or racially motivated migration and citizenship policies in Europe continued for decades. Mostly because racism was embedded in the system, and it acquired additional forms.

Although scientifically it is proved that there are no races between human beings and it is mostly of a social construct, the terms "race" and "racism" are continued to be used as they have created their own social realities like other social constructs. While some scholars still claim race is not real (Mukhopadhyay & Moses, 1997; Goodman, 2012); some others show the reality of race by underlining its role and prominence in the formation of societies (Omi & Winant, 2015; Bois, 1999). However, none of the terms have fixed meanings. There have been many attempts to formulate current forms of racism to explain those meanings.

What is called as "old racism" refers to the belief that the distinct races exist with essential characteristics and there is a hierarchy between them as explained in the previous part (Rattansi, 2007, p. 95). The opponents of "cultural racism" approach, on the other hand, claim that this biological determinism left its place to the discourse on culture after the Second World War. Augoustinos & Reynolds define cultural racism as:

> "Cultural racism occurs when those in positions of power define the norms, values, and standards in a particular culture. These mainstream ideals that permeate all aspects of the social system are often fundamentally antagonistic with those embraced by the powerless (e.g., African-Americans). In circumstances such as the powerless, in order to participate in society, have to surrender their own cultural heritage and adopt new ones (e.g., those of the White majority)" (Augoustinos & Reynolds, 2001, p. 4).

Especially with the increasing immigration to Europe since the 1970s, "new racisms" focus on cultural differences and hierarchies rather than biological differences to discriminate (Barker, 1981; Pieterse, 2002). Moreover, these new racisms claim that separate development of cultural groups is necessary and natural, whereas co-existence of cultural groups is not.

However, discrimination is not as direct as before in the form inferiority and superiority, but rather it is subtle (Garner, 2010, p. 142; Fredrickson, 2002, p. 141; Somersan, 2004, p. 58; Cohen, 1999, p. 3-4; Healey, 2006, p. 125). Pettigrew and Meertens claim "blatant" and "subtle" (benign) forms of prejudice can easily be observed

in intergroup relations. While blatant prejudice is "hot, close and direct," subtle is "cool, distant and indirect" (Meertens & Pettigrew, 1997, p. 54; Pettigrew & Meertens, 2001).

The "symbolic racism" suggests that people agree on racial equality in principle and deny outward racism, but they resist equality policies and might support racist statements. It is possible that they do not see themselves as racist (Kinder & Sears, 1981). Tarman & Sears summarize such attitudes as such:

> "1. Racial discrimination is no longer a serious obstacle to blacks' prospects for a good life. 2. Blacks' continuing disadvantages are largely due to their unwillingness to work hard enough. 3. Blacks' continuing demands are unwarranted. 4. Blacks' increased advantages are also unwarranted" (Tarman & Sears, 2005).

Other than old and new forms of racism, another distinction is between "dominative" and "aversive" forms of racism. With dominative racism, racial groups are oppressed consciously, while with "aversive racism" people avoid or even fear of interaction with other racial and ethnic groups (Dovidio & Gaertner, 1986). They often claim they are not racist, it is explained as:

> "… sympathize with the victims of past injustice; support public policies that, in principle, promote racial equality and ameliorate the consequences of racism; identify with a more liberal political agenda; regard themselves as nonprejudiced and non-discriminatory; but, almost unavoidably, possess negative feelings and beliefs about blacks" (Gaertner, Dovidio, & Johnson, 1982).

The "ambivalent racism" challenges the unidimensionality of the modern racism approaches and claims that the positive and negative attitudes co-exist (Katz & Hass, 1988). The "reverse racism," on the other hand, claims that there is racism against whites, not non-whites (James, James, & Vila, 2016).

The benign forms of racism have also similarities with the phenomenon of "xenophobia", which is known as the fear from the strangers, while "strangers" are not defined concisely. However, it is also argued that the concept of xenophobia does not only include the fear but also "the explicit hostility against those who are considered as intruders, usurpers, or vectors of disease" (Sanchez-Mazas & Licata, 2015). Such a definition is closer to the understanding that xenophobia and racism are the same (Tafira 2015). However, there are also views that consider them different because of the specific

historical development of racism and the role of the state in its operationalization (Fernando 2012).

The role of the "state" in the operationalization of different forms of racism is significant. Another distinction suggested by Taguieff between "differentialist racism" and "discriminatory racism" underlines this significance:

> "[Discriminatory racism] framed within an imperial/colonial relationship that understands human diversity as being explicitly on a scale running from civilised to barbarous, and is much about biology as culture. 'Differentialist racism' then is what he observed in the French and wider European context from the 1980s onwards, that is, a political instrumentalisation of the key terms of the previously anti-racist language of respect for difference and cultural diversity. In the French republican context, talking explicitly about "race" in the political discourse is not acceptable. The far-right Front National (FN) (among others) developed a form of argument around difference ("le droit a la différence") in a cultural setting that implicitly places Christian, Catholic, white Europe on one side and everything else, especially Islam, on the other. This line of reasoning is linked by Taguieff with the far right's other areas of interest, such as anti-semitism and nationalism" (Garner, 2010, p. 130).

The role of the state is also analyzed in *The Empire Strikes Back* through the example of Britain during 1970s. It argues that the states use race as a tool in times of crises to secure hegemonic relations (Solomos, Findlay, Jones, & Gilroy, 1982, p. 9). Omi and Winant similarly focus on the processes and the role of the state in it. They proposed the theory of "racial formation," which is defined as "sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed" (Omi & Winant, 2015, p. 55). They studied the racial formation in the US that is still going on, and concluded that the state actions such as controlling the immigration are determinant to define the asymmetrical racial relationships.

In a groundbreaking study, Carmichael and Hamilton made a distinction between "institutional racism" and "individual racism" differentiating between individual and group behaviours (Carmichael & Hamilton, 1967). Carmichael explains:

> "Negroes are defined by two forces, their blackness and their powerlessness. There have been traditionally two communities in America. The White community, which controlled and defined the forms that all institutions within the society would take, and the Negro community which has been excluded from participation in the power decisions that

> shaped the society, and has traditionally been dependent upon, and subservient to the White community.
>
> This has not been accidental. The history of every institution of this society indicated that a major concern in the ordering and structuring of the society has been the maintaining of the Negro community in its condition of dependence and oppression. This has not been on the level of individual acts of discrimination between individual whites against individual Negroes, but as total acts by the White community against the Negro community. This fact cannot be too strongly emphasized – that racist assumptions of white superiority have been so deeply ingrained in the structure of the society that it infuses its entire functioning, and is so much a part of the national subconscious that it is taken for granted and is frequently not even recognized.
>
> Let me give an example of the difference between individual racism and institutionalized racism, and the society's response to both. When unidentified white terrorists bomb a Negro Church and kill five children, that is an act of individual racism, widely deplored by most segments of the society. But when it that same city, Birmingham, Alabama, not five but 500 Negro babies die each year because of a lack of proper food, shelter and medical facilities, and thousands more are destroyed and maimed physically, emotionally and intellectually because of conditions of poverty and deprivation in the ghetto, that is a function of institutionalized racism. But the society either pretends it doesn't know of this situation, or is incapable of doing anything meaningful about it. And this resistance to doing anything meaningful about conditions in that ghetto comes from the fact that the ghetto is itself a product of a combination of forces and special interests in the white community, and the groups that have access to the resources and power to change that situation benefit, politically and economically, from the existence of that ghetto" (Carmichael, 1966, p. 642-643).

Similarly, Feagin suggests that the centuries-old racism not only affects individuals' attitudes and biases, but also it is embedded into to all economic, political and social relationships (Feagin, 2006). This macro level discrimination inevitably causes micro level discrimination perpetrated by individuals, which is called as "everyday racism" by Essed:

> "… injustices recurring so often that they are almost taken for granted, nagging, annoying, debilitating, seemingly small, injustices one comes to expect. The concept of everyday racism relates day-to-day experiences of racial discrimination to the macrostructural context of group inequalities represented within and between nations as racial and ethnic hierarchies of competence, culture, and human progress" (Essed, 2002, p. 203).

Feagin and Feagin focus on the issue of "intent" in institutional racism and claim there are direct and indirect forms of institutional discrimination. While direct discrimination entails overt racist actions, in indirect forms the perpetrators not necessarily have the intent of discrimination (Feagin & Feagin, 2003). The idea of indirect discrimination or subconscious racism is criticized. Miles and Brown (2003) criticize that the intentionality is not considered as a necessary criterion for identifying racism and Bonilla-Silva argues that racial phenomenon is the normal outcome of the racial structure of the society regardless of actors and intent (Bonilla-Silva, 1997).

Healey focuses on the "interests" dimension of the theory, and argues that the institutional discrimination aims to sustain the unequal relations:

> "... both racist ideologies and institutional discrimination are created to sustain the position of dominant and minority groups in the stratification system. The relative advantage of the dominant group is maintained from day to day by widespread institutional discrimination. Members of the dominant group who are socialized into communities with strong racist ideologies and a great deal of institutional discrimination are likely to be personally prejudiced and to routinely practice acts of individual discrimination. The respective positions of dominant and minority groups are preserved over time through the mutually reinforcing patterns of prejudice, racism, and discrimination on which members of a minority group can be denied access to valued goods and services, opportunities, and rights. That is, institutional discrimination helps to sustain and reinforce the unequal positions of racial and ethnic groups in the stratification system" (Healey, 2006, p. 28).

The "Critical Race Theory" which has been very influential in the US, thoroughly analyzes the jurisprudence in the US to show how it contributes to the institutional racism by insisting race being a construct rather than a natural fact (Carbado & Harris, 2011; Lopez, 2003). Critical Race Theorist Crenshaw coined the term "intersectionality" which underlines the different factors in the system of oppression such as race, ethnicity, religion, national origin, class and sexuality (Crenshaw, 1989; Hutchinson D. L., 1997).

In Europe, the report on "the Stephen Lawrence Inquiry" in 1999 in the UK has a major role in the acknowledgement of the existence of institutional racism. With the report, the UK government officially acknowledged the existence of institutional racism

in the UK. The report was investigating the murder of Stephen Lawrence in London in 1993. At the time, no one was convicted of murder and his family was blaming the inefficient police investigation, as the victim had an African-Caribbean background. In 1997, the Home Office opened an investigation to inquire the circumstances. They could not find any evidence on overt racism, however the inquiry concluded that there was institutional racism, which is explained as:

> "We have been concerned with the more subtle and much discussed concept of racism referred to as institutional racism which (in the words of Dr. Robin Oakley) can influence police service delivery *'not solely through the deliberate actions of a small number of bigoted individuals, but through a more systematic tendency that could unconsciously influence police performance generally"*" (Macpherson 1999).

The report led to various research on the institutional racism in Europe (Anthias 1999; Solomos 1999; Bridges 2000; Lea 2000; Bourne 2001; Evens Foundation 2001; Hepple 2004; Bradbury 2013). Therefore, institutional racism might be a useful conceptual tool to explain the current situation in Europe with its historical and systemic outlook. The institutional racism embedded into the systems of European states might be one of the reasons that prevents their full commitment to racial equality at the national level and hinders the attempts at the regional and international level. It can be conceptualized through certain elements such as:

- a set of ideas that accept the existence of different racial and ethnic groups and attribute inferiority or superiority to them because of biological and/or cultural characteristics, and common descent,
- an asymmetrical power relationship,
- history of oppression and discrimination,
- the hierarchy that was caused by the history of oppression and discrimination,
- intersectionality between different forms of oppression,
- intent that causes direct or indirect discrimination,
- resistance to change the situation either through pretending not knowing the situation or claiming the incapability of changing it,
- interests that are at stake by a possible change.

Considering the fluidity of the concepts; the *racial group* is defined in this research through *the common descent, biological and/or cultural characteristics identified by the group itself or others*, whereas the *ethnic group* is defined through *the common descent and cultural characteristics identified by the group itself or others but not necessarily with biological characteristics.* Therefore, the basic difference between race and ethnicity is the biological characteristics, which might or might not be a determinant in ethnicity. The fluid nature of the concepts brought them closer more than ever as earlier race was considered to be more related to biological characteristics whereas ethnicity was considered to be more related to culture.

This fluidity creates confusion especially for the legal definitions and the implementation of legislations. For example, there is a confusion with the identification of some groups as race or ethnicity. Another confusion is derived from the role of religion and belief. In sociological terms, religion and belief are considered as part of culture and culture is currently seen as a determinant of both race and ethnicity. However, in many legal documents protection against discrimination on the basis of religion and belief is provided with separate articles or legislations from race and ethnicity. Thus, the same protection level is not provided by the legal systems.

2.3 Concluding Remarks

The idea of "race" was born and developed in Europe. In this chapter, it is aimed to discuss its development in parallel with the relevant transformations brought by the geographical expeditions, slavery, colonialism, the Enlightenment, scientism, and modernity. The early traces of discrimination and stereotypes can be found in the Medieval Europe, but the real turning point was the geographical expeditions and colonialism as "race" was used as a justification for the slavery in religious terms. The proto-racism of this era opened the way to the Enlightenment theories on racial classification. Influenced by the Enlightenment ideas of scientism and progress; intellectuals accepted the existence of separate races and attributed essentialist characteristics to them. There was not any agreement on which races exactly exist, but there was no doubt about the superiority of the European race. When this thinking combined with Darwinism; Social Darwinism and scientific racism were developed. The theories of scientific racism claimed to prove the hierarchy between races through

scientific means, and among them, eugenicists suggested to eliminate the unfit populations. These theories caused drastic results in colonies and Nazi Germany.

The drastic results led world powers to design international and regional systems to institutionalize "human rights," which were developing in parallel to racism, sometimes by the same thinkers. However, the "equality" approach under human rights has never been free of critics as it was emerged to protect the equality of only certain parts of the society. Since the end of the Second World War, the theories of scientific racism were discredited, however, overt racism continued its existence in some parts of the world such as the US and the South Africa; and benign racism through state policies such as immigration and citizenship control. Yet, the scholars observe that the new forms of racism include subtle forms and have cultural elements as well as biological elements. More importantly, scholars identified systematic forms of racisms, which is defined as "institutional racism".

Institutional racism is embedded into the systems of states and can be defined through a set of ideas that accept the existence of different racial and ethnic groups and attribute inferiority or superiority to them because of biological and/or cultural characteristics, and common descent; an asymmetrical power relationship; history of oppression and discrimination; hierarchy that was caused by the history of oppression and discrimination; intersectionality between different forms of oppression; intent that causes direct or indirect discrimination; resistance to change the situation either through pretending not knowing the situation or incapability of changing it; and interests that are at stake by a possible change.

As racism and nation-state are inevitably connected, and this historical and ideological connection has an effect on the current state policies; institutional racism might be a useful conceptual tool to explain the state policies in the EU member states today.

3. INTERNATIONAL AND REGIONAL SYSTEMS AGAINST RACIAL DISCRIMINATION IN EUROPE: THE UNITED NATIONS AND THE COUNCIL OF EUROPE

As the racist Nazi ideology was seen as one of the main reasons of the Second World War, protection against racist discrimination found itself in the international human rights system in the aftermath of the Second World War under the context of equality and non-discrimination. These interlinked principles became a part of the international human rights system after the Second World War. In this way, protection against racial discrimination is provided by the major international and regional human rights conventions and institutions.

In this chapter, two systems are discussed; the United Nations, and the Council of Europe. It is crucial to discuss these systems to understand the EU system in a better way. Firstly, all EU member states are part of the United Nations and the Council of Europe systems. Secondly, both of these systems have an influence over the EU system. The Council of Europe and the EU operate roughly in the same geographical area, but the Council of Europe focuses more on the issues of human rights and democracy. There is no formal hierarchy between these institutions, but the EU has more economic power and human resources (Burchill, 2010; Bond, 2010). In this chapter, the United Nations and the Council of Europe systems against racial discrimination are compared on the legal basis, institutions, procedures and initiatives. It is argued that, although international and regional systems provide limited enforcement and punishment, they are proven necessary to lay the ground, set the standards, act as a monitor, create a public opinion and provide a *de facto* legitimacy for the EU to use its competences. The international and regional system complements the EU and the national efforts in this aspect, albeit sometimes being redundant.

3.1 Legal Basis

The United Nations offers a global human rights protection system based on various legislation (Charter, treaties, declarations, agreements, documents), institutions

(agencies, monitoring bodies, working groups, committees, experts, special rapporteurs), and activities (awareness-raising, technical assistance, protection).[14] The type of protection provided by the United Nations on human rights is based on either Charter-based or Treaty-based mechanisms. Charter-based bodies are established under the UN Charter of 1945, and they provide a general framework to be followed. The UN Charter has a clause for protection against racial discrimination.

Article 55(c) of the UN Charter states:

> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: … (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." (United Nations, 1945)

Treaty-based mechanisms are established by eight-related human rights treaties, and they seek for compliance with the specific treaty they are created under. The Charter-based mechanisms are not always legally binding, but the Treaty-based mechanisms are. Those mechanisms based on the UN Charter include: the Universal Declaration of Human Rights; the Commission on Human Rights; and the Sub-Commission on the Promotion and Protection of Human Rights.

The Universal Declaration of Human Rights (UDHR) is one of the first international documents guaranteeing rights to each human being. The aim of the UDHR was to establish world peace by promoting human rights, like the UN itself. The UDHR is not legally binding, however it has created international human rights norms for further documents and procedures. The UDHR was drafted between January 1947 and December 1948 by a Commission on Human Rights headed by Eleanor Roosevelt. The Declaration was passed on December 10, 1948, unanimously by the UN General Assembly with eight abstentions coming from Belarus, Czechoslovakia, Poland, Saudi Arabia, South Africa, the Soviet Union, Ukraine, and Yugoslavia.

14 For a discussion of the accountability of international organizations for their own human rights violations see (Wouters, Brems, Smis, & Schmitt, 2010).

The UDHR consists of 30 articles. First two articles state the equality of human beings and the rights entitled to them just for being human beings.

Article 1 states:

> "[A]ll human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." (United Nations, 1948)

Article 2 continues:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (United Nations, 1948)

Article 2 of the UDHR provides protection against racial discrimination and the idea belonged to the Soviet delegation as it was aimed to prevent the repetition of the racism of Nazi ideology in any form (Morsink, 2014).

From Article 3 to Article 21, civil and political rights are issued such as the right to life, liberty, a fair trial, free speech, privacy, of personal security, and of movement, as well as freedom from slavery, torture, and arbitrary arrest. From Article 22 to Article 27, economic, social and cultural rights are issued. The economic rights such as the right to social security, economic work-related rights, fair payment and leisure; social rights such as the right to an adequate standard of health, well-being and education; and cultural rights, such as the right to participate in cultural life. From Article 28 to Article 30 a general framework is provided for the fulfillment of human rights.

The core human rights treaties and their optional protocols for providing protection for specific subjects in the UN system can be seen in Table 3.

Table 3 Core Human Rights Instruments of the UN

Treaty Name	Signing Date	Entry into Force	Number of State Parties	Number of EU Member States
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	21.12.1965	04.01.1969	177	28
International Covenant on Civil and	16.12.1966	23.03.1976	168	28

Political Rights (ICCPR)				
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16.12.1966	03.01.1976	164	28
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	18.12.1979	03.09.1981	189	28
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10.12.1984	26.06.1987	159	28
Convention on the Rights of the Child (CRC)	20.11.1989	02.09.1990	196	28
International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW)	18.12.1990	01.07.2003	48	0
International Convention for the Protection of All Persons from Enforced Disappearance (ICPED)	20.12.2006	23.12.2010	51	12
Convention on the Rights of Persons with Disabilities (CRPD)	13.12.2006	03.05.2008	163	25+EU
Optional Protocol to the Covenant on Economic, Social and Cultural Rights (ICESCR-OP)	10.12.2008	05.05.2013	21	8
Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1)	16.12.1966	23.03.1976	115	27
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2)	15.12.1989	11.07.1991	81	28
Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW)	10.12.1999	22.12.2000	107	25
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC)	25.05.2000	12.02.2002	163	28
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC)	25.05.2000	18.01.2002	173	27
Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP-CRC-IC)	19.12.2011	14.04.2014	27	12
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)	18.12.2002	22.06.2006	81	24
Optional Protocol to the Convention on the Rights or Persons with Disabilities (OP-CRPD)	12.12.2006	03.05.2008	88	21

Article (2)1 and 26 of the International Covenant on Civil and Political Rights (ICCPR) has two articles ensuring the equality principle and prohibiting racial discrimination[15] The same principles are underlined in the Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[16] The Article 2(1) of the Convention on the Rights of the Child (CRD) provides a similar protection for children and their legal guardians.[17] Moreover, the Convention against Discrimination in Education by the United Nations Educational, Scientific and Cultural Organization (UNESCO), which entered into force on 22 May 1962 also provides protection against discrimination in schools. 17 of the EU member states are parties to that Convention. Accordingly, the segregation in schools on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth" is prohibited while at the same time the right for choosing religious or linguistic schools for minorities is ensured (UNESCO, 1960).

However, the main protection against racism in the UN system comes from the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It was adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) on 21 December 1965 and entered into force on 4 January 1969. As of November 2016, the ICERD has been ratified by 177 states including all EU member states and remains as one of the most ratified international treaties. It consists of three parts and 25 articles. While the first part between Article 1 and 8 lays the ground for the

15 Article 2(1)"respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (United Nations, 1966a).

Article 26 "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (United Nations, 1966a).

16 "The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status" (United Nations, 1966b).

17 "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (United Nations, 1989).

elimination of racial discrimination; the second part between Article 9 and 16 establishes the Committee to monitor the implementation of the Convention and procedures; and the third part between 17 and 25 clarifies the implementation rules of the Convention.

The racial discrimination is defined in the ICERD with the Article 1(1):

> "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (United Nations, 1965).

The Council of Europe is another attempt of European states to prevent conflict after the Second World War and its member states developed a regional human rights system by various mechanisms. The treaties of the Council of Europe related with human rights and their protocols can be seen in Table 4.

Table 4 Human Rights Treaties of the Council of Europe

Title	Opening of the Treaty	Entry into Force	Number of the State Parties	Number of the EU Member States
Convention for the Protection of Human Rights and Fundamental Freedoms	04.11.1950	03.09.1953	47	28
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	20.03.1952	18.05.1954	45	28
European Social Charter	18.10.1961	26.02.1965	27	22
Protocol No 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms	06.05.1963	21.09.1970	47	28
Protocol No 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms	06.05.1963	21.09.1970	47	28
Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms	16.09.1963	02.05.1968	43	25
Protocol No 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms	20.01.1966	20.12.1971	47	28
European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes	25.01.1974	27.06.2003	8	5
European Convention on the Legal Status of Migrant Workers	24.11.1977	01.05.1983	11	6

Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms	22.11.1984	01.11.1988	44	24
Protocol No 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms	19.03.1985	01.01.1990	47	28
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	26.11.1987	01.02.1989	47	28
Additional Protocol to the European Social Charter	05.05.1988	04.09.1992	13	12
Protocol No 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms	06.11.1990	01.10.1994	24	19
Protocol amending the European Social Charter	21.10.1991		23	19
Convention on the Participation of Foreigners in Public Life at Local Level	05.02.1992	01.05.1997	9	6
Protocol No 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms	25.03.1992		25	20
European Charter for Regional or Minority Languages	05.11.1992	01.03.1998	25	18
Protocol No 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	04.11.1993	01.03.2002	47	28
Protocol No 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	04.11.1993	01.03.2002	47	28
Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms	11.05.1994	01.11.1998	47	28
Framework Convention for the Protection of National Minorities	01.02.1995	01.02.1998	39	23
European Convention on the Exercise of Children's Rights	25.01.1996	01.07.2000	20	15
European Social Charter (revised)	03.05.1996	01.07.1999	34	20
Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine	04.04.1997	01.12.1999	29	17
European Convention on Nationality	06.11.1997	01.03.2000	20	12
Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms	04.11.2000	01.04.2005	19	9
Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin	24.01.2002	01.05.2006	14	8

Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms	03.05.2002	01.07.2003	44	28
Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems	28.01.2003	01.03.2006	24	16
Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms	13.05.2004	01.06.2010	47	28
Additional Protocol to the Convention on Human Rights and Biomedicine	25.01.2005	01.09.2007	10	4
Convention on Action against Trafficking in Human Beings	16.05.2005	01.02.2008	46	28
Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	25.10.2007	01.07.2010	41	25
Convention on Preventing and Combating Violence against Women and Domestic Violence	11.05.2011	01.08.2014	22	14
Protocol No 15 to the Convention for the Protection of Human Rights and Fundamental Freedoms	24.06.2013		28	16
Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms	02.10.2013		6	3

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was signed in November 1950 and came into force in September 1953. The Convention consists of three sections and 59 articles underlying 13 fundamental rights including, rights to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to an effective remedy, and prohibition of discrimination.

In 1965, member states also adopted the European Social Charter consisting of economic and social rights. In the Preamble of the European Social Charter it is stated that:

> "The governments signatory hereto, being members of the Council of Europe, … Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;…Have agreed as follows:" (Council of Europe, 1961)

All of the EU member states are parties of the European Convention of Human Rights and the European Social Charter. The EU, as an institution, is supposed to accede to the ECHR with the Lisbon Treaty (2009). With accession to the ECHR, the European Court of Human Rights (ECtHR) judgments will be binding over the EU institutions. However, the process has not been completed yet.[18]

Article 14 of the European Convention of the Human Rights underlines the prohibition of racial discrimination as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (Council of Europe, 1950).

However, the prohibition of racial discrimination of the ECHR provides protection in relation to rights within the ambit of Convention. In order to overcome this shortcoming, Protocol No. 12 was adopted in November 2000 and entered into force in April 2005, after the tenth ratification. As of 2016, it has been ratified by 19 states out of nine are the EU member states and 12 of the EU member states have signed but not yet ratified.

Article 1 of Protocol 12 states:

> "(1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
> (2) Noone shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1" (Council of Europe, 2000).

[18] For a discussion on the accession of the EU to the ECHR see (Lock, 2010; Jacqué, 2011; Eckes, 2013; Craig, 2013; Kuijer, 2011; O'Meara, 2011).

Article 14 of the Convention and Article 1 of the Protocol 12 are designed to complement each other. While Article 14 deals with the discrimination within the ambit of the Convention rights, Article 1 of Protocol 12 extends the scope to the national law. The details and the rationale of the Protocol 12 are explained through the associated Explanatory Report (Council of Europe, 2000).

For the United Nations systems; the ICERD, and for the Council of Europe system; the ECHR are the fundamental legal documents providing protection against racial discrimination. When the ICERD and the ECHR are compared, it seems that the ICERD provides a more comprehensive legal protection against racism as it is specifically designed to target racial discrimination whereas the ECHR is a more general human rights convention. First of all, Article 14 of the ECHR is limited since claims of discrimination can only be made in conjunction with another right guaranteed in the ECHR. With the entry into force of the Protocol 12, it is aimed to overcome this deficiency. The Protocol 12 widens the scope of the protection, however it has not been ratified by many of the member states. Unless it is ratified by the other member states, the protection it brings cannot be realized. In that sense, the ICERD provides a wider protection as it clearly states civil and political rights as well as economic, social and cultural rights and prohibits racially motivated violence and incitement to racial hatred.

Secondly, the ICERD focuses on substantial equality in addition to formal equality. It promotes, what is known as "affirmative action" for disadvantaged groups to promote equality while the ECHR or Protocol does not have such a provision. The Explanatory Report to Protocol 12 explains the lack of such provisions in the ECHR as "Such a programmatic obligation would sit ill with the whole nature of the Convention and its control system which are based on the collective guarantee of individual rights which are formulated in terms sufficiently specific to be justiciable" (Council of Europe, 2000).

In 2009, the CERD (Committee for the Elimination of Racial Discrimination) published General Recommendation No 32 to further elaborate the special measures that can be taken by the state parties to provide substantial equality. Accordingly, "'Measures' include the full span of legislative, executive, administrative, budgetary and regulatory

instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments" (CERD, 2009b, p. 5).

On the other hand, the ECHR provides better protection for non-citizens and for protection against religious discrimination while the CERD tries to compensate the legal weakness of the ICERD on these issues by its actions. The ECHR protects all people without discriminating non-citizens and the ICERD has clauses for protecting non-citizens. However, Article 1(2) of the ICERD has limitations for the protection of non-citizens.[19] To compensate this weakness, the CERD always tries to include non-citizens to its periodic evaluations. With the General Recommendation No. 30 in 2004 on discrimination against non-citizens, the CERD makes series of recommendations to combat racism against non-citizens (CERD, 2004).

The limitations for the non-citizens obviously undermine the so-called universal nature of the human rights. This situation particularly creates problems for people with immigration background. The reluctance can also be seen by the fact that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) is only ratified by 48 state parties, and none of them are the EU member states. In addition to other rights, the ICMW also provides protection against racial discrimination for all migrant workers and their families.[20]

19 "The Convention is not applicable in cases of distinctions, exclusions, restrictions and preferences made by a State party between citizens and non-citizens and cannot be interpreted as affecting the laws regulating nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality" (United Nations, 1965).

20 Article 1(1) "The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, or other status" (Council of Europe, 1990).

Article 7 "State Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction to any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status" (Council of Europe, 1990).

Moreover, the ICMW provides protection against religious discrimination that the ICERD lacks. It is stated in Article 1(1), Article 7 and elaborated in Article 12 (Council of Europe, 1990). Although, the ICERD does not have any clause on religious discrimination, the CERD again forces to include religious discrimination with its wide-interpretation of the ICERD (IMADR, 2011, p. 7). The ECHR, on the other hand, provides protection against religious discrimination.

3.2 Institutional Structures

In the UN system, *the Human Rights Council* is the Charter-based body, dealing with the human rights issues, which replaced the Human Rights Commission in 2006. It is composed of 53 member states and assisted by the Sub-Commission on the Promotion and Protection of Human Rights, individual experts, representatives, and Special Rapporteurs. It meets for six weeks per year in Geneva, but it may also meet in "Special Sessions" to deal with human rights abuses.

The Council may monitor a situation itself or may request for an outside body to evaluate a situation. It also monitors the implementation of the human rights standards. The Council may employ permanent or special procedures. Two permanent procedures are known as *the 1503 Procedure* and *the 1235 Procedure*. The *1503 Procedure* is a universal procedure, which examines the complaints about human rights situations in a state. The applications can be made by individuals and remain confidential. The application must show gross human rights violations. The *1235 Procedure,* on the other hand, cannot be used by individuals. It is used by the Council to form an ad hoc working group to investigate gross human rights violations. The special procedures consist of fact-finding missions, thematic mechanisms or mandates, and advisory services, designed to gather information about an alleged human rights violation.

The Sub-Commission was established by the Commission on Human Rights in 1947 and was named as the *Sub-Commission on Prevention of Discrimination and Protection of Minorities.* The name was changed in 1999 as the *Sub-Commission on the Promotion and Protection of Human Rights*. It assists the activities of the Commission on Human Rights. The Sub-Commission includes 26 experts. They are elected by the Commission in accordance with the geographical population distribution rather than

nationality. The Sub-Commission gathers for three weeks per year in Geneva. The tasks of the Sub-Commission is to make recommendations to the Commission on Human Rights for the prevention of discrimination and the protection of racial, national, religious and linguistic minorities.

The position of the *High Commissioner for Human Rights* was established by the General Assembly of the United Nations in December 1993. The task of the High Commissioner is to carry out the Secretary-General's duties relating to human rights. The High Commissioner has the responsibilities of crisis management; prevention and early warning of abuses; assistance to states in periods of political transition; promotion of substantive rights to governments; and coordination and rationalization of human rights programs. S/he is accountable to the Economic and Social Council and the Secretary-General. The policies of the High Commissioner are implemented by the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR also appoints a *Special Rapporteur on contemporary forms of racism, racial discrimination and related intolerance* since 1994, a *Special Rapporteur on minority issues* since 2005.

In addition to the general institutions, each of the human rights treaties also has a monitoring body as can be seen in Table 5.

Table 5 Monitoring Bodies of the UN Human Rights Treaties

Treaty Name	Monitoring Body
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
International Covenant on Civil and Political Rights	Human Rights Committee (CCPR)
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of all forms of Discrimination against Women (CEDAW)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture (CAT)
Convention on the Rights of the Child	Committee on the Rights of the Child (CRC)
International Convention on the Protection of All Migrant Workers and Members of Their Families	Committee on the Protection of All Migrant Workers and Members of Their Families (CMW)
International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearances (CED)

Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities (CRPD)
Treaty Name	Monitoring Body
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
International Covenant on Civil and Political Rights	Human Rights Committee (CCPR)
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of all forms of Discrimination against Women (CEDAW)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture (CAT)
Convention on the Rights of the Child	Committee on the Rights of the Child (CRC)
International Convention on the Protection of All Migrant Workers and Members of Their Families	Committee on the Protection of All Migrant Workers and Members of Their Families (CMW)
International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearances (CED)
Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities (CRPD)

The ICERD is monitored by the Committee on the Elimination of Racial Discrimination (CERD). The CERD Committee consists of 18 experts elected for four-year terms. They usually meet twice a year in Geneva, for three weeks, for two three-hour meetings each day.

At the Council of Europe, the Convention established the European Commission of Human Rights and the European Court of Human Rights (ECtHR). The Commission was active between 1953 and 1998 to investigate and resolve conflicts. It was dissolved in 1998 by Protocol, and its powers were transferred to the ECtHR.

The European Court of Human Rights is an international court, which was established in 1959. States or individuals can apply to the ECtHR in case of a violation of the ECHR. The ECtHR has produced more than 10.000 judgments, which are binding on the state parties and the enforcement is made through monetary compensations. The ECtHR consists of 49 judges from each member states; however, they do not represent their states. They are expected to act independently.

The position of the *Commissioner for Human Rights* was established in 1999 to raise awareness of the human rights in the member states. The Commissioner is elected by the Parliamentary Assembly for a six-years term; and conducts country visits; prepares thematic reports with suggestions; and organize activities to raise awareness. *The Steering Committee for Human Rights* consists of the representatives of the member states and regularly evaluates case law of the European Court of Human Rights, and defines actions to promote human rights.

The *Parliamentary Assembly of the Council of Europe* (PACE) consists of 324 parliamentarians from the member states. It is mainly a monitoring body for human rights violations, and it has powers to demand answers from Head of States or Governments or sanctions in case of a violation of a member state. It is also a platform for debate and exchange of ideas. The *PACE Committee of Equality and Non-Discrimination* consists of 81 PACE members and aims to combat discrimination and promote equality across Europe. It has three sub-committees on Gender Equality, Rights of Minorities, and Disability and Inclusion. The Committee prepares reports, make declarations and take decisions. It also has a *General Rapporteur* on combating racism and intolerance.

The *Ad hoc Committee of Experts on Roma and Traveller Issues* (CAHROM) was established after an intergovernmental meeting in 2011. It is directly answerable to the Committee of Ministers and responsible for evaluating the implementation of national policies; assisting member states in developing new policies and sharing good practices for Roma inclusion. The Committee consists of members from relevant international and regional organizations and observers from civil society institutions. There is also a *Special Representative of the Secretary-General of the Council of Europe for Roma Issues* (SRSG) with supporting stuff to assist Roma-related work of the Council of Europe.

The European Commission against Racism and Intolerance (ECRI) is composed of the independent experts in order to monitor member states; prepare recommendations; publish statements and raise awareness. ECRI was set up at the Vienna Summit of Heads of State and Government of the Council of Europe in October 1993 and strengthened by the further declarations in Strasbourg Summit of Head of States and Governments in

October 1997, Ministers of Council of Europe member states in October 2000, and the resolution by the Committee of Ministers in June 2002. It is not a coincidence that the establishment and strengthening of ECRI occurs in the same period that the EU develops its own non-discrimination legislation against racial discrimination. It shows the efforts of the European states to provide protection against racial discrimination with different tools in the European human rights system.

Article 1 of its Statue states its objectives as:

> "ECRI shall be a body of the Council of Europe entrusted with the task of combatting racism, racial discrimination, xenophobia, anti-Semitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention of Human Rights, its additional protocols and related case-law. It shall pursue the following objectives:
> -to review member states' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance, and their effectiveness;
> -to propose further action at local, national and European level;
> -to formulate general policy recommendations to member states;
> -to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate" (Council of Europe, 2002, p. 2).

The members are appointed for five years by each of the member states, but they are expected to act independently. ECRI ensures this with its inner procedures. As ECRI is not treaty-based but a result of an intergovernmental decision, it has more room for the interpretation of different forms of racism.

As for the institutional structure, the CERD and ECRI are the main specialized monitoring bodies on the issue of racial discrimination. They have similar structures and using similar procedures, however, the Council of Europe has better enforcement mechanism with the existence of the ECtHR. The ECtHR is using monetary punishments in case of non-compliance with the Convention. The CERD has no mechanism of enforcement for non-compliance with the ICERD. Other than that, both ECRI and the CERD are monitoring bodies consisting of voluntary international independent experts elected for limited terms. Both bodies regularly gather to evaluate country reports and/or specific actions for countries or areas. Both ECRI and the CERD suffer from being

understaffed and having limited working times. Despite all of their weaknesses, they are still the main watchdogs against institutional racism.

3.3 Procedures

The procedures of the United Nations against ethnic and racial discrimination are reporting, individual complaint mechanism, thematic discussions, general recommendations, early warning and urgent action whereas the procedures of the Council of Europe are reporting, individual complaint mechanism, general recommendations, and statements that are compared in this part.

3.3.1 Reporting

The first function of the CERD is to review the reports from the states and prepare annual reports to General Assembly under the Article 9. The CERD asks for a report from the state parties, underlining the activities related to the ICERD one year after their accession to the ICERD and then it is repeated for every two years. After the submission of the state report, one of the Committee members is chosen as the "Country Rapporteur." The Country Rapporteur highlights the topics to be discussed during the examination by the whole Committee. The examination is held between the state party and Committee. After the examination, the CERD prepares its report with concerns and recommendations called as "Concluding Observations."

For the CERD, the reporting is voluntary, and the states are responsible for analyzing their own affairs. Thus, it is not always a very accurate evaluation. The reports are presented in every other year by the state parties. However, it is very common for states to miss the deadlines. Between 1970 and 2016, state parties submitted their country reports on time only 10 times out of 156 possible.[21] The CERD has never been designed as a harsh monitoring body. So, it lacks the necessary enforcement mechanisms to provide compliance with the ICERD. However, both the format of the reports and procedures have evolved after the end of the Cold War. The CERD started to add "recommendations" to the Concluding Observations and followed them up in the next session. Yet, the enforcement remains voluntary, and the CERD has no power to make

21 See Appendix 4.

states to implement its recommendations. Consequently, similar concerns are raised by the CERD members throughout the years and similar suggestions are made.[22]

Moreover, the CERD has limited resources to evaluate the contents of all reports since it is under-funded and understaffed (Felice, 2002). As a result, states tend to "overstate their achievements and underemphasize the problem of racial discrimination" (Felice, 2002, p. 288). In order to overcome this problem, the CERD members, are assisted by the civil society organizations. The relevant civil society organizations for each of the reporting term provide shadow reports to the CERD members and the CERD members use this information during the sessions through the questions they ask the representatives of the states.

Table 6 shows the reports for Austria since its accession to the EU in 1995 as an example. Although Austria had to present reports every other year, it presented only four reports between 1995 and 2014. The concerns over the insufficient anti-racism legislation; the situation of the minorities, asylum-seekers, and non-citizens and ill-treatment against them; racially motivated attacks; hate speech are repeated in various reports. It shows the limited progress Austria made throughout the years. However, the problem is not limited with Austria. Both missing the deadlines and limited progress are common practices for all state parties as can be seen in Appendix 3 and 4.

Table 6 Example of the CERD Reports for Austria

1999	2002	2008	2013
*Insufficient legislation *Situation of minorities *Existence of extremist organizations *Racially motivated attacks *Police brutality against minorities (including Roma) *Discrimination in private sector	*Insufficient legislation *Situation of minorities *Increasing racial attitudes *Behaviours of the law enforcement officers *Situation of asylum-seekers	*Situation of minorities *Insufficient anti-racism legislation *Hate speech of politicians targeting migrants, asylum-seekers, refugees, minorities *Ill-treatment of asylum-seekers, non-citizens and Roma *Racist and discriminatory acts in everyday life	*Lack of ethnic data *Insufficient legislation *Racist incidents *Racism by politicians and media *Situation of the non-citizens *Education problem of Roma and children with immigration background

22 See Appendix 3.

ECRI has a mandate for country monitoring. It does that with reports in which it examines the manifestations of racism and intolerance in the member states. ECRI reports are periodical and conducted by the assigned rapporteurs on a country-by-country basis. ECRI organizes visits to countries before publishing the reports, and they conduct dialogues with national authorities. Hollo (2012) claims that this more personalized approach of ECRI contributes to establish a constructive dialogue with the member state representatives. ECRI reports are discussed in general meetings, and country representatives are allowed to talk about the issues, which are discussed. The fifth reporting cycle started in 2013, and it will last five years. ECRI completes nine/ten reports each year and covers all Council of Europe member states in a reporting cycle. Similarly, ECRI rapporteurs also benefit from the consultations with the civil society like the CERD. Thus, the role of the NGOs is crucial to support the monitoring bodies especially when their institutional weaknesses are considered.

Table 7 Example of ECRI Reports for Austria

First Cycle (1997-1999)	Second Cycle (1999-2002)	Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)
*Ratification of international legal instruments *Status of non-citizens *Insufficient legislation *Effective implementation of the anti-racism legislation *Insufficient institutional structure *Ill-treatment to non-citizens by law enforcement *Over-representation of the children of immigrants in lower level schools *Anti-semitism *Discourse of FPÖ and media *Discrimination in employment *Lack of ethnic data *Racist incidents *Discrimination against Roma in housing and employment and racist	*Ratification of international legal instruments *Status of non-citizens *Insufficient legislation *Effective implementation of the anti-racism legislation *Insufficient institutional structure *Ill-treatment to non-citizens by law enforcement *Over-representation of the children of immigrants in special schools *Anti-semitism *Racism of politicians	*Ratification of international legal instruments *Situation of non-citizens *Insufficient legislation *Effective implementation of the anti-racism legislation *Insufficient institutional structure *Ill-treatment to non-citizens by law enforcement *Over-representation of the children of non-citizens in special schools	*Ratification of international legal instruments *Situation of non-citizens *Insufficient legislation *Effective implementation of the anti-racism legislation *Insufficient institutional structure *Ill-treatment to non-citizens by law enforcement *Over-representation of the children of non-citizens in special schools *Anti-semitism *Racism of	*Ratification of international legal instruments *Situation of non-citizens *Insufficient legislation *Effective implementation of the anti-racism legislation *Insufficient institutional structure *Ill-treatment to non-citizens by law enforcement *Over-representation of the children of non-citizens in special schools *Anti-semitism *Racism and hate speech of politicians and media and in sports

attacks *Negative attitudes around asylum-seekers	(particularly FPÖ) and media *Discrimination against non-citizens and 'visible minorities' in employment, housing, public spaces *Lack of ethnic data *Racist incidents *Discrimination against Roma in housing, employment and public spaces and racist attacks *Negative attitudes around asylum-seekers	*Anti-semitism *Racism of politicians (particularly FPÖ) and media *Discrimination and racism against Black Africans, Muslims, Roma in employment, housing, public spaces *Lack of ethnic data *Racist incidents *Discrimination against Roma in housing, employment and public spaces and racist attacks *Negative attitudes around asylum-seekers	politicians and media and in sports and internet *Discrimination and racism against Blacks, Muslims, Jews, Roma in employment, housing, public spaces *Lack of ethnic data *Racist incidents *Discrimination against Roma in housing, employment and public spaces and racist attacks *Negative attitudes around asylum-seekers	and internet *Discrimination and racism against Muslims, Roma and people from immigration background in employment, housing, public spaces *Lack of ethnic data *Racist incidents *Discrimination against Roma in housing, employment and public spaces and racist attacks *Negative attitudes around asylum-seekers

Table 7 shows an example of the ECRI reports for Austria. As it can be seen, ECRI reports share all of the concerns of the CERD reports and add new ones. Thus, the reports of the CERD and ECRI can be redundant as they are covering the same subject for the same countries. However, they are crucial for monitoring the state parties, raising awareness to the particular problems, setting the standards and creating a public opinion. A member of the CERD states the basic duties of the CERD as:

> "The UN, of course, has its limitations because it is working at the global level. Their duty is, sort of, get the word across: what is discrimination?, how do we deal with it? So, more basic level. Because in a lot of countries in the world, the concept of discrimination is unknown. The concept of hate crime is unknown or not understood. It was not known in the Continental Europe. Known in the UK and Ireland but not in the

> Continent. We have mechanisms, created this follow-up procedure. We get the national human rights institutions involved" (Interview 1, 2015).

Although none of the bodies have necessary enforcement mechanisms to make states follow the reports, the reports are being used as a reference point by bodies as the ECtHR and the EU, which have enforcement powers. The case law of the ECtHR proves that it uses the reports of the CERD, ECRI as well as OECD, Fundamentals Rights Agency and Amnesty International.[23] Informal meetings with the EU officials confirm their awareness of the UN and the Council of Europe mechanisms, and close cooperation, especially with ECRI. Statements from a current and a former Commission officers are as such:

> "The Council of Europe, we closely collaborate with them as well. They are always present in our conferences; we are always going to their conferences. We are taken into account all of their reports because they have country reports on racism and xenophobia. So, we have read all of them. There is also a working party organized by FRA on hate crime where ECRI, and the Commission are members. So, we are also collaborating with international organizations on that" (Interview 6, 2015).

> "We had regular meetings with Council of Europe and took a lot input from them during CEECs enlargement about minority rights" (Interview 4, 2015).

3.3.2 Individual Complaint Mechanisms

Article 14 of the ICERD makes it possible for the CERD to investigate individual complaints when states opt in for this optional clause. As of November 2016, 55 states accepted the individual complaint mechanism including 23 of the EU member states. The EU member states, which have not accepted the individual complaint mechanism are Croatia, Greece, Latvia, Lithuania, and the UK. The CERD hears the complainant and state parties. If it decides that a violation has occurred, it can recommend compensations. However, it does not have any enforcement mechanism to push for its recommendations.[24]

23 See Appendix 8.

24 See Appendix 6.

State parties of the ECHR, on the other hand, are responsible against the European Court of Human Rights. The ECtHR can handle individual or inter-state cases. For the admissibility of an individual case, the applicant must claim that s/he is a victim of a violation of a right in the Convention; all domestic remedies are exhausted (so it is the duty of national courts first), and the application must be made within six months after the last decision.

Although the ECtHR judgments are mainly for individual justice, they can also serve for the social justice as proven by practice. In a situation of a violation, the state party is not only obliged to pay the monetary compensation to the victim but also they have to adopt the necessary general and/or individual measures (Myjer, 2012). One of the most prominent examples of this situation is the *D. H. and Others v. the Czech Republic Case 57325/00-2006* (D.H. Case).

D.H. Case was targeting the segregation of Roma children in the schools in the Czech Republic. The applicant claimed that the Czech Republic intentionally put Roma children into the special schools designed for the children with learning difficulties. The allocation was determined by tests, which measures the intellectual capacity of children. The children were put into those special schools only after the consent of their parents. However, the applicant claimed that the tests were not reliable and the parents were not well informed. The applicant used statistical evidence to prove their case, according to which more than half of the students in the special schools were of Roma origin. The Grand Chamber of the ECtHR took the issue as a systematic problem affecting Roma children in general, not as an issue limited with the applicant. The ECtHR judgment found a violation of Article 14 when in conjunction with Article 2 of Protocol 1, and ruled that albeit not intended by the authorities, the tests might be culturally biased, and the whole practice led to indirect discrimination as proved by the statistics.

D.H. Case remains as one the most groundbreaking judgments by an international organization for the Roma rights movement. It forced many European governments to take action against the segregation of Roma children in schools. The collective approach and using statistical data to prove indirect discrimination are considered as the novelties of the ECtHR and as a way of serving for the social justice

(White & Ovey, 2010, p. 565; Mowbray, 2007, p. 815). The ECtHR also used the critical reports by ECRI and Commissioner of Human Rights (White & Ovey, 2010, p. 565). Similarly, the EU used the judgment for its own policies in this area.

When the individual complaint mechanisms are compared for the CERD and the ECtHR, as can be seen from the Table 8 below, the number of applications is higher for the CERD and the average time to process is much lower. However, the CERD has no power of enforcement of its decisions, unlike the ECtHR. Although the ECtHR has limited follow-up mechanisms to monitor the implementation of its judgments, the monetary compensations are mainly implemented by the EU member states despite possible delays in the implementation.

Table 8 Comparison of Individual Applications to the CERD and ECtHR

	CERD	**ECtHR**
Number of Applications	30	17
Number of Inadmissible Cases	9	0
Number of Violation Decisions	21	15
Number of Non-violation Decisions	0	2
Average Time to Process (Years)	1.5	4

The existing case law suggests that both institutions are used limitedly for the protection against racism especially considering, 19 of the 30 cases of the CERD are assisted by the same civil society organization in Denmark. For the ECtHR, for example, although both Article 14 and Protocol 12 provide protection both for direct and indirect discrimination, there is yet no case law under the Protocol 12. The reason for the ECtHR might be derived from its long processing period and complicated structure, and for the CERD it might be its limited enforcement powers.

Individual complaint mechanisms of the CERD and the Council of Europe are among the main tools for individuals who experience racial discrimination and cannot find justice by the domestic mechanisms. Despite their limited usage, the existence of both mechanisms is crucial to hold states responsible for their violations. Especially the judgments of the ECtHR carry utmost importance for the European human rights system as it is well respected and followed for setting the ground.

3.3.3 Thematic Discussions and General Recommendations

The CERD carries thematic discussions during the regular informal meetings it holds with states parties, international institutions, and civil society institutions. Then the subject is carried to a public plenary meeting. The subjects of the thematic discussions are in parallel with the general statements of the CERD, and it benefits from these public deliberations to prepare its general statements.

Table 9 Thematic Discussions of the CERD

Subject	Date
Discrimination against Roma	2000
Discrimination based on descent	2002
Non-citizens and racial discrimination	2004
Follow up procedure to the Declaration on Prevention of Genocide Indicators of Systematic and massive patterns of racial discrimination	2005
Declaration on the prevention of genocide	2005
Special measures/affirmative action	2008
Racial discrimination against people of African descent	2011
Racist hate speech	2012

Although ECRI does not have such a mechanism of thematic discussion, both the CERD and ECRI publish General Recommendations on the issues that are particularly important for combatting racism. The CERD has published 36 General Recommendations since 1972 on various subjects that can be seen from in Table 10.

Table 10 General Recommendations of the CERD

No	Subject	Date
1	States Parties' Obligations	24.02.1972
2	States Parties Obligations	25.02.1972
3	Reporting by States Parties	25.08.1972
4	Reporting by States Parties	24.08.1973
5	Reporting by States Parties	14.04.1977
6	Overdue Reports	19.03.1982
7	Implementation of Article 4	23.08.1985
8	Interpretation and Application of Article 1, Paragraphs 1 and 4	23.08.1990
9	Application of Article 8, Paragraph 1	24.08.1990
10	Technical Assistance	22.03.1991
11	Non-citizens	13.03.1993
12	Successor States	14.03.1993
13	Training of Law Enforcement Officials in the Protection of Human Rights	15.03.1993
14	Article 1, Paragraph 1	16.03.1993
15	Article 4	17.03.1993
16	Application of Article 9	18.03.1993
17	Establishment of National Institutions	19.03.1993
18	Establishment of an International Tribunal to Prosecute Crimes against Humanity	18.03.1994

19	Article 3	18.08.1995
20	Article 5	14.03.1996
21	Right to Self-Determination	15.03.1996
22	Article 5 on Refugees and Displaced Persons	23.08.1996
23	Rights of Indigenous Peoples	22.08.1997
24	Article 1	27.08.1999
25	Gender Related Dimensions of Racial Discrimination	20.03.2000
26	Article 6	24.03.2000
27	Discrimination against Roma	16.08.2000
28	Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	19.03.2002
29	Article 1, Paragraph 1	23.08.2002
30	Discrimination against Non-citizens	19.08.2004
31	Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System	20.08.2004
32	The Meaning and Scope of Special Measures in the ICERD	24.09.2009
33	Follow-up to Durban Review Conference	24.09.2009
34	Racial Discrimination against People of African Descent	03.10.2011
35	Combatting Racist Hate Speech	26.09.2013
36	Corr. 1	13.02.2014

ECRI similarly has published 16 General Recommendations since 1996 as can be seen in Table 11.

Table 11 General Recommendations of ECRI

No	Subject	Date
1	Combating Racism, Xenophobia, Antisemitism and Intolerance	04.10.1996
2	Specialised Bodies to Combat Racism, Xenophobia, Antisemitism and Intolerance at National Level	13.06.1997
3	Combating Racism and Intolerance against Roma/Gypsies	06.03.1998
4	National Surveys on the Experience and Perception of Discrimination and Racism from the Point of View of Potential Victims	06.03.1998
5	Combating Intolerance and Discrimination against Muslims	16.03.2000
6	Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet	15.12.2000
7	National Legislation to Combat Racism and Racial Discrimination	13.12.2002
8	Combating Racism while Fighting Terrorism	17.03.2004
9	The Fight against Antisemitism	25.06.2004
10	Combating Racism and Racial Discrimination in and through School Education	15.12.2006
11	Combating Racism and Racial Discrimination in Policing	29.06.2007
12	Combating Racism and Racial Discrimination in the Field of Sport	19.12.2008
13	Combating anti-Gypsyism and Discrimination against Roma	24.06.2011
14	Combating Racism and Racial Discrimination in Employment	22.06.2012
15	Combating Hate Speech	08.12.2015
16	Safeguarding Irregularly Present Migrants from Discrimination	16.03.2016

There are some overlapping recommendations about Roma, law enforcement, national anti-discrimination bodies, hate speech, and migrants. The procedure of General

Recommendations lacks the necessary enforcement mechanisms. Their implementation is dependent on the willingness of the member states. However, the subjects of the general recommendations contribute to the agenda-setting, providing guidelines, and act as a reference point for the EU.

3.3.4 Early Warning and Urgent Action

The CERD has a procedure for the situations that necessitate early warning or urgent action. With the working paper it adopted in 1993, the CERD developed these procedures to react more timely and effectively to the violations of the ICERD. According to Article 8, early warning measures aim to prevent occurrence or escalation of conflicts, while urgent actions are taken in the presence of serious violations.[25] [26] As for early warning measures, the CERD can issue statements and letters, collect information, issues specific recommendations in its concluding observations, establish a follow-up mechanism for its suggestions in concluding observations, offer to send its members for assistance, and offer technical assistance. As for the urgent procedures, the CERD can make specific recommendations, designate special rapporteur, and address relevant parties with its statements.

The CERD sent letters to the EU member states only eight times as can be seen in Table 12 (CERD, 2016).

25 "(a) Early warning measures to address existing structural problems from escalating into conflicts. These could also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict situations where it has occurred. (b) Urgent procedures to respond the problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention" (CERD, 1993, p. 2).

26 Article 9(a) clarifies the criteria for urgent action which is "… the presence of a serious, massive or persistent pattern of racial discrimination or (…) the situation is serious and there is a risk of further racial discrimination" (CERD, 1993, p. 2).

Table 12 Letters to the EU Member States by the CERD

Country	Subject	Date
The Czech Republic	Forced eviction of Roma	15.08.2008
Italy	Racist and xenophobic discourse against Roma and immigrants	15.08.2008
France	Uranium extraction in the lands of Touareg people of Niger	28.09.2009
The United Kingdom	Eviction of Romani and Irish Travellers	12.03.2010
Slovakia	Forced Eviction of Roma	27.08.2010
Slovakia	Forced Eviction of Roma	11.03.2011
Slovakia	Forced Eviction of Roma	02.09.2011
Slovakia	Discrimination against Roma	31.08.2012

A similar procedure for ECRI can be named as the statements (ECRI, 2016b). When it sees the urgency, ECRI publishes statements about specific themes.

Table 13 Statements of ECRI

Subject	Date
Fighting terrorism and the protection of human rights	14.12.2001
The use of racist, anti-Semitic and xenophobic elements in political discourse	17.03.2005
The Occasion of Euro 2008 'Unite against Racism'	13.05.2008
Recent events affecting Roma and immigrants in Italy	20.06.2008
The situation of Roma migrants in France	24.08.2010
Racist and xenophobic political activities in Greece	10.12.2012
Current humanitarian crisis in the Mediterranean	19.06.2015

There has been one instance for the CERD and ECRI to issue a warning for the same topic, which is the Roma evictions in Italy in 2008. Similar to General Recommendations, Early Warning/Urgent Action procedures do not have necessary enforcement mechanisms. Their implementation is dependent on the willingness of the member states. However, they contribute to set up the standards, raise awareness and create public opinion, and send signals to the member states. Moreover, they are used as reference point for the ECtHR and the EU for their actions.

3.4 Awareness-Raising Initiatives

Most of the initiatives of the United Nations and the Council of Europe against racial discrimination are on awareness-raising. The United Nations assigns topics to days, weeks, and decades and observes them to create and promote awareness. The observances are designated by the United Nations General Assembly or the UN

specialized agencies. Out of 31 international decades since 1960, three of them were devoted to combat against racism. The United Nations General Assembly declared 1973-1983 as the Decade to Combat Racism and Racial Discrimination; 1983-1993 as the Second Decade to Combat Racism and Racial Discrimination; and 1993-2003 as the Third Decade to Combat Racism and Racial Discrimination.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities prepared the action plan for the First Decade. Among the goals of the First Decade, there were promoting human rights and fundamental freedom for everyone; eliminating racist policies and beliefs that are leading to racism. In order to realize these aims, national, regional, international and UN actions were developed. The suggested actions were giving education and training; organizing seminars, workshops and conferences; ratification and implementation of the ICERD; and conducting research and studies. It was also decided to organize a world conference. Thus the First World Conference to Combat Racism and Racial Discrimination was organized in Geneva in 1978, and the Second one has organized again in Geneva in 1983.

The UN General Assembly evaluated the report of the Second World Conference on 22 November 1983 and declared that the First Decade could not reach its aims, and millions of people continued to be the victims of racial discrimination. Therefore the General Assembly declared 1983-1993 as the Second Decade. The action plan for the Second Decade included suggestions to eliminate apartheid in the South Africa as well as emphasizing on the actions on the role of media and rights of minorities, immigrants and indigenous people. The release of Nelson Mandela in 1990 and the elimination of the apartheid system occurred in this period.

Similarly, the General Assembly claimed that the aims of the First and Second Decades could not be reached on 16 February 1994, and decided to declare 1993-2003 as the Third Decade. In addition to the similar actions with First and Second Decades, the General Assembly also suggested measures to compensate the damages of the apartheid system in the South Africa. During the Third Decade, Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban between 31 August and 7 September 2001 (United Nations, 2016).

The United Nations observed 75 “International Years” since 1959. Six of them have been related to combat against racism; International Year for Action to Combat Racism and Racial Prejudice 1971, International Anti-Apartheid Year 1978/79, International Year of Mobilization for Sanctions Against South Africa 1982, International Year of Tolerance 1995, and International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001. Also, the week of 21-27 March is designated as the Week of Solidarity with the Peoples Struggling against Racism and Racial Discrimination, and 21 March is designated as the International Day for the Elimination of Racial Discrimination.

The Council of Europe carries awareness-raising activities through the campaigns it organizes. The past campaigns related to the combat against racial discrimination were “European Youth Campaign All Different All Equal” between 1995 and 2009; and “Speak-out against Discrimination” between 2008 and 2010. The ongoing Council of Europe campaigns about the issue are “Dosta! Fight Prejudice towards Roma” since 2006; and “No Hate Speech Movement” between March 2013 and December 2017.

The PACE Committee on Equality and Non-Discrimination proposed to set up a No Hate Parliamentary Alliance among the members of PACE, and other delegations with observer or partner for democracy status. The Alliance was launched in January 2015 and organized several events since. It is coordinated by the General Rapporteur on combating racism and intolerance and supported by the Bureau of the Committee.

The Council of Europe is one the most active institutions on the discrimination against Roma. With the Stockholm Declaration of 2010, it declared principles and priorities to tackle discrimination against Roma (Council of Europe, 2016). The Council of Europe organizes awareness raising initiatives, trainings, research on Roma and specifically develops policies targeting Roma women, children, youth or Roma history or culture. It also implements two major projects on Roma; the ROMACT and the European Training Programme for Roma Mediators (ROMED). The Council of Europe works in partnership with the EU for the ROMACT project and aims to build capacity and produce long-term solutions for local authorities for Roma empowerment. For the ROMED, it

aims to train mediators to facilitate dialogue between Roma communities and public institutions.

Both of the institutions have been organizing many conferences, seminars, trainings, workshops, campaigns, and research as a part of their initiatives. However, the impacts of those initiatives are rather questionable. It is fair to assume that they have contributed to the awareness-raising on the combat against racism, yet very difficult to assess the level of contribution.

3.5 Concluding Remarks

After the Second World War, "equality" and "non-discrimination" principles became parts of the institutions and legal structures that were built to provide peace. The United Nations and the Council of Europe have been two of those institutions that the EU member states are also members. Both of these institutions included protection against racial discrimination in their legal and institutional structures and developed mechanisms for it. In this chapter, these systems are compared.

When the legal basis is compared, it is seen that the United Nations provides a wider protection with the ICERD, however the implementation of the ICERD remains as the greatest challenge as it lacks an enforcement mechanism. The Council of Europe, on the other hand, has a better enforcement mechanism with the existence of ECtHR. However, this is only valid for the individual complaint mechanisms. None of these institutions has necessary enforcement mechanisms for their reporting, early/urgent action or general recommendation procedures. Moreover, individual complaint mechanisms seem to have limited visibility and usage among the public. Also, their actions can sometimes be redundant, which raises the question for the necessity of the existence of these similar structures.

Despite their limited powers and redundant procedures, both institutions have contributed to the "clarification of the racial discrimination, the difference between direct and indirect discrimination and the positive obligations of states in response to (allegations of) racial discrimination, particularly the nature of effective remedies" (Bantekas & Oette, 2013, p. 208). Moreover, their contributions are proven necessary for

the agenda setting; naming and framing the norm violators; monitoring the state parties; setting the standards; being a reference for other international institutions; constructing dialogue with the national authorities; and providing venues for individual and social justice. Therefore, their weakness is caused by their design. The interviews showed that both institutions are well known and followed by the EU circles, however the relations with the Council of Europe and the effects of its institutions are more prominent on the EU institutions.

4. THE DEVELOPMENT OF THE EU LEGISLATION AGAINST RACIAL DISCRIMINATION

The integration in the area of anti-racism has taken many decades with the different involvement levels and willingness of different actors. Eventually, the EU has gained competence against racial discrimination with the Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing The European Communities and Certain Related Act (Amsterdam Treaty), and the complementary tools were developed afterwards.

The development of the EU policies against racial discrimination can be analyzed under three phases. The first phase has started with the establishment of the Communities with the founding treaties until the Joint Declaration of the Council, Commission, and Parliament in 1986. During the first phase, the debate was mostly about the role of the Communities for the protection of the fundamental rights. The discrimination perception of the Communities was mainly about the labour market and the policies were developed mostly for the equality between men and women. The discrimination on the basis of nationality was prohibited, but there were no policies against racial discrimination.

The second phase started with the Joint Declaration by the Council, Commission, and Parliament and added racial discrimination on the agenda. The activism of the EP together with the civil society increased during the 1990s. Although the policy development was limited; racism, xenophobia, and discrimination entered the discourse and agenda in the EU. The third phase started with the Amsterdam Treaty. The EU gained competence about racism, discrimination, and xenophobia with the Amsterdam Treaty and initiated several policies in the second half of the 1990s. The debate then turned into how to tackle with racism most effectively at the Community level. In the early 2000s, the EU developed several directives to tackle racism and developed comprehensive policies in specific areas such as antigypsyism.

In this chapter, it is aimed to track down the development of the EU policies against racism since its establishment to the current date. This kind of historical approach

clearly demonstrates the development of the priorities, agenda, discourse and the role of the actors throughout the time.

4.1 The First Phase: The Establishment of the Communities

The first phase starts with the founding treaties and ends with the Joint Declaration by the Council, Commission, and Parliament in 1986. Since the activities of the Communities are mainly about economics in the first decades, only discrimination on the basis of nationality in the labour market was taken into account. The issue of racial discrimination was not on the agenda yet, and the main discussion was about the role of the EU for the protection of the fundamental rights.

Among the founding treaties, only the Treaty Establishing the European Economic Community (Treaty of Rome) of 1957 mentions discrimination, and it is about the discrimination on the basis of nationality in the labour market. Article 48 of the Treaty of Rome states that:

> "2. This [free movement of workers] shall involve the abolition of any discrimination based on nationality between workers of the Member States, as regards employment, remuneration and other working conditions." (European Union, 1957).

Article 235 of the Rome Treaty was also used, unsuccessfully, as a basis for the civil society while lobbying for an anti-discrimination clause four decades later:

> "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures." (European Union, 1957).

During the 1970s, the European Court of Justice (EJC) and the European Parliament (EP) took several steps about the protection of the fundamental rights at the Community level. The first document of the EP about the fundamental rights is its resolution on the protection of the fundamental rights of member states' citizens in April 1973. The EP opens the door for the development of a Community policy for the protection of the fundamental rights of the citizens by emphasizing three points; first,

invites the European Commission to respect the fundamental rights of citizens its actions; second, urges the Commission to develop a European law on the subject; and third, suggests individual access for the ECJ (European Parliament, 1973, p. 7-8).

Following the request of the EP, the Commission submitted its report for the protection of fundamental rights in the Communities in February 1976. In this report, the Commission clarifies its competences first, by stating that it cannot "intervene or pass judgment" about the fundamental rights issues, thus member states are responsible for protecting the fundamental rights of their citizens, and that the Commission can only play a supervising role about how the Community legislation is implemented without any infringement from the fundamental rights in the member states (European Commission, 1976, p. 7). The Commission states that the Treaties and the ECJ rulings constitute the basis for the fundamental rights regime in the Communities, and underlines the role of the ECJ (European Commission, 1976, p. 11). The report concludes that the protection of fundamental rights and mechanisms for preventing infringement in the Communities are sufficient enough (European Commission, 1976, p. 16-17).

Moreover, the Commission argues that the scope of the fundamental rights shall be extended to civil and social rights in addition to the economic and social rights as well as the powers of the Community institutions (European Commission, 1976, p. 15). It also elaborates the possibility of a catalogue of rights for the Communities and the accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. The Commission does not see any of them as a necessity in the short-term unless the Communities evolve into a European Union; however a catalogue should certainly be considered in the long-term, although it is "desirable not essential" (European Commission, 1976, p. 15-17). Thus, the issues of the Charter of Fundamental Rights for the EU and the EU's accession to the ECHR have been on the agenda since the 1970s.

Following the Commission's invitation for a joint declaration on the protection of fundamental rights; the Council, the EP, and the Commission adopted a declaration in

April 1977. [27] However, there were voices in the Commission advocating for extending the scope of the fundamental rights and for a catalogue of rights. In a speech in November 1977, Guido Brunner, Member of the Commission, underlined the need for a catalogue of European human and civil rights; a more comprehensive definition of the rights other than the Community Treaties and the ECHR; and individual access to the ECJ (Brunner, 1977, p. 2). Similarly, R. Burke, as the European Commission representative at the joint meeting of the European Parliament and the Parliamentary Assembly of the Council of Europe, focused on the need for preventing human rights violations in the Communities in addition to defending a broad definition of rights than economic and social rights (Burke, 1978).

Although the Commission stated in its report in 1976 that it is not necessary for the Community to be a part of the ECHR since the norms in the ECHR have already been respected in the Community Law (European Commission, 1976, p. 14); it modified its opinion in 1979 due to certain factors. The most important factor was the demand for the protection of fundamental rights at the Community level because of the increasing activities of the Communities other than economic and social areas (European Commission, 1979, p. 5).

With the memorandum it published, the Commission stated that there were two options for responding to these demands; accession to the ECHR or building a catalogue of its own. Since there were different opinions among the member states, the former seemed more practical for the short-term, but it was also underlined that this did not necessarily mean that the latter would not be done. The Commission proposed to the accession to the ECHR for the short-term and preparation for a catalogue of rights for the long-term. The Commission considered the representation of the EC as an institution was a necessity since its policies influence more people day by day including people from

27 "The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms; In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights." (1977).

non-member states. In that case, the EC should be able to defend itself in the ECHR system by being a part of it (European Commission, 1979, p. 10).

In the Memorandum, the Commission further explained the reasons, advantages, disadvantages, and technicalities of a possible accession in addition to the content and mechanisms of the ECHR. It also underlined the fact that the accession would not increase its powers and it is not the aim of the Commission to propose to increase its powers (European Commission, 1979, p. 8-9). The emphasis of the Commission on the competence is another manifestation of its delicate nature; that it has to reassure the balance between intergovernmental and supranational forces in its tasks. While defending the accession to the ECHR, it has to reassure the member states that it does not mean an increase in the Community competences, and it is for the benefit of the member states. In 1982, the EP declared its support to the Commission for this proposal and called the Commission to discuss with the Council of Europe to include other fundamental social, economic and cultural rights in the Convention (European Parliament, 1982, p. 254).

In 1985, the Council called for more consultation and cooperation at the Community level against increasing migration with a Regulation. In this text, the Council also argued that a joint declaration should be adopted by the Community institutions for condemning xenophobia and racism (European Council, 1985, p. 4). This is the first text by an EU institution which uses the terms "xenophobia" and "racism." The issues of racism and xenophobia entered the EU agenda with the immigration concerns, while they were mainly seen as a part of fundamental rights regime previously.

In September 1984, the European Parliament established a Committee of Inquiry for writing a report on racism and fascism in Europe, and the report was presented in December 1985. In this report, the existence of everyday racism and institutional racism in Europe was underlined, and international and European level policies were proposed in addition to the national policies. It was argued that the Commission had competence to act on these issues with a broader reading of the treaties and a central role was designated for the European Parliament (European Parliament, 1985).

Following this report, the European Parliament adopted two resolutions in January 1986. The EP requested the Committee of Inquiry to prepare a draft text for a joint declaration on the basis of their findings. The EP stated the discrimination grounds as "Welcomes the broad consensus achieved within the committee of inquiry, which lays emphasis on the fundamental importance of defending a democratic and pluralist European society and respecting the dignity of men and women whatever their race, sexual orientation, religion, nationality, or ethnic origin." (European Parliament, 1986, p. 142-143).

4.2 The Second Phase: Increasing Activism for a Common Policy

The second phase for a common European policy against racism started with the Joint Declaration by the Council, Commission and the Parliament in 1986. After the joint declaration, the activism of the European institutions and the European civil society increased; and racism, xenophobia, and discrimination entered the discourse and agenda of the EU. This phase led to the introduction of the non-discrimination clause in the Amsterdam Treaty.

In June 1986, the joint declaration by European Parliament, Council, and Commission was adopted:

> "… Recognizing the existence and growth of xenophobic attitudes, movements and acts of violence in the Community which are often directed against immigrants; …
>
> Whereas respect for human dignity and the elimination of forms of racial discrimination are part of the common cultural and legal heritage of all the Member States;
>
> Mindful of the positive contribution which workers who have their origins in other Member States or in third countries have made, and can continue to make, to the development of the Member State in which they legally reside and of the resulting benefits for the Community as a whole,
>
> 1. vigorously condemn all forms of intolerance, hostility and use of force against persons or groups of persons on the grounds of racial, religious, cultural, social or national differences;
> 2. affirm their resolve to protect the individuality and dignity of every member of society and to reject any form of segregation of foreigners;

3. look upon it as indispensable that all necessary steps be taken to guarantee that this joint resolve is carried through;

4. are determined to pursue the endeavours already made to protect the individuality and dignity of every member of society and to reject any form of segregation of foreigners;

5. stress the importance of adequate and objective information and of making all citizens aware of the dangers of racism and xenophobia, and the need to ensure that all acts of forms of discrimination are prevented or curbed." (1986).

The Joint Declaration is the most important document by the EU institutions until that date as it recognizes the existence of racism and xenophobia in the European society, especially against foreigners. From this point on, racism, xenophobia, and discrimination have been handled in itself by the EU institutions rather than as a part of fundamental rights concerns.

However, the Single European Act of June 1987 only mentioned the fundamental rights within the context of national laws.[28] In 1988, the Commission submitted a proposal to the Council for a resolution on the fight against racism and xenophobia. The Commission made recommendations including education reforms in addition to the strengthening of member state legislations for fighting against racism and xenophobia (European Commission, 1988). It is worth underlining that the Commission was still making recommendations for the policies at the national level, instead of a Community competence on the issue.

In July 1988, the Council asked the European Economic and Social Committee (ESCS) for its opinion on the proposal for a Council Resolution on the Fight Against Racism and Xenophobia. The ECSC approved the Commission recommendations, however, stated its disappointment for the lack of real political commitment to combat racism at the European level (EESC, 1988). Moreover, the ESCS argued that every individual living in the Community should be protected including third country nationals (EESC, 1988). In February 1989, the EP published its opinion about the issue and urged the Council to adopt the resolution (European Parliament, 1989b).

28 "… Determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice…" (1987, p. 4).

Finally, in May 1990, the Council adopted the resolution on the fight against racism and xenophobia. However, the adopted document had several differences from the draft document. It did not include the following recommendations:

> • "Publication of texts (posting of laws and of the inter-institutional Declaration in public places, such as town halls, police stations, schools, post offices, etc.) and court judgments, with the aim of both education and dissuading,
> • Production of a report every three years assessing the position as regards the integration of migrant communities within society,
> • Promotion of the organization of migrants' associations at Community level so as to facilitate the dialogue between the migrant communities and the Community institutions." (European Commission, 1988, p. 34).

Also, the recommendations about strengthening member state legislations were left to the willingness of the member states (European Council, 1990c). Thus, the Council scaled down the Commission recommendations, especially the ones about the third-country nationals. In June 1990, the EP strongly criticized the Resolution for the exclusion of the third-country nationals and urged the Commission to take further action (European Parliament, 1990c).

On the other hand, a draft of a Community Charter on Fundamental Social Rights was accepted during the Madrid Summit of European Council of June 1989. It was stated that "the role to be played by Community standards, national legislation and contractual relations must be clearly established." (European Council, 1989). The Council further demanded the Commission to formulate the fundamental rights by taking into account the principle of subsidiarity.

Within the same year, the EP adopted the resolution on the declaration of fundamental rights and freedoms, which consists of 28 articles. Article 3 (equality before law) of the declaration states that:

> "2. Any discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status shall be prohibited.
>
> 3. Any discrimination between European citizens on the grounds of nationality shall be prohibited." (European Parliament, 1989a, p. 53).

The involvement and activism of the European Parliament significantly increased during the 1990s. In May 1990, as a result of the attacks on Jewish cemeteries in East Berlin and France, the EP condemned the activities of extremist organizations and political figures in Europe and called for a solution to racism, xenophobia and anti-Semitism at the Community level in addition to the measures taken at the national level (European Parliament, 1990a). Furthermore, the EP demanded the formation of another Committee of Inquiry on racism. The growing presence of the extreme right wing party members in the EP itself was the major motivation for the establishment of this Committee (European Parliament, 1990b, p. 7).

The Committee presented its report in 1990. The report analyzed the member and neighboring states one by one and updated the information given in the previous report. It concluded that out of the 40 recommendations of the first report, only a few of them were realized. The Committee argued that the EP and the Commission showed effort, but the Council of Ministers was reluctant to make decisions about social issues (European Parliament, 1990b, p. 99). Moreover, it blamed some member states for violating their international obligations of protecting fundamental rights of legally residing foreigners, thus contributing to their inferior status within their societies (European Parliament, 1990b, p. 46). The report claimed that the unwillingness of the member states was causing an upsurge of racism and xenophobia in the EU (European Parliament, 1990b, p. 100). The Committee gave 77 recommendations and particularly emphasized the role of the media. It criticized media as the racist images and stereotypes were common, but information for minorities in their mother tongues was not that widespread (European Parliament, 1990b, p. 146). In October 1990, the EP called the Commission and the Council to examine the report and recommendations in detail (European Parliament, 1990e).

In November 1990, the EP adopted a resolution recommending for the upcoming Treaty on the European Union (Maastricht Treaty) to include a declaration on fundamental rights and freedoms, and the extension of certain rights to the third country nationals including the combat against racism, discrimination, segregation issues (European Parliament, 1990d). In October 1991, the EP declared its concerns over the

racist and anti-Semitist incidents against refugees and immigrants throughout Europe and called for action at the Community, national and local levels (European Parliament, 1991). It criticized the inaction of the Community and member state institutions and underlined the need for a harmonized immigration policy based on human rights (European Parliament, 1991). The EP once again called the Community institutions and member state governments for a common action in March 1992 (European Parliament, 1992b). In September 1992, it condemned the racist riots in Rostock-Lichtenhagen in Germany and underlined the need for harmonization of asylum and visa policies (European Parliament, 1992c). The EP repeated the suggestion in October 1992 and gave its support for the Maastricht Treaty (European Parliament, 1992a).

The issues of racism, discrimination, and xenophobia were also mentioned more in the Presidency Conclusions of the European Council summits after 1990. In the Presidency Conclusion of Dublin Summit of 25-26 July 1990, Declaration on Anti-Semitism, Racism, and Xenophobia was issued for the first time. In this document, member states condemned the racist and discriminatory incidents in Europe and showed their determination to combat them, however, not with a Community policy but with their national legislations (European Council, 1990a). Also, they emphasized their international obligations under the frameworks of the United Nations, the Council of Europe and the Conference on Security and Cooperation in Europe (CSCE) (European Council, 1990a). These commitments were repeated in the Presidency Conclusion of Maastricht Summit of 9-10 December 1990. The responsibility of the governments and parliaments of the member states for combating racism, discrimination, and xenophobia and protecting third country nationals were underlined, and thus no Community level action was foreseen (European Council, 1991). In the Presidency Conclusion of Rome Summit of 14-15 December 1990, the elimination of racial discrimination and xenophobia was identified among the goals (European Council, 1990b). Yet, there was no mention of the Community level policies; rather the emphasis was on the national level policies.

In 1990, the Commission formally requested the Council to approve the accession of the Community to the ECHR. The Commission firstly suggested this idea in

1979. It emphasized one more time that such an attempt would be complimentary to the Communities' own catalogue of fundamental rights (European Commission, 1990). In 1993, the EP started to publish annual reports on human rights. In the first report, the EP gave its support to the Commission for their campaign for being a part of the ECHR but also argued that the Community needed its own catalogue of rights (European Parliament, 1993a).

Also in 1992, the Commission compared the legal instruments in the member states for fighting racism, discrimination, and xenophobia following a request from the Council. In this paper, the Commission compared the demographic and socio-economic status of minorities; policies and legal instruments of member states; international obligations of member states; and measures on discrimination areas (European Commission, 1992).

In the Presidency Conclusion of Edinburgh Summit of 11-12 December 1992, a detailed roadmap for a common immigration policy was declared and need for combating racism and discrimination against immigrants was mentioned (European Council, 1992). The European Council repeated its commitments about combating racism and xenophobia in the Copenhagen Summit of 21-22 June 1993. It also clarified the criteria for the states, which want to be members of the EU, which are known as the Copenhagen Criteria. Among two of these criteria are "… stability of institutions guaranteeing democracy; the rule of law, human rights and respect for and protection of minorities…" (European Council, 1993, p. 13). From then on, the democratic criteria have officially been formulated for the applicant countries.

The Maastricht Treaty of 1992 introduced the pillar structure and a provision on a common asylum and immigration policy. No common policy for combatting racism, discrimination and xenophobia was foreseen; instead, the international commitments of the member states were underlined again. Article K.2 stated that these matters shall be dealt with in compliance with the ECHR and the Convention for Refugees (European Union, 1992). The Council made it clear one more time that the international system of which the member states were part, was sufficient for the protection against racial discrimination and there was no need for a common European policy on this issue.

In April 1993, the EP adopted a resolution on the resurgence of racism, xenophobia, anti-Semitism and other forms of religious intolerance both in the Western Europe and in the Central and Eastern European Countries (CEECs), and the danger of right-wing extremist violence. The EP warned that these attacks were against the values of the EU and multicultural social models had to be established, and the Community efforts so far were inadequate and had to be improved (European Parliament, 1993c). It also criticized, again, the failure of action of the Community about being part of the ECHR and the UN Convention, and called once again for taking the appropriate proposals and measures to comply with the recommendations that the Committee of Inquiry made (European Parliament, 1993c). Among its proposals, there were Holocaust denial laws; further rights for immigrants; and further Community responsibilities and policies (European Parliament, 1993c). It requested the Commission; to prepare a four-year action plan by the end of 1993; set up a data system for monitoring racism and discrimination; submit a new Eurobarometer survey; organize a conference on racism and xenophobia at the first quarter of 1994; and declare the 1995 as the "European Year of Harmony Among Peoples" (European Parliament, 1993b).

In December 1993, the EP adopted another resolution on racism and xenophobia. It repeated its concerns about the rise of racism and xenophobia in Europe, and called Union for the duty since it has to "protect democratic values and that the principles of tolerance and solidarity are fundamental in Europe which has always claimed to be an open society and a guarantor of diversity" (European Parliament, 1993c, p. 20). It also declared its regret about the inaction of Communication about the four-year action plan and Eurobarometer survey that the EP demanded with the previous resolution (European Parliament, 1993c). Moreover, it called the Commission and member states to strengthen the legal instruments; initiate policies; provide financial support to organizations and movements dealing with racism; and implement Committee of Inquiry recommendations (European Parliament, 1993c).

In April 1994, the EP adopted a resolution on Roma in the Community. The term "gypsy" was used in the title, but the term "Rom" was also used in the text. It was stated that the Roma community was the largest minority in the Community, however;

they could not defend their rights because of the discrimination they were facing (European Parliament, 1994a). It made recommendations to improve the living situations of Roma and travelers throughout Europe (European Parliament, 1994a). This is the first EU text mentioning Roma, and after that Roma has become a substantial part of the Community policies against discrimination.

In the Presidency Conclusion of Corfu Summit of 24-25 June 1994, the European Council stated its content for the joint Franco-German initiative for forming a Consultative Commission to develop a strategy for a common anti-racism legislation (European Council, 1994b). It also adopted a detailed timetable and work plan for adopting the strategy by the end of June 1995 (European Council, 1994b).

In October 1994, the EP adopted a resolution on racism, xenophobia, and anti-Semitism. It warned of the rise of the extreme right-wing parties in Europe and for the first time named the parties as *Freiheitliche Partei Österreichs* (FPÖ) in Austria, Front National in France, British National Party in the UK, Vlaams Blok and Front National in Belgium (European Parliament, 1994b). The EP appreciated the establishment of the Consultative Committee on Racism and Xenophobia (European Parliament, 1994b). The Consultative Committee presented its interim report at the Essen European Council on 9-10 December 1994, and the report was appreciated by the member states (European Council, 1994a).

In April 1995, the EP adopted a resolution on racism, anti-Semitism and xenophobia. The EP argued that the competences had to be given to the Community to work on an anti-discrimination directive and other ways of acts against racism, xenophobia, anti-Semitism, and Holocaust denial at the Community level (European Council, 1994c).

In April 1995 Consultative Commission on Racism and Xenophobia published its report (also known as Kahn Report). The Consultative Commission detected problems through its subcommittees and made proposals for revisions and adequate policies especially on education, employment, freedom of movement, the role of police, harmonization of legislation such as revision in the education system and materials in a

more tolerant way; access to education by everyone; establishment of an European observatory which would also help the education system and materials; designing special policies towards "difficult districts"; extending the competence of the Europol (Kahn, 1995).

More importantly, the Consultative Commission reached the conclusion that "amendment of the Treaty to provide explicitly for Community competence must be regarded as an essential element in any serious European strategy aimed at combating racism and xenophobia." (Kahn, 1995, p. 57). Accordingly, the EU has a responsibility for protecting democracy in Europe, and providing equal treatment is a core part of this responsibility. A treaty change confirming the Community competence would show the determination of member states for combating racism, discrimination, and xenophobia. It would provide better coordination and supervision. The findings and suggestions of the Khan Report are very crucial as it recommends for Community level action as a committee initiated by the Council itself.

In the next European Council in Cannes in June 1995, the Kahn report was barely mentioned in the Presidency Conclusions (European Council, 1995a). In October 1995, the Council adopted a resolution on combating racism and xenophobia in the field of employment and social field. While the problems related to racism and xenophobia underlined by the European Parliament and Kahn Report were acknowledged, only policies at the national level were proposed specifically for those who were "legally resident in member states" (European Council, 1995b). Similarly, in the Council Resolution of 23 October 1995, racism and xenophobia in the educational systems of the member states were targeted at the national level (European Council, 1995c). In both of them, the need for cooperation with the Council of Europe was underlined. In December 1995, the Council only mentioned the proceedings of the Consultative Commission on Racism and Xenophobia in Annex 4.1 of the Presidency Conclusions without making any further comments (European Council, 1995b).

In June 1995, the EP adopted a resolution on organizing a day to commemorate the Holocaust (European Parliament, 1995a). In July 1995, the EP adopted a resolution on Roma and underlined one more time that the Roma population was facing

discrimination in all over Europe and called European institutions to overcome this situation (European Parliament, 1995b). In October 1995, the EP adopted a resolution on racism, xenophobia, and anti-Semitism. It criticized the European Council in Cannes for their unwillingness to adopt an overall strategy against racism and anti-Semitism and urged the Spanish Presidency, and member states for further action (European Parliament, 1995c). It called the Commission to submit a proposal for a non-discrimination directive, and the Consultative Commission to clarify its demand for a treaty change to fight against racism and discrimination (European Parliament, 1995c).

In December 1995, the Commission presented a draft Council Decision to declare 1997 as "European Year against Racism" with a Communication. The draft laid a prime responsibility to combat racism with the member states, while recognizing its transnational character and underlined the calls for Community-level legislations (European Commission, 1995, p. 4).

The European Parliament positively responded to this proposal by appreciating the suggestion of declaring 1997 as "European Year against Racism," and supported the establishment of monitoring center for racism and xenophobia in May 1996 (European Parliament, 1996, p. 60). It also encouraged the Commission to develop a non-discrimination policy in other sectors such as healthcare and education. The EP supported including non-discrimination in the Treaties to give a Treaty-base competence to the Commission. The EP restated its support and concerns in January 1997 with a resolution (European Parliament, 1997).

The Council, on the other hand, stated the objectives of the European Year against Racism (1997) with a Resolution in July 1996:

> "(a) to highlight the threat posed by racism, xenophobia and anti-semitism to respect for fundamental rights and to the economic and social cohesion of the Community;
>
> (b) to encourage reflection and discussion on the measures required in order to combat racism; xenophobia and anti-semitism in Europe;

(c) to promote the exchange of experience on good practice and effective strategies devised at local, national and European level to combat racism, xenophobia and anti-semitism;

(d) to disseminate information on such good practice and effective strategies among persons working to combat racism, xenophobia and anti-semitism to increase the effectiveness of their action in this area;

(e) to make known the benefits of integration policies, implemented at national level, in particular in the fields of employment, education, training and accommodation;

(f) to turn to good account whenever possible the experience of persons actually affected or likely to be affected by racism, xenophobia and anti-semitism, and promote their participation in the society." (European Council, 1996d, p. 3).

The Council called member states and the Commission to implement measures such as organizing conferences, seminars; preparation of reports, information campaigns; and exchanging information (European Council, 1996d, p. 3). In January 1998, the EP adopted a resolution to evaluate the results of European Year against Racism and to make suggestions to member states and European institutions to extend the efforts especially for protecting the migrants from racism (European Parliament, 1998). In June 1999, the Commission published a report on the implementation of the results of the European Year against Racism praising the coordination and cooperation between member states, European institutions, media and civil society; and the results of the events, information campaigns, and activities; and underlines the lack of visibility that came out of the external evaluation (European Commission, 1999).

In June 1996, the European Council in Florence underlined the need for the establishment of European Monitoring Center (European Council, 1996a). In July 1996, the Council published Joint Action to combat racism and xenophobia, in which the need and conditions for cooperation between member states against racism and discrimination were underlined (European Council, 1996b). After the proposal for a Council Regulation in November 1996 (European Council, 1996c); amended proposal in May 1997 (European Council, 1997a); and Communication from the Commission to the Council (European Commission, 1997); the Council Regulation to establish a European Monitoring Center for Racism and Xenophobia was published in June 1997 (European

Council, 1997b). The aim of the Center was to collect, record, and analyze data in the member states for the issues of racism, xenophobia, and anti-Semitism.

Within this phase, the activism of the civil society also increased. The Starting Line Group, composed of independent experts, strongly lobbied for an anti-racism legislation. They prepared a draft directive, which was modeled after the gender equality legislation of the EU as it is recognized as a pioneer in the development of the EU anti-discrimination legislation.[29] The draft directive had a crucial influence on the equality legislatives developed in the next phase as stated by a member of the Starting Line Group interviewed:

> "If we haven't started Starting Line Group, there would probably no Anti-Discrimination legislation in 2000. And, there had probably no anti-discrimination clause in the Treaty in 1997 either" (Interview 9, 2015).

4.3 The Third Phase: Gaining Competence and Developing Common Policies

With the Amsterdam Treaty of 1997, non-discrimination clause was introduced with the Article 13. This signifies the beginning of the third phase that still continues. Within this period, the EU tries to develop various policies to tackle racism, xenophobia, and discrimination. Moreover, Amsterdam Treaty also gave competence to the EU in the area of asylum policy.

The non-discrimination clause of the Article 13 of the Amsterdam Treaty states:

> "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (1997, p. 26).

It is a curious question how it was possible for the member states to choose to give competence to the EU in the area of racial discrimination rather than continue to deal with the issue with their national policies. Thus, how can the integration in the area of

29 The Treaty of Rome brought equal pay between men and women in 1957, and laid the basis for the first equality directives of the Equal Pay Directive of 1975 and the Equal Treatment Directive of 1976.

protection against racial discrimination be explained? The analysis of the historical process for the development of the legislation in this area and the elite interviews point out several explanations.

The first one is to find common solutions to common problems while benefiting from the experiences of others. As proven by the activities of all EU institutions, racism concerns entered the EU agenda in the late 1980s. Far-right parties have never been absent from the European political scene, but the success of Haider was a real warning for many. Therefore, the issue was acknowledged as a European problem rather than a solely domestic one. However, at that time only six member states had anti-racism legislation, the area was rather unknown, and they wanted to provide the same level of protection all over Europe. This also shows that the domestic politics matter.

> "Something I used to say when I was presenting the Starting Line, it basically because of Haider we got the directive. Because the Treaty was amended in 1997, in the Autumn 1999 we had two proposals on the table by the Commission and six months later the Racial Equality Directive was adopted, which is extremely short. At the time there were only six countries that had specific legislation dealing with racial discrimination. So that's not much. But in the mean time, Haider was elected in Austria, and it was a real shock in all of Europe. So, the Austrians were very keen in showing that they were really devoted to human rights and anti-racism and the other countries were scared that if they vote against they were automatically put in the other camp. So, the political momentum was really there. I am honestly convinced, if we did not have that political situation in Austria, that for the first time a right-wing extremist is being elected, I am not sure it would have been so fast" (Interview 9, 2015).

> "The member states have history and experiences with racism. Also, there were many differences in member states to fight against racism. With the Directive, member states can compare and benefit the experience of others" (Interview 3, 2015).

> "[For Framework Decision] It is a common problem in Europe and it is good that all member states address or have a minimum standard on how to combat that. Member states alone are not capable of or don't have enough resources to fight some forms of racism and discrimination. And it is very good when we do this express meeting, when they share best practices and that's we are focusing you know. We don't have a clear idea how we are going to do but it would somehow enhance of exchange of our practices from the Commission's standpoint. Because I think in these express meetings, member states are very inspired by all the cases or they

> simply share some problems they have in common, if we don't have these express meetings and we never had the EU competence, they would never share. Or they hear how a member state increases reporting because they simply have changed the information system by putting extra case. I think it is very good that this is somehow coordinated at the European level" (Interview 6, 2015).

> "We wanted legislation at the European level because we wanted same level of protection for all of the EU citizens" (Interview 9, 2015).

> "I think it was the pressure by the civil society. But also the question of ratifying the ECHR was on the table. And at one point, it is only logical when you want to be a social Europe. Then, you have to give that" (Interview 9, 2015).

The second one is the legitimacy and human rights concerns. Especially with the introduction of the Copenhagen Criteria, the EU became much more vocal about the human rights issues starting from the early 1990s. They could not go against a strongly lobbied anti-racism legislation in their home affairs, while at the same time defending human rights in external affairs. As Schimmelfennig pointed out, it was a "rhetorical entrapment" for the EU (Schimmelfennig, 2001).

> "And I guess it just one of those articles it is passing through .. certain point of no return. When it reaches to point of no return, it is difficult to say no. It is almost equal to say I am not against discrimination. That's the climate you create" (Interview 1, 2015).

> "The fact that racism is so important in Europe, there is a role to play. It has to do with the fundamental values of the Union" (Interview 4, 2015).

> "The European Communities has always had competence when it comes to discrimination on nationality. That is part of the idea. So, there was on one hand a competence on discrimination, and there was on the other hand a commitment to human rights. So, the link to extend this original competence on discrimination, I don't think it was such a major extension" (Interview 7, 2015).

> "Probably because it makes sense to have a … First of all, the phenomenon, as you know, is, even if unintended, but is in relation with other policy areas that are European as well. Racism is in direct relation with migration phenomenon for instance very evidently. And if you have a migration competence on the European level than it makes sense also to have a possibility for the European Union to look to the matter of how we see and how we perceive migrants… By the way, it is part of a codex of

rights and it would be illogical if we can busy ourselves with all other areas of the law, and the functioning of society but not with racism. So, it was only consequent at a certain point" (Interview 5, 2015).

"In all of these years, the competence of the EU has been increasing. It is the part of deepening" (Interview 4, 2015).

Thirdly, the pressure from the civil society and the different institutions of the EU only increased after first Joint Declaration in 1986. Especially the EP was putting a lot of pressure in cooperation with the civil society.

"What we wanted to achieve was protection against racial and ethnic discrimination. There was nothing at the EU level at the time. So, it was basically an individuals' initiative of four-five people… It was really few individuals and we were convinced that we had to do something on that. We asked lawyers in the group to draft a proposal for the directive, and it was called as 'the Starting Line Directive'. Then the campaign started and that's when I joined. It started in 1992, on a very informal and very little scale. Then there was a need for someone who could coordinate. That is the reason I was hired. The text had been circulated in the European Parliament quite widely. So since 1992, 1993 there were recommendations of the EP asking the Commission to take the Starting Line proposal as a basis for discussion. We had circulated it in the Commission. Then we had the answer from the legal service of the Commission saying that the Article 235 at the time that we have chosen as the legal basis for that legislation was not valid, which we still do not agree with. But that would have required quite a bit of political will and the political will definitely was not there. But, because we were stubborn, if we were told that there was no legal basis in the Treaty to give competence to the European institutions to act on that specific matter, then we had to propose a change to the Treaty. And the timing was very right because in 1996, there was the intergovernmental conference looking at the revision of the Treaties. So, we drafted a text for an anti-discrimination clause in the Treaty. We started to lobby and advocacy. The group that was dealing with the revision of the Treaty [Kahn Group], we were very much in contact with that group. Then we started our tour of the EU at the time to explain it to civil society organizations but also to the national governments, what we wanted to achieve with that. Why we wanted to be regulated by European legislation, not by national law. Why we wanted a directive, not a regulation. What it would entail. Bearing in mind that most of the definitions in the directive were taken from gender European legislation. So, it was not something that was totally new. Member states should have implemented already long time ago regarding gender legislation but apparently what was good enough for gender was too good enough for racial and ethnic discrimination. I remember some of the officials were saying on the shift of the burden of proof, we absolutely cannot do that. In 1995, there was a

> directive on the shift of the burden of proof on gender discrimination cases. So, we went every country. We had meetings with the officials, quasi-governmental organizations, ombudsman or the equality bodies that existed at the time, and most crucially with the civil society organizations… That generated quite a lot of support. I think we had more than 400-450 signatures to support the proposal… We were very lucky at the end" (Interview 9, 2015).

> "I think decisive moment was definitely the adoption of the Amsterdam Treaty and the Article 13. That was a crucial turning point in relation to the admitting that discrimination is an issue and then we try to address it both in legal terms, institutionally, equality bodies, etc. It was extremely difficult to get Article 13 too, took years of lobbying" (Interview 1, 2015).

These explanations reveal the effects of historical path-dependency in the integration in this area as well as the importance of the socialization and socially constructed norms. It seems that the logic on appropriateness played an important role in addition to the logic of consequentiality.

The Commission set up an action plan against racism in March 1998 to complement the non-discrimination clause (European Commission, 1998). The action plan consisted of four pillars. These were the legislative pillar, which had to follow the non-discrimination clause in the Amsterdam Treaty; mainstreaming anti-racism; developing and exchanging new models; and strengthening the communication.

Legislatively, the non-discrimination clause in the Amsterdam Treaty was complemented by two Council directives. The Council Directive 2000/43/EC, also known as the Race Equality Directive, and the Council Directive 2000/78/EC Employment Equality (Framework) Directive, provides the content for the implementation of non-discrimination clause. The Race Equality Directive had to be adopted until 19 July 2003, and the Framework Directive had to be adopted until 2 December 2003. The directives were modeled after the Starting Line Directive, but the Commission went further on some issues like the area of education. Education was not included in the Starting Line Directive as it was not under the Community competence. On the other hand, there were limitations for the third country nationals although the issue first entered the EU agenda through immigration.

While the Treaty amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts (Nice Treaty) did not mention the discrimination in 2001, the Treaty Establishing a Constitution for Europe (Constitutional Treaty) placed equality and non-discrimination under the Charter of Fundamental Rights of the European Union in 2004. Part II of the Constitutional Treaty was devoted to the Charter of Fundamental Rights. The non-discrimination clause in the Charter (2004, p. 46) is very wide and also includes non-nationals, however, the Constitutional Treaty could not be implemented due to the ratification crisis, and the implementation of the Charter was postponed until the Treaty amending the Treaty on European Union and the Treaty Establishing the European Community (Lisbon Treaty).

In June 1999, the Cologne European Council suggested an agency for the human rights, which was also supported by the EP. In December 2003, the European Council decided to convert the European Monitoring Centre on Racism and Xenophobia into a Human Rights Agency. In October 2004, the Commission Communication laid the ground for the agency by underlining its field of action, tasks, structure and relations with other bodies (European Commission, 2004a). In February 2007, the European Union Agency for Fundamental Rights (FRA) was established by the Council Regulation (European Council, 2007a) and its multi-annual framework was declared by the Council decision in February 2008 (European Council, 2008a). In July 2008, an agreement was reached between the EU and the Council of Europe for the cooperation of the FRA and the Council of Europe for avoiding the duplications in activities (European Union and Council of Europe, 2008c).

In May 2004, the Commission published the Green Paper on equality and non-discrimination in an enlarged European Union. The Commission evaluated the progress, agenda, and challenges with the contributions from national authorities, specialized equality bodies, non-governmental organizations, regional and local authorities, and individuals (European Commission, 2004b). Following the Green Paper, the Commission laid the ground for a more advanced anti-discrimination regime in the EU with a Communication in 2005 by stating the grounds that the existing anti-discrimination directives were not covering (European Commission, 2005). A single comprehensive

"Horizontal Directive" had long been advocated by the relevant actors. However, the Commission did not propose a further legislation at that point, instead initiated further research on it, and focused on the mainstreaming of non-discrimination for all relevant EU policies.

In January 2006, the Commission published its decision on establishing a high-level advisory group on social integration of ethnic minorities and their full participation in the labour market (European Commission, 2006). The findings stating the difficulties that the minorities had been facing in the labour market were published in 2007 (High Level Advisory Group, 2007). Non-discrimination clause was also included in the Community Program for Employment and Social Solidarity decided by the EP and the Council (European Union, 2006a). The year of 2007 was designated as "European Year of Equal Opportunities for All" and various initiatives were taken (European Union, 2006b). In November 2008, the Council Framework Decision tried to clarify the specifics of combatting certain forms and expression of racism and xenophobia by means of criminal law (European Council, 2008b). Following the Communication it published in 2008 (European Commission, 2008a), the Commission proposed for a Council Directive on equal treatment (European Commission, 2008b). The Equality Directive proposal by the Commission aimed to extend the groups and fields covered by two directives, however, it has not been approved yet.

The Lisbon Treaty was signed in 2007 and came into force on 1 December 2009. It makes amendments to the existing treaties and contributions to the human rights dimension of the EU. The Lisbon Treaty makes mainstreaming a policy choice in this area. The other component of the anti-discrimination legislation of the EU is the Charter of Fundamental Rights, which was agreed by the member states as early as 2000, but could only come into force with the Lisbon Treaty in 2009. Chapter 3 of the Charter is devoted to equality.

In October 2010, the Commission published Communication for a strategy to effectively implement the Charter. The document provided guidelines both for the EU institutions and for the member states to respect the Charter in their policies (European Commission, 2010b). The implementation of the Charter was assessed by the

Commission with the report it published in April 2012 (European Commission, 2012b). The Commission evaluated the developments in the areas of racist hate speech, the collection of the ethnic data and the inclusion of Roma.

As a part the Communication of 2008 "Renewed Commitment for Non-Discrimination and Equal Opportunities," the Commission underlined the need for the tackle the particular problems of Roma (European Commission, 2008c). With a working document, the Commission emphasized various instruments on Roma inclusion. In 2010, it further elaborated those instruments with another communication (European Commission, 2010a). In 2011, the Commission urged member states and the EU to have an EU Framework for National Roma Integration Strategies up to 2020 (European Commission, 2011) and the European Council in June 2011 gave its support (European Council, 2011b). The EU Framework aimed to combat discrimination against Roma and promote social inclusion. It was the first time to develop a Europe-wide approach to the problem. All member states also produced a national Roma strategy to tackle the problems. The Commission evaluated those efforts with Communications in 2012 (European Commission, 2012a), 2015 (European Commission, 2015a) and assessment reports in 2013, 2014 (European Commission, 2014c) and 2016 (European Commission, 2016a). In December 2013, the Council adopted a recommendation for member states to develop effective policies for Roma inclusion (European Council, 2013).

The Council (European Council, 2007b; 2008d; 2008c; 2009; 2010; 2011a); the EP (European Parliament, 2006; 2009; 2010c; 2011), and the Committee of Regions (European Parliament, 2010b) have been developing principles and policies on Roma inclusion since 2000s. However, one of the most important cornerstones of the Roma rights movement is the EP Resolution on 15 April 2015 that recognizes of Antigypsyism as a specific form of racism; recognizes of the genocide of Roma during the Second World War; and designates the August 2nd as the memorial day for it (European Parliament, 2015).

The latest addition to the anti-discrimination legislation is the Audiovisual Media Services Directive of 2010 that bans incitement to hatred on the grounds of race and religion on media. The Commission also conducts meetings with IT companies to

combat online hate speech and a "Code of Conduct" is agreed in June 2016 with Twitter, Facebook, and YouTube (European Commission, 2016e).

4.4 Concluding Remarks

The development of the EU policies against racism, xenophobia, and discrimination has been analyzed in this chapter. The first phase starts with the establishment of the Communities and ends with the Joint Declaration by the Council, Commission, and Parliament in 1986. During this phase, the main debate was the inclusion of the fundamental rights to the Community competences. The issues such as the EU Charter of Fundamental Rights and the accession of the EU to the European Convention of Human Rights started to be discussed within this period. The legislation about the non-discrimination on the basis of gender directives was also developed within this period. With the increase of the immigration to the Communities, the concerns were raised about racism, xenophobia, and discrimination.

In 1986, the Council, Commission, and Parliament stated their concerns with the Joint Declaration, which marks the beginning of the second phase. During the second phase, the EP and the civil society increased their activism in order to have a common anti-racism policy at the European level. The Council, on the hand, considered the existing UN and Council of Europe systems sufficient and wanted to keep the issue as a member state competence.

The breaking point came with the Amsterdam Treaty of 1997. The Amsterdam Treaty has a clause on non-discrimination including the prohibition on racial discrimination. This was the beginning of the third phase. After the Amsterdam Treaty, there were four major instruments to tackle racism in the EU. The Race Equality Directive (2000), the Framework Directive (2000), the Framework Decision (2008) and the Audiovisual Media Services Directive (2010).

When the roles of the different actors are compared, it is seen that the European Parliament has been the most active European institution to have a policy against racial discrimination at the European level. The Council, on the other hand, tried to keep the issue under the national competence as much as it could and regularly underlined the

international system the member states are part of. The Commission tries to keep the balance between these two actors most of the time. Yet, the inclusion of the non-discrimination clause to the Amsterdam Treaty is a breaking point, and it could not happen without a Council decision.

The results of the historical analysis and elite interviews point to several explanations for the member states to give competence to the EU in this area. Accordingly, the activism of the EP and the civil society were putting a lot of pressure to the member states. When it is combined with the rise of the far-right parties especially the FPÖ in Austria, the member states came to the point of no return. They could no longer ignore the demands for a treaty change for a non-discrimination clause especially considering the tragic past of the continent. They could not be seen passive against racism, and they needed common policies to deal with it.

This explanation is in line with the historical institutionalist perspective. As the theory suggests, the integration in this area is rather an unintended consequence of the long-term implications of the decisions taken in the past. Several decisions taken in the past created a path for the EU and its institutions to follow. Therefore, the EU was indeed locked in to the process to have a common policy at the EU level while its institutions also followed their own paths in accordance with their own organizational cultures and interests. The change was gradual though and it only arrived when combined with the inside pressures deriving from domestic politics and EU level activism, and socialization and social learning among the actors.

5. THE EU POLICIES AGAINST RACISM, DISCRIMINATION, XENOPHOBIA AND THEIR IMPLEMENTATION IN THE MEMBER STATES

In this chapter, the EU policies aiming to combat racial discrimination on the basis of legislation, actors and the associated policies are discussed in detail. The legal sources of the EU policies against racial discrimination are treaties; the ECJ rulings; regulations, directives, decisions; and soft-policy instruments for the protection of fundamental rights. The binding legislation is considered as hard law instruments and consists of the Amsterdam Treaty; the Lisbon Treaty; the Charter of Fundamental Rights; the Council Directive 2000/43/EC of 29 June 2000 "Race Directive"; the Council Directive 2000/78/EC of 27 November 2000 "Framework Directive"; the Council Framework Decision 2008/913/JHA of 28 November 2008; and the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 "Audiovisual Media Services Directive". The EU also has associated non-binding policies, which are considered as soft law instruments, to promote racial non-discrimination.

5.1 Legal Basis

The legal basis for the EU legislation on racial non-discrimination is provided by the Amsterdam Treaty, the Lisbon Treaty, and the Charter of Fundamental Rights.

The Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial origin, also known as "Race Directive", and the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, also known as "Framework Directive", are the first tools to implement racial non-discrimination clause. While the Race Directive defines the concepts of discrimination and equality; and the obligations of the member states for the discrimination on the basis of racial and ethnic origin; the Framework Directive extends the non-discrimination grounds.

The Council Framework Decision 2008/913/JHA of 28 November 2008 on combatting certain forms and expressions of racism and xenophobia by means of criminal law, also known as the "Framework Decision" sets the ground for the criminal punishments. As of 1 December 2014, the Commission has the power to oversee the implementation of the Framework Decision. The Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services, also known as "Audiovisual Media Services Directive" aims to target the hate speech on media.

5.1.1 Amsterdam and Lisbon Treaties

The competence for a policy against racial discrimination is given to the EU by the Amsterdam Treaty. The Amsterdam Treaty was signed in 1997 and came into force on 1 May 1999. The Amsterdam Treaty provides the legal basis for an EU policy against racism. It includes racial and ethnic origin and religion or belief to the non-discrimination clause. Article 13 of the Amsterdam Treaty states that:

> "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (1997, p. 26).

The Lisbon Treaty was signed in 2007 and came into force on 1 December 2009 to make amendments to the existing treaties. Although, the Lisbon Treaty does not amend the non-discrimination clause of the Amsterdam Treaty, it underlines the equality principle in the Article 2 (European Union, 2007).[30] Also, the Lisbon Treaty makes an amendment to add that the Union "shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child" (European Union, 2007).

30 The Article 2 of the Lisbon Treaty underlines that: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail" (European Union, 2007).

With another amendment, the Lisbon Treaty brings mainstreaming for non-discrimination into the EU legislation by the Article 10 (European Union, 2007).[31] Consequently, the Lisbon Treaty develops the legal basis for the policies against racial discrimination that are first introduced by the Amsterdam Treaty.

5.1.2 EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights had been on the EU agenda since the 1970s and was finally agreed by the member states in 2000. However, when the Constitutional Treaty failed, it could only come into force with the Lisbon Treaty in 2009. Chapter 3 of the Charter is devoted to equality.

Article 21 states that:

> "
>
> 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
> 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited."

Article 22 states that:

> "The Union shall respect cultural, religious and linguistic diversity" (European Union, 2000a).

The discrimination grounds in the Charter are wider than the Amsterdam and Lisbon Treaties, and the Equality Directives as it includes colour, social origin, genetic features, language, political or any other opinion, membership of a national minority, property, birth and nationality as well as sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. However, no tools have been developed to extend those grounds to this day.

31 Article 10 "defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (European Union, 2007).

5.1.3 Race and Framework Directives

The Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial origin, also known as "Race Directive" and the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation also known as "Framework Directive" are the first tools developed by the EU to operationalize the non-discrimination clause in the Amsterdam Treaty.

In the EU law, directives set the goals that all of the EU member states must reach, but they do not put the specifics. Member states are free to develop their own systems to reach these goals. Therefore, the Race and Framework Directives provide the goals for preventing racial discrimination in the member states. It is expected from member states to develop their own policies to reach those goals.

5.1.3.1 The Definition of "Race"

The Race Directive clarifies its position about the definition of "race" just like the UN and the Council of Europe as follows:

> "(6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term 'racial origin' in this Directive does not imply an acceptance of such theories" (European Union, 2000b).

The Race Directive provides prohibition on the grounds of race and ethnic origin. However, it does not clarify what it means by these concepts. The definition is not as wide as the one in the ICERD, the ECHR, or even the Amsterdam or Lisbon Treaties and the EU Charter. Moreover, religion is not included in the Race Directive, thus certain forms of racism are not accepted. As religion can also be a part of ethnicity, the situation gets more complicated. Religion is included in the Employment Directive as a discrimination ground, however, the scope of the Employment Directive is much narrow. Therefore, the Equality Directives are criticized for "creating hierarchy between grounds, letting exceptions, and being fragmented" (Ellis & Watson, 2012).

5.1.3.2 The Definition of "Discrimination"

The Race and Framework Directives provide protection for direct discrimination, indirect discrimination, harassment, and victimization. Article 2(2) defines the direct and indirect discrimination as:

> "(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;
> (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary" (European Union, 2000b).

The definition of the direct discrimination is based on the legislation in the field of sex discrimination (European Council, 1997c), and the definition of indirect discrimination is drawn from the case law of the European Court of Justice relating to the free movement of workers (European Court of Justice, 1996).

The first element of direct discrimination is unfavourable treatment. The examples of unfavourable treatment can be named as segregation in the schools; refusal of entry to a social area; or non-recruitment. The unfavourable treatment must be demonstrated by a comparator. Thus, the second element of direct discrimination is a comparable situation. It means that not everyone is excluded from a social area, but some people are refused to enter. If there is no actual comparator, a hypothetical comparator might be sufficient to establish the direct discrimination (ERA). The last element establishes the reason for unfavourable treatment, which is protected ground. The protected grounds for the Race Directive are the racial and ethnic origins. Then direct discrimination occurs when some people are refused to enter to a social area on the basis of their racial or ethnic background.

Discrimination does not always occur directly through treating people in similar situations differently; in some circumstances, discrimination occurs indirectly, when a neutral treatment puts people in disadvantaged situations because of their racial or ethnic

background. The first element of indirect discrimination is "a neutral rule, criterion or practice" that is applied to everybody. Following the example of *DH Case*, the neutral practice is the tests that the students are taking for determining their intellectual capacity. The second element is that a neutral rule, a criterion of practice is causing disadvantage to a protected group. For the *DH Case*, the tests were causing Roma children to end up in special schools as they were designed for the mainstream Czech population. Similar to direct discrimination, a comparator is also needed as the third element. The ECtHR and the ECJ accept the statistical evidence in indirect discrimination cases.

The Race Directive lets an indirect discrimination occur if the practice can be justified under two elements; first, it has a legitimate aim, and secondly, the means to achieve that aim are appropriate and necessary. The Court has to be satisfied that the aim is important enough and the means cause the minimum level of harm.

Another form of discrimination introduced by the Race Directive is "harassment." Article 3 defines harassment as:

> "3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States" (European Union, 2000b).

Harassment is a concept developed within the gender equality laws of the EU. It is a form of direct discrimination that does not necessitate a comparator to prove the claims. The first element is unwanted conduct against someone on the basis of racial or ethnic origin. Unwanted conduct can be verbal, non-verbal or physical. The second element is that the unwanted conduct aims to violate the dignity of that person. The last element is that the unwanted conduct creates an intimidating, hostile, degrading, humiliating or offensive environment. As the comparator is not needed, the victim's perception is sufficient to build the case for harassment. Even if the victim has not felt the harassment, the complainant can still be targeted (Fundamentals Rights Agency, 2010, p. 32).

The Race Directive also prohibits 'victimisation,' which is defined in Article 9 as follows:

> "Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment" (European Union, 2000b).

5.1.3.3 Limits and the Scope

The Race and Framework Directives have limitations underlined by the principles of subsidiarity and proportionality, and there has not been any clarification by the case law yet. As the Article 3 of the Race Directive and the Article 13 of the Amsterdam Treaty give reference to the "within the limits of the powers conferred upon the Community", it leads to two different opinions argued by Howard (2007, p. 243-245). While one of them argues that these statements mean that the EU does not have competence on discrimination, the other opinion argues that the Article 13 gives an autonomous power about non-discrimination, but the procedural powers of the EU are limited with its competences (Niessen & Chopin, 2004).

Content-wise, the Race Equality Directive provides protection against discrimination on the grounds of race and ethnicity in employment, occupation, social protection, education, access to and supply of goods and services. The Framework Directive provides protection on the grounds of religion or belief, sexual orientation, disability, and age, but only in employment. The groups protected by the Framework Directive are broader than the Race Equality Directive, however, the sectors are more limited to the employment.[32] Both of the Directives lay the minimum grounds for discrimination; the member states are free to move it further.

Table 14 Equality Directives

Grounds Field	Race	Religion	Disability	Age	Sexual Orientation	Sex

32 Protection for non-discrimination on sex in the areas of goods and services and social protection are provided by the Gender Equality Directives.

Employment & Vocational Training	Yes	Yes	Yes	Yes	Yes	Yes
Education	Yes	No	No	No	No	No
Goods and Services	Yes	No	No	No	No	Yes
Social Protection	Yes	No	No	No	No	Yes

Source: (Academy of European Law, 2014)

The Race and Framework Directives are criticized for "creating a hierarchy of discrimination grounds," as protection for racial discrimination is stronger than the other discrimination grounds (Howard, 2007, p. 241).

Another area of criticism is the meaning of the "public bodies" (Howard, 2007, p. 243-245). Article 3 states that:

> "1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
> (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
> (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
> (c) employment and working conditions, including dismissals and pay;
> (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
> (e) social protection, including social security and healthcare;
> (f) social advantages;
> (g) education;
> (h) access to and supply of goods and services which are available to the public, including housing" (European Union, 2000b).

Howard (2007) asks whether the actions of law enforcement, military or border control officers are included in the public bodies. Bell (2008) claims that they are included in the recruitment process, but not in their administration processes. Brown (2002), on the other hand, claims that they could be included by the interpretation of the ECJ under the institutional racism; otherwise the Equality Directives would be incomplete. Howard (2007, p. 243-245), also claims that "some functions of the police, law enforcement officials, border control officials, the army and prison personnel outside the employer/employee relationship might be considered to fall under 'social protection'

or ‘social advantages’…, but the situation is unclear with regard to the exercise of their law enforcement and other duties, although these might be included under Article (1)(e), (f) or (h).”

Another criticism is about the limitations. Although Recital 3 of the Preamble of the Race Directive states “the right to equality before the law and protection against discrimination for all persons constitutes a universal right,” there are still limitations. Recital 13 states that:

> “To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation” (European Union, 2000b).

Similarly, Article 3(2) states that:

> “This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned” (European Union, 2000b).

Both paragraphs were added by the member states during the negotiations because of their concerns about immigration and asylum systems (Howard, 2007, p. 243-245). As a result, the Race Directive does not provide protection against discrimination on the basis of nationality in the immigration issues.

5.1.3.4 Obligations of the Member States

The Race and Framework Directives define the obligations of member states as dissemination of information; creating a social dialogue with private sector; creating a dialogue with non-governmental organizations; establishing bodies for the promotion of equal treatment; providing compliance; determining effective, proportionate and

dissuasive sanctions; ensuring the implementation; and communication with the Commission for the preparation of implementation report in every five years.

Moreover, with the Article 5, the Race Directive opens the ground for member states to aim more substantial forms of equality:

> "With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin" (European Union, 2000b).

The positive actions are one of the areas that the Race Directive lets for discrimination in addition to the genuine occupational requirements. However, it is still criticized that the Directive does not clarify the actions that can be taken by the member states and the case law of the ECJ on the sex discrimination proves that its interpretation is very strict (Howard, 2007). In this way, the Directive often described as a good but insufficient step, and it is designed more for individual litigation rather than combating against institutional racism (Howard, 2007; McInerney, 2003).

5.1.3.5 Transposition

Before the Equality Directives, only six of the member states had equality legislations covering racial and ethnic discrimination. Among those Denmark, Ireland, the Netherlands, Sweden and the UK made minor changes to their already existing non-discrimination legislation (Fundamental Rights Agency, 2012a, p. 9). Between 2005 and 2007, the Commission initiated infringement procedure to 25 member states due to the transposition problems and as a result, all member states transposed the equality legislations (European Commission, 2014a, p. 3).

The Race Directive obliged member states to establish an equality body or bodies to carry three tasks: to offer assistance to victims in pursuing their complaints; to conduct surveys on discrimination; and to publish reports and make recommendations on discrimination. In some member states, a new body was established with the Directive like France, Germany, Italy, and Spain (Fundamental Rights Agency, 2012a). In some others, the mandate of an existing body was expanded to cover racial or ethnic

discrimination such as Cyprus and Latvia (Fundamental Rights Agency, 2012a). In some member states, bodies dealing with racial and ethnic discrimination were already existent like Belgium, Ireland, the Netherlands, Sweden and the UK (Fundamental Rights Agency, 2012a). As a result, all member states have equality bodies to deal with the racial and ethnic discrimination (in Poland there is no specific equality body, but the existing bodies cover the three tasks) (Fundamental Rights Agency, 2012a).

Article 7 requires member states to ensure that the victims have access to judicial and/or administrative procedures and to provide NGOs to involve to those proceedings. Currently, all member states have the necessary procedures and NGOs are able to involve (Fundamental Rights Agency, 2012a).

On the other hand, there have been problems in the application of some other articles. For example, the burden of proof has to be shared between the claimant and the respondent in accordance with Article 8. FRA (2012a, p. 13) claims that it has not been fully incorporated into domestic law as it is rather a novel approach although it has long been used for discrimination on the grounds of sex in the EU law. Another example is the Article 15, which obliges member states to ensure effective, proportionate and dissuasive sanctions in case of breaches. This issue remains as problematic while in some member states civic dispute settlement bodies do not have the competence to issue compensations; in some others, the decisions of quasi-judicial bodies might not be binding (Fundamental Rights Agency, 2012a). On the other hand, member states have sanctions when it goes to the civic courts (Fundamental Rights Agency, 2012a) but still; it is hard to determine whether the sanctions are effective, proportionate and dissuasive.

FRA underlines the challenges of the application of the directives as lack of awareness about the rights, underreporting of the discrimination cases, legal costs, lack of data, lack of preventive and promotional measures, distrust to the system, denial to accept discrimination as a problem, or failure to recognize discrimination (Fundamental Rights Agency, 2012a).

5.1.4 Framework Decision

Another part of the racial non-discrimination legislation is the Council Framework Decision 2008/913/JHA of 28 November 2008 on combatting certain forms and expressions of racism and xenophobia by means of criminal law, also known as the "Framework Decision." The Framework Decision was adopted before the Lisbon Treaty; therefore the Commission did not have any power to open infringement procedures until 1 December 2014. All of the EU members had to adopt it until 28 November 2010, and Croatia had to adopt it until 1 July 2013.

The Framework Decision determines the areas of criminal law to be used for the racial discrimination. As being a decision, it is binding and directly applicable for the member states. Article 1(1) of the Framework Decision states:

> "Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:
>
> (a) publicly inciting violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
> (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures of other material;
> (c) publicly condoning, denying or grossly trivializing crimes of genocide, crime against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statue of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite in violence or hatred against such a group or a member of such a group;
> (d) publicly condoning, denying or grossly trivializing the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group." (European Union, 2008b).

The Framework Decision makes member states to criminalize hate speech; dissemination of the hate speech; denial of genocide, crimes against humanity and war crimes. For the natural persons, the penalty must be a maximum of at least between one and three years of imprisonment. For the legal persons, the penalties may include criminal, non-criminal fines and other penalties such as:

> "(a) exclusion from entitlement to public benefits or aid;
> (b) temporary or permanent disqualification from the practice of commercial activities;
> (c) placing under judicial supervision;
> (d) a judicial winding-up order" (European Union, 2008b).

Moreover, it puts that any conventional offence with racist and xenophobic motivations must have an aggravated sentence. In June 2016, the Commission agreed on a "Code of Conduct" with Twitter, Facebook, and YouTube to combat online speech on the basis of the Framework Decision. Accordingly, the IT Companies will take down the prohibited content within 24 hours after they receive the valid removal notification (European Commission, 2016d).

However, criminal punishments for the hate speech have long been a very contentious issue as it is considered as a limitation of the freedom of speech and expression. In this way, the Framework Decision is criticized for a limitation on the freedom of expression (Garman, 2008). Although freedom of expression is very much valued both by many of the member states and the EU; criminalization of the hate speech is also a part of the legal systems of many member states. The Commission is in the opinion that the European case law clarifies and ensures the balance between freedom of speech and prohibition of illegal hate speech.

As for the transposition, albeit with different wording, all of the member states have somehow criminalized the public incitement to violence or hatred and public dissemination of materials inciting to violence and hatred. However, 13 member states have no provisions for public condoning, denial or gross trivialization of genocide, crimes against humanity and war crimes; and 15 member states have no provisions for public condoning, denial or gross trivialization of the crimes defined in the Charter of the International Military Tribunal. The majority of the member states have provisions to

punish hate speech with criminal penalties. All of the member states have included the racist and xenophobic motivation as a factor in their criminal codes to changing degrees. Except Greece, Spain, Italy and Slovakia, all member states address the liability of the legal persons for hate speech.

The challenges for the application of the Framework Decision are the lack of awareness about the legislation, underreporting, lack of data, failure to recognize hate crimes, lack of specialized or trained bodies especially for online hate speech, and racist and xenophobic attitudes of the opinion leaders.

5.1.5 Audiovisual Media Services Directive

The last piece of the legislation is the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in the member states concerning the provision of audiovisual media services, also known as "Audiovisual Media Services Directive." The Audiovisual Media Services Directive has the aims of addressing new technological developments in the media while at the same time promoting and preserving cultural diversity and pluralism in the media, and combating the hate speech on the grounds of race and religion. Article 6 of the Directive states that: "Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality" (European Union, 2010, p. 15).

So far, the Commission states that the Directive works well and cites only one example of Al Aqsa TV which broadcasting Anti-Semitist content and ceased transmitting such programs after the intervention of the Commission (European Commission, 2010d).

5.2 Actors

Formally, the Commission and the ECJ are responsible from the implementation of the legislation. However, the EU has a very complex structure of local, national, international and supranational actors that involve in the process with different degrees.

For the implementation of the racial non-discrimination legislation, the Commission carries utmost importance as an MEP states that:

> "The Commission is very important on these issues. They can give money, they can change things, determine the actions" (Interview 3, 2015).

During the previous college of Commissioners, the President of the Commission Barosso established a "Group of Commissioners on Fundamental Rights, Anti-Discrimination and Equal Opportunities." The group consisted of related Commissioners and was meeting 3-4 times per year. The Commission also had working groups within the Commission on Roma and anti-racism. Currently, there are two units within the DG Justice; one for non-discrimination policies and Roma coordination, and the other is for hate crime and hate speech. The units are responsible for monitoring the transposition and implementation of the legislation.

While fulfilling their tasks, the Commission brings member states together to share the best practices and discuss the common problems through express or larger meetings. A Commission officer states that:

> "In our express meetings we encourage them to talk. We ask that they do presentations. We have contributions in advance before we have express meetings. We select best practices of each country. We ask them to present to the others" (Interview 6, 2015).

It is also possible for the public to reach the Commission:

> "We have a lot of channels with the citizens. We receive Parliamentary Questions from the European Parliament, we have to answer. We receive complaints, formal complaints from citizens. We also receive letters, general letters from citizens. We have the obligation to reply to all of them. We also receive petitions from the European Parliament as well which is different from the question because the question is made by the MEP, while petitions made by citizens and channeled to the European Parliament. Any citizen can send a question, complaint or letter to the European Commission in any official language. We have a duty to reply in 15 days. The Ombudsman is very tough with us. If we don't reply, they receive a complaint. We do not receive a lot of because we do our work very well but we do receive remarks from the Ombudsman when we don't reply in time or … So, the citizens still have the right to go to the Ombudsman. We try to reply as fast as we can but you know we are only 24 and we receive a lot of questions. We also have different

> Commissioners. We are the only unit with different Commissioners. We have the Commissioner Verova who is the Commissioner for DG Justice, but we also have the Vice-President Timmermans who is the Vice-President for fundamental rights and rule of law. So we do have double work because we have to deal with letters addressed to both of them" (Interview 6, 2015).

However, as stated by the same officer interviewed, it is understaffed: "24 people responsible from fundamental rights in the EU" (Interview 6, 2015). Therefore; they often use the expertise of the civil society while fulfilling their tasks. As it does with the member states, the Commission also holds regular meetings with relevant NGOs. It encourages the formation of Europe-wide networks and benefits from the research and reports of NGOs and other international institutions especially the Council of Europe:

> "We have regular meetings with the NGOs because they are part of the solution as well. So, we meet them and of course every time they are asking the same question; what are you doing for the Framework Decision? Why the Commission is not starting infringement procedure? We are very few but we try to go to the all the conferences we can to participate and to give visibility to the work we are doing because sometimes they think we are doing nothing. NGOs, even in the Parliament they think that the Commission is not doing anything, which is not true" (Interview 6, 2015).

The NGO representatives support this system. One of them states that:

> "Within the Commission, fortunately, the people that are working on our issues, most of them are at the right place. They are knowledgeable about the issues and they really want to see the change happen. They are genuinely convinced that they work towards equality… We usually have good contacts with them. They are informing us about what happened and they are seeking advice from us" (Interview 8, 2015).

One of the most important organizational supports to the Commission comes from the Fundamentals Rights Agency (FRA). The European Monitoring Centre on Racism and Xenophobia (EUMC) was established in 1997. Its main tasks were to conduct research, make analysis, and monitor the member states for the incidents of racism and xenophobia. In 2007, the Centre was turned into the Fundamental Rights Agency (FRA). Its mandate is extended from racism and xenophobia to include all fundamental rights especially under the themes of access to justice; asylum, migration and borders; gender; hate crime; information society, privacy, and data protection;

LGBTI; people with disabilities; racism and related intolerance; rights of the child; and Roma. The FRA assists the EU institutions and member states and works in cooperation with them as well as with international organizations and civil society actors. The main tasks of the FRA are doing research and analysis both in the member states and Europe-wide; providing expertise when needed; information-sharing and awareness-raising. The budget of the FRA is directly coming from the EU and was 21 million Euros in 2015. The FRA does not do advocacy or lobbying directly, however, its reports and publications include recommendations for policy-makers. As an officer from the Commission states:

> "We closely cooperate with the FRA. They are an independent agency but we closely cooperate on surveys, we participate and comment on their working program. My Head of Unit is the Member of the Board of the FRA. We are closely connected" (Interview 6, 2015).

The Commission encourages the establishment of Europe-wide networks in thematic areas. Some of them are independent but mostly funded by the Commission such as ENAR,[33] Equinet,[34] ERIO,[35] European Equality Law Network.[36] Although they are independent, the funding from the Commission might cause problems for them:

> "What we have to be very careful about however is the mentality there was before and one of its success unfortunately is the far-right parties… to drop the seeds in the minds of the number of civil servants in the

33 The European Network Against Racism (ENAR) was founded by the civil society actors in 1998 to work at the European level. ENAR is a network organization for the civil society organizations working in the area of anti-racism in Europe. Although its main funding (almost %80) is coming from the DG Justice of the Commission, it acts as an independent body. As an independent body, ENAR conducts research, analysis and monitoring. Like the FRA, it also involves in the policy-making processes of the European institutions with its expertise; on the other hand, it does active advocacy and lobbying unlike the FRA. The main areas that the ENAR works are specific forms of racism (Roma, people of African descent and Black Europeans, Jews and migrants), equality data collection, equality at work, racist violence and discourses, and advocacy in the European Parliament.

34 As a result of the Equality Directives, all member states established some kind of national equality bodies. The Commission encouraged national equality bodies to form a network organization for themselves. As a result, Equinet, the European Network of Equality Bodies is founded in 2007 and it brings 45 organizations from 33 European countries together. It is funded by the DG Justice of the Commission, however it is an independent legal organization. Equinet evaluates equality legislation, develops strategies and policies, organize trainings and produce publications.

35 The European Roma Information Office (ERIO) is an international advocacy NGO that is mainly financed by the Commission. It implements projects; conducts research; prepare publications; provide information and does advocacy to promote Roma inclusion and prevent Roma discrimination. It involves in public deliberation process with the EU institutions; and provides information to them and to Roma NGOs and state institutions.

36 The European Equality Law Network established in December 2014 and it combines two previously existing networks; the European Network of Legal Experts in non-discrimination (established in 2004) and the European Network of Legal Experts in the gender equality (established in 1983). The network provides general coordination, consultation and evaluation in the area of non-discrimination.

> Commission that the EU money is public money. Therefore, it cannot be used to criticize democratically elected parties. This was not the case before. So, there was an understanding the public money is used to combat ideas, ideologies that are against the founding values of the EU and now that is not the case any more. Because a party which is advocating things that are obviously against the basic values of the EU that are fundamental rights, democracy, equality so forth, because it is democratically elected, public money should not be used to criticize this party, which is really a huge and massive setback. Because it puts really at risk all the organizations at the sector. We felt the pressure earlier but all the organizations in the field are having it. So, we had robust conversation with the Commission because one of the biggest funding we have is coming from the structural funding. They told us directly they don't want us to criticize the far-right. If we had to do, it was very well detailed and we should not only criticize the far-right but all the other parties to have a balance. It was 2-3 years ago. Therefore, we really had to adjust some of things we produce. We had to survive" (Interview 8, 2015).

There are also many global and European NGOs that contribute to research, reporting, monitoring, agenda-setting and also invited to the meetings in the Commission such as Amnesty International, Statewatch, Human Rights Watch, European Roma Rights Center, Open Society Foundation.

Therefore, the roles of the NGOs are crucial not only for the UN and Council of Europe but also for the EU. Their roles can be summarized as to "(1) provide information; (2) lobby and advocate; (3) participate in dispute resolution in international tribunals; (4) implement policies and programs of intergovernmental institutions; (5) collaborate in policy-making; (6) engage in lawmaking; and (7) hold intergovernmental institutions accountable for compliance with their own internal directives" (Schweitz, 1995, p. 418).

The European Parliament has always been also very active in this area. The issue falls under the Committee on Civil Liberties, Justice and Home Affairs (LIBE), but the EP also has an unofficial intergroup named Anti-Racism and Diversity Intergroup (ARDI). ARDI was first formed during 2009-2014 term, and it was revitalized for the 2014-2019 term. ARDI organizes many events about anti-racism within the European Parliament, thus contributes to awareness raising among the MEPs and advocacy. The EP puts pressure on the Commission and member states by its actions:

> "There is a certain kind of moral pressure that we can exert. If the European Parliament as such, or even if only the Committee of the European Parliament addresses itself visibly, namely presses the Italian authorities saying here we have the case, that is not really acceptable and you should take action, then this cannot simply be ignored… We are not the Court, we are not the Commission, we cannot order a state anything, we cannot command a state to do anything, the only thing we can say is this is wrong" (Interview 5, 2015).

Therefore, relevant NGOs try to reach out to the MEPs to attract their attention to the subjects they are working on. The EP can set the agenda or raise the profile of an issue, but the issue has to be picked up by a member:

> "It is mostly about strong personalities. The European Parliament is a good place for agenda-setting about human rights issues, but in order for policies to be realized, it needs strong personalities to drag the issue and put pressure on other institutions" (Interview 3, 2015).

The political party composition of the EP also matters:

> "Our allies in the EP are the Greens, Radical Left and a big chunk of S&D… It has been one year for this Parliament and we haven't had any single contact with the EPP… It is very difficult with the right whereas on the left side, it is very easy and we have good contacts" (Interview 8, 2015).

The growing presence of the far-right parties and mainstreaming of the far-right discourse also have an impact on the relations between the EP and NGOs working in the area:

> "The major issue that we face now at the advocacy is of course that coalition. People that are on the left side that are more supportive are not in power. It is already very difficult to start the game and it has been the same since 2001. We see growing number of far-right, or people that are close to neo-right populist types of discourses. We have counted more than 80 MEPs that are really far-right oriented. If you add all the ultra-nationalist, anti-European, you have already one force easily in the European Parliament, which is not in favour of our ideas, which is adamantly against. That does not make things very easy. Apart from the Greens, Radical Left, some S&D; it means the rest of the EPP and S&D will be very careful not to go so far" (Interview 8, 2015).

While the Council is not directly related to the implementation phase of the existing legislation, they have crucial importance for the development of the new legislation. However, it is more difficult for NGOs to have access to the Council:

> "On the issue of hate crime, we had a very good collaboration with Lithuanian Presidency… The Council Presidencies absolutely make difference. Some of these issues would not move as powerful as it did without the Council President. Lithuanian Presidency moved in a very profound way the hate crime. It was us preparing it and helping them but they were willing to do it and pushed that. Of course, they [EP] are important to create this general understanding and knowledge. But more specific dealing with the issue, then the Council comes. Because in the Council Conclusions, you get all the member states on board and you can drop it to the … member state. You cannot do it with the Parliament Conclusions. The Commission is a key actor but I would say these issues are member state issues because it is their institutions you press. That's why the Council becomes so important because you get the by in from the Council" (Interview 1, 2015).

> "The Council is more difficult. There is a lot of secrecy around it. Difficult to know who is working on what. Specifically when it comes to COREPER. We try to bypass this by having contacts at Permanent Representations. Some of them are more laid back towards civil society. They appreciate civil society and they leak some information from time to time but it is much more complex" (Interview 8, 2015).

5.3 Policies

In addition to the hard law instruments, the EU also employs more flexible and fluid approaches known as "soft law instruments" to respond to challenges it has been facing.[37] Instead of pushing for binding policies in a larger and more integrated union; it has also been employing non-binding methods to create or contribute to the policy change. Mainstreaming and various policy initiatives are among the soft law instruments that the EU has been employing to combat racial discrimination.

Mainstreaming is a complementary approach to the non-discrimination legislation. It is based on the idea that all legislation and public policy should be reconsidered within the perspective of equality, as individual litigation based on non-

[37] Soft law instruments include opinions, recommendations, guidelines. They are not binding but still have legal effects.

discrimination legislation cannot bring the expected outcomes by itself. Mainstreaming can be traced back to 1970s for the gender policies and widely employed by the EU as well especially for the gender policies. The Commission put mainstreaming among the other soft policy tools in its Action Plan against Racism in 1998, and Lisbon Treaty underlined it.

The European Union also undertakes various policy initiatives. All European institutions publish public statements to underline the need for combating racism. Moreover, there have been many educational activities under Socrates, Youth for Europe, Leonardo programs of the EU. The EU designated 1997 as the European Year Against Racism and organized many events throughout the year. While these policies were mainly for awareness-raising, the EU also strengthened its institutional structure for research, analysis, information sharing and even for advocacy. The Commission launched "For Diversity-Against Discrimination" campaign in 2003 to raise awareness about diversity and the EU designated 2007 as the "European Year of Equal Opportunities for All" and organized many informative events against anti-discrimination throughout the year.

Roma inclusion was made into the EU agenda in the 1990s especially with the accession process of the CEECs. In May 2011, member states agreed on the EU Framework for National Roma Integration Strategies, which would be completed until 2020. Accordingly, all member states are invited to prepare national Roma integration strategies, and the areas of education, employment, housing, and healthcare are underlined. Member states have to appoint National Contact Points and provide the involvement of Roma civil society and other stakeholders. The Commission has to evaluate these policies and identify best practices.

With the "For Roma, with Roma" program, the Commission aims to organize activities to target discrimination against Roma. The activities involve local authority twinnings, media seminars, and cultural and educational events. Together with the Council of Europe, the EU implements the ROMACT project and aims to build capacity and produce long-term solutions for local authorities for Roma empowerment. European Economic and Social Community project of "Better inclusion of the Roma community

through civil society initiatives" aims to evaluate the current EU legislation and identify the ways to improve it.

In terms of funding, the Rights, Equality and Citizenship Funding Programme is a general program to support projects promoting equality and rights. The Employment and Social Innovation Programme provides funding to projects combatting social exclusion and promoting adequate social protection. The Erasmus Plus supports educational activities, and the Culture Programme focuses on intercultural dialogue.

5.4 Concluding Remarks

The EU competence against racial discrimination is based on the Amsterdam Treaty, the Lisbon Treaty and the Charter of Fundamental Rights; and the Race Directive, the Equality Directive, the Framework Decision and the Audiovisual Media Services Directive are developed to operationalize this competence. The Race Directive provides protection against racial and ethnic discrimination, while the Equality Directive includes religious discrimination, however only in the area of employment. The definition of discrimination in the EU system includes direct discrimination, indirect discrimination, harmonization and victimisation, and the member states are obliged to undertake certain actions to prevent racial discrimination. With the Framework Decision, hate speech in the EU is also criminalized, and with the Audiovisual Media Services Directive protection against incitement hatred on the grounds of race and religion are extended to the media. The Commission thinks that the legislation is sufficiently transposed, but underlines various challenges in the application of the legislation.

The non-discrimination system of the EU is fragmented; the grounds of race, ethnicity, and gender have better protection than the other discrimination grounds, which makes a hierarchy among discrimination grounds. The calls for a single, more harmonized and comprehensive "Horizontal Directive" by the civil society could not be successful so far. Moreover, unlike the Council of Europe system, the EU system has limitations for the protection of non-citizens from racial discrimination.

With regards to actors, the Commission and the EP are the most active actors for the application and the development of the non-discrimination legislation with the help of

the civil society. Especially the civil society representatives based in Brussels are well-integrated to the process and do not have any difficulty to access to the Commission and the EP. Especially the interviews revealed that there is a high degree of socialization and social learning among the actors working in this area. However, the EP is not a homogenous actor; certain political groups are easier to reach and more active on the issue of racial discrimination. Moreover, the increasing representation of the far-right also has consequences for the civil society. Lastly, the Council is mostly missing in these interactions, showing their reluctance to involve in supranational processes.

The EU tries to complement the legislation with different policies such as mainstreaming; education and awareness-raising projects. The impacts of those tools are yet to be known.

6. ENFORCEMENT OF THE EU POLICIES AGAINST RACISM, DISCRIMINATION, XENOPHOBIA IN THE MEMBER STATES

The responsibility to implement the EU law lies on the member states, however, the Commission has the responsibility of monitoring the efforts and provide the correct application of the legislation together with the ECJ. Article 258 of the TFEU clarifies the competence as:

> "If the Commission considers that a Member State has failed to fulfill an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.
> If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union" (European Union, 2008a).

This procedure is known as the "infringement mechanism." Accordingly, when the Commission considers there is a breach of the EU law by a member state, it may send a letter of formal notice through the system of the EU Pilot. Member state has to reply within a given period of time. If the member state fails to reply on time or if the reply is not found satisfactory by the Commission, the Commission delivers a reasoned opinion underlining the breaches of the EU law and asking member state to act upon it. If the member state cannot comply with the EU law within the given period or the Commission is not satisfied by the progress of the member state, the Commission may decide to bring the issue to the ECJ.

As of January 2017, there have been 82 infringement cases opened by the Commission on the basis of Race Directive. 79 of them are related to the transposition; while only three of them are related with the actions of member states that can be considered as institutional racism.[38] Whereas those 79 cases are closed, three cases are still open against the Czech Republic, Slovakia, and Hungary. For the Employment Equality Directive, 90 infringement cases are opened of which nine are still open.[39] There

38 See Appendix 9.

39 See Appendix 10.

have been no infringement cases on the basis of Framework Decision or Audiovisual Media Services Directive.

The Commission referred seven infringement cases to the ECJ on the basis of Race Directive, while referred six cases on the basis of Employment Equality Directive. All the cases are related with the transposition.[40] On the other hand, there have been three individual applications to the ECJ on the basis of Race Directive. Although not all of them are related with the state policies, all three individual application cases to ECJ are discussed in this chapter, as they are the only examples of ECJ rulings on the basis of Race Directive so far.

In addition to all ECJ cases, all three infringement cases against the Czech Republic, Slovakia, and Hungary on the basis of Race Directive are also discussed in this chapter. Moreover, three cases are also added to the discussion. One case about Greece represents the inaction of the Commission because of the competence issues for the racism against refugees; while two others about France and Italy represent the inaction of the Commission despite having competence for the eviction of Roma. The cases of Greece, France, and Italy are chosen as the key cases under their relevant topics.

6.1 Infringement Procedures by the European Commission

The Commission cannot and/or does not act against any kind of racist, discriminatory, xenophobic situation in the EU. As the competence of the Commission is for the implementation of the EU law, it cannot act on the cases of individual racism. Individual racism is under the competence of the member states. The Commission can only act against the cases of the breaches by the member states.

Furthermore, the Commission cannot act against a single incident. It has to be convinced of an ongoing trend of the breach in order to act. Therefore, the efforts of individuals, civil society actors, and other international and regional institutions are crucial for the assistance to the Commission in detecting the breaches on the issues of

40 See Appendix 11.

fundamental rights including protection against racism, discrimination, and xenophobia. A Commission official states that:

> "On the other side, there is also a problem because the Commission cannot intervene in the middle of the cases. We need to see some trends before the Commission can start the infringement procedures. And sometimes it is also frustrating even we know that there might be a problem, especially in the area of racism and xenophobia we can do a lot of legislative and we are doing also, we are trying to encourage the states implement correctly the laws on discrimination but we cannot intervene in the middle of the cases because this is for national authorities to do. Of course, if we see some trends we can start asking member states what is happening but we have to have some trends. Otherwise, we cannot intervene… The Commission tries to do everything but as I told you, we can't intervene in the middle of the cases. We need to see trends. And we can't prove there are trends we can't go against the member state. Of course, we can send the remarks. We have a system of communication with member states. We have the permanent representations. We can have bilateral dialogues and we do have bilateral dialogues. We have express meetings as well on Framework Decision but they also have express meetings in Race Directive. So, there are ways to communicate what is happening, and why. But officially the Commission cannot intervene in the middle of the cases" (Interview 6, 2015).

Even if there have been ongoing trends about racism in the member states, the Commission does not open infringement mechanism for all of the breaches. Sometimes the issue is again related to its competence, as the competence of the Commission is limited. For example, it cannot act on the violations against third country nationals about immigration issues as the Race Directive has limitations on that issue. Another example is it cannot act against religious discrimination other than in the area of employment as the protection against religious discrimination is provided by the Employment Directive, which does not have other discrimination grounds. If the formulation of "race" and "ethnicity" in the Race Directive included religion, the Commission could act against it under the Race Directive.

The elite interviews revealed some other factors that might have an effect on the Commission to open an infringement mechanism on the basis of racism. The first factor is the personality of the Commissioner and the President:

"The Commission is not a bad actor either as well either because they are the ones who initiate and to draft the proposals. But then, it very much depends on the orientation each Commission has. So, what happened against the Czech Republic and Slovakia, it had not been happened before. That's because both the President and the Commissioner were eager, and it was time, and the file was well prepared to act on it. I never look at the Commission as an opponent but more as an ally. I might not agree with everything they do or they propose or they have in the legislation. But we should consider them as an ally definitely" (Interview 9, 2015).

"[Personality of the Commission] definitely matters and the personality of the President as well" (Interview 9, 2015).

"Of course all depends on the Commissioner. What sort of policies she wants to follow?... They are also aware of political opportunities… They are politicians" (Interview 1, 2015).

"I was at the trialogue with the Budget Committee. There was a Bulgarian Commissioner, she was very strong. When the Commissioner is strong, it is a really big power and pressure from the Commission to the member states but when the Commissioner is so so… It is also about personalities in the Commission" (Interview 3, 2015).

The second factor underlined in the interviews is the changing context and the demand of the society for the more involvement of the Commission:

"It is not about being active. We have a lot of work because things are not going well. Last Commissioner was very proactive in mainstreaming fundamental rights, citizenship rights. There were no such big worrying trends back than like it is now. Therefore, because of the reality we are living now, of course, our work is much more visible. Because society started to get worried and of course we get more questions on that. It is not that the Commissioners are more active but they are more involved in that work because the society and the member states are asking for much more involvement" (Interview 6, 2015).

"Obviously, there was a change in the political will to tackle the issue because the methods have not changed" (Interview 7, 2015).

Another factor is the difference between the big and small states. Accordingly, the Commission is more reluctant to act against big member states on the issue of racism:

"[big state, small state] I think that will change. The Commission is acting fast now since September. The Commission is working on other cases as well. There are EU Pilots going on at the moment for Greece, Italy. That is confidential. We are not sure whether these cases will be

> pushed forward but if so, that should be done in a year. Then we can't say there is preference to one another. The fact that Italian case has not been pursued last year is obvious. Because there was the Italian Presidency. So, obviously political issues matter. But again, those information, we don't have publicly. Because we don't know Italy has been pursued. We also don't know it has not been pursued last year because of the Presidency but it was obvious" (Interview 7, 2015).

In this part, six cases under three topics are analyzed in order to elaborate the behavior of the Commission in different circumstances for the enforcement of the anti-racism legislation. The case of Greece for the topic of "Racism against Refugees" represents the behavior of the Commission when it does not have a clear competence against a clear breach. The cases of France and Italy for the topic of "Evictions Targeting Roma" represent the behavior of the Commission when it has competence but does not act against a clear breach. Finally, the cases of Czech Republic, Slovakia, and Hungary for the topic of "the Segregation of Roma Children in Education" represent the behavior of the Commission when it has the competence and acts against a clear breach.

5.1.4 Racism against Refugees

It is assumed that there are 6o million people on the move in the world, of which 20 million are refugees (UNHCR, 2015). This is the highest number recorded ever in the world history. Apart from 5.1 million Palestinian refugees, most of them are from Syria. Although most of the refugees are hosted outside of Europe, the increasing number of arrivals to the European continent has been causing difficulties for the EU and its member states. According to Frontex, over a million refugees and immigrants arrived in Europe, mostly to Italy and Greece in 2015 (Frontex, 2016). The number was around 200.000 in 2014. As the FRA states in its 2016 report:

> "The increased number of arrivals put a significant strain on domestic asylum systems in countries of first arrival (mainly Greece and Italy), transit countries (Croatia, Hungary, Slovenia and to some extent Austria) and countries of destination (Austria, Germany and Sweden, as well as to a lesser extent other Member States). Among the last group, Sweden recorded the highest number of applications per capita in the EU (some 11.5 applicants per 1,000 inhabitants). As Sweden's asylum and reception system was no longer able to cope with the arrivals, a proposal to suspend relocation to the country was tabled in December" (Fundamental Rights Agency, 2016a, p. 17).

Since 1999, the EU has been trying to build a Common European Asylum System (CEAS) to create solidarity among member states; make them share the responsibility; guarantee the common standards and fair treatment for immigrants and asylum-seekers by harmonizing their legislations. The main components of the CEAS can be named as "Qualifications Directive" to clarify the grounds for granting international protection; "Receptions Directive" to ensure humane reception conditions across the EU; "Procedures Directive" to give fairer and quicker asylum decisions with providing support to asylum-seekers; "Dublin Regulation" to clarify the rules between states; "EuroDac Regulation" to ensuring cooperation among the law enforcement units; "Returns Directive" to determine the procedures for the return and removal decisions.

According to Dublin Regulations, refugees have to seek asylum at their first entry point. This creates an enormous stress especially for Greece and Italy, as the numbers of the arrivals are higher than their capacities. This situation led to the deterioration of already bad conditions for the refugees and necessitated member states to take action. In 2015, the EU Heads of Governments and States met for six times. The European Commission published the European Agenda for Migration with two action plans focusing on fighting smuggling and ensuring effective returns. Furthermore, the European Commission used the emergency response mechanism under Article 78(3).[41] Accordingly, 160.000 people were to be relocated from Greece and Italy to the other member states in accordance with some quotas. However, some member states announced their discontent with the scheme afterwards, thus the plan could not be implemented properly. As of 9 December 2016, only 1737 people from Italy, and 6245 people from Greece were relocated as Table 15 shows:

Table 15 Member States' Support to Emergency Relocation Mechanism

Member States	Relocated from Italy	Relocated from Greece	Remaining places from the 160.000
Austria	0	0	1953
Belgium	29	177	3606
Bulgaria	0	29	1273
Croatia	9	10	949
Cyprus	10	42	268

[41] "3. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament." (European Union, 2007).

The Czech Republic	0	12	2679
Denmark	-	-	N/A
Estonia	0	66	263
Finland	359	542	1177
France	282	2091	17.341
Germany	207	408	27.921
Greece	-	-	N/A
Hungary	0	0	1294
Ireland	0	109	491
Italy	-	-	N/A
Latvia	8	140	333
Lithuania	0	185	486
Luxembourg	40	136	381
Malta	46	34	51
Netherlands	331	834	4782
Poland	0	0	6182
Portugal	261	459	2231
Romania	43	513	3624
Slovakia	0	9	893
Slovenia	23	101	443
Spain	50	348	8925
Sweden	39	0	3727
The United Kingdom	-	-	N/A
TOTAL	**1737**	**6245**	**89.930**

Source: (European Union, 2016b)

Among the member states, Hungary even went for a referendum in October 2016. Although the plan was rejected in the referendum (with 98%), it was not binding as it could not reach the majority (only 43.9% participated) (Guardian, 2016). However, the failure of the referendum does not change the fact that Hungarian government spent 16 million Euro during the referendum campaign which had many racist and xenophobic elements (Human Rights Watch, 2016b).

In November 2015, the EU started to negotiate a "refugee deal" with Turkey and reached an agreement on 18 March 2016. Accordingly, Turkey has been increasing the controls over its borders to stop the crossings to the EU member states. In exchange, the EU is relocating refugees from Turkey in accordance with the Voluntary Humanitarian Admission Scheme, and making a three billion Euro funding available for refugees (European Union, 2016a). The issues of opening of the new accession chapters, and visa-free regime are also parts of the deal, but the progress in those issues are proved to be dependent on the political context.

As of 28 September 2016, the Commission stated that the daily arrivals to Greece decreased to an average of 94 from 1740 (European Union, 2016a). Therefore, the

deal decreased the number of arrivals, however, the problems about poor reception conditions, ill-treatment of law enforcement officers, xenophobic and racist incidents against the refugees and immigrants continue to exist. The "refugee deal" with Turkey has been receiving many criticisms on the basis of violating rights of refugees and international law (Migration Policy Institute, 2016; Amnesty International, 2016b; Human Rights Watch, 2016a; UNHCR, 2016). Nonetheless, the EU is seeking similar agreements with several North African states to curb the flow to Europe (EurActive, 2016; Politico, 2016b).

Another issue that has intensified during the recent period is the violation of the principle of *non-refoulement* by the EU member states. The principle of *non-refoulement* is one of the most important gains in the post Second World War context. The principle is developed after witnessing the refugee tragedies during the Second World War and aims to prevent the similar situations by prohibiting states to return the refugees who have a risk of persecution. The principle is guaranteed by Article 33 of The Convention and Protocol Relating to the Status of Refugees (Refugee Convention), Article 18 and Article 19 of the EU Charter, and Article 78 of the Lisbon Treaty as well as ECtHR interpretation of Article 3 of the ECHR.

The principle of *non-refoulement* bans direct refoulement as well as indirect refoulement. As a result of the prohibition of direct refoulement, individuals cannot be returned to the country of origin, and as a result of prohibition on indirect refoulement, individuals cannot be returned to the countries where they can face harm. The situation of each individual shall be assessed separately, otherwise, it becomes collective expulsion which is also prohibited by Article 19 of the EU Charter and Article 4 of Protocol 4 to the ECHR, including high seas.

As contrary to the principle of *non-refoulement*, Greece has been pushing boats to Turkish waters (Human Rights Watch, 2015; Amnesty International, 2015). Bulgaria pushes back refugees at the Turkey border, often violently (Bordermonitoring, 2016; Human Rights Watch, 2016c). The Commission opened the infringement procedure against Bulgaria in April 2014 for the possible refoulement of refugees, however, the procedure did not make any improvement as the authorities denied any wrongdoings (Human Rights Watch, 2016c; ECRE, 2014). Bulgaria was also among 20 member states,

of which the Commission gave 40 infringement decisions to make CEAS work in September 2015 (European Commission, 2015c).

In addition to the push-backs, Bulgaria has been building wired border fences along the Turkish border assumed to be 130 km long when it is done (Daily Mail, 2016). In 2012, Greece built a fence at the Turkish border to close the land border (Huffington Post, 2015). In November 2015, Austria decided to build a border fence at its border with Slovenia. Hungary fenced all of its borders with Croatia and Serbia and seeks to extend it to Slovenia border (Independent, 2016). Slovenia started to build fences in November 2015 (Balkan Insight, 2016). Moreover, Hungary amended its law to criminalize the crossing of border fences and issued charges (Fundamental Rights Agency, 2016a, p. 13). Eight member states introduced temporary border controls inside of the Schengen area.[42]

Although it is not illegal for a state to strengthen its borders, it certainly adds up to the inhumane dimension of the European asylum system. It is not possible for refugees to seek asylum before reaching the EU soil, and for Syrian refugees, for example, it is not possible to apply for a visa from Syria as no EU embassy exists in Syria anymore. Even if refugees can reach the EU territory through legal or illegal means, they have to seek asylum at their first entry point, which is not necessarily their choice and they try other routes to reach their choice of destination. Examples of such tragic events occurred during September-October 2015 when thousands of refugees walked from Croatia to Slovenia and waited at the Austria-Slovenia border (BBC, 2015a). Hungary not only closed its borders but also used tear gas and water canons against refugees (The Guardian, 2015).

While Germany and Sweden had been regarded as more generous for asylum applications when compared to other EU states, in November 2015, Sweden announced that it could not afford any more asylum applications and would keep the EU minimum (The Guardian, 2015). In Germany, Chancellor Merkel has been criticized widely for the refugee policies (Independent, 2016). Some member states have not been refraining from making their asylum laws more restrictive. In September 2015, Denmark gave advertisements to four Lebanese newspapers underlining the difficulties of obtaining asylum in Denmark, also passed a controversial law that makes it possible to confiscate

42 See Appendix 13.

the possessions of refugees (Washington Post, 2015; Bloomberg, 2016). Austria, Denmark, Finland, Germany, Sweden made their family unification laws more restricted (Fundamental Rights Agency, 2016a, p. 12). In many member states, there are laws, which criminalizes helping refugees and Austria, Denmark and Germany issued charges for this crime (Fundamental Rights Agency, 2016a, p. 13).

One dimension of these restrictive policies against refugees is the racism and xenophobia against the refugees (ENAR, 2017). The officials from Hungary, Slovakia, Cyprus, Estonia, the Czech Republic clearly stated that their states do not prefer to accept Muslim refugees under the resettlement programs (BBC, 2015b; Fundamental Rights Agency, 2016a, p. 79). Moreover, increasing anti-refugee sentiments have been causing an increase in the attacks against Muslims (Fundamental Rights Agency, 2016a, p. 79) or refugees (Fundamental Rights Agency, 2016a, p. 9; Amnesty International, 2016c) in some member states (ENAR, 2017).

Those sentiments find their reflections in the immigration and refugee facilities. The violation of the fundamental rights in the facilities (camps, detention centers, reception centers) is an important problem in the EU member states and xenophobia and racism by the authorities is a crucial dimension of it. However, the EU does not have a clear competence to act on this issue, as the Race Directive has limitations for the protection of the third country nationals about immigration issues. Consequently, the Commission has never used any infringement mechanism on the basis of racism and xenophobia against refugees although the violations are well documented.

In this part, the example of Greece is discussed as the Commission initiated many procedures about the dysfunctional asylum and immigration system of Greece, but never touched upon the issue of racism against refugees especially in the immigration and refugee facilities. The case study represents the inaction of the Commission in an area where it does not have a clear competence, therefore fails to protect human beings against racism, xenophobia, and discrimination in an EU member state.

5.1.4.1 Greece

While there is a general problem of the conditions in the immigration and refugee facilities all across the EU, the conditions in the Greek facilities are well

documented, especially in the detention centers. Despite being very controversial, detention of the immigrants and refugees is an accepted tool by the EU (Cornelisse, 2010). The issue is controversial as degrading detention conditions for lengthy periods have been causing physical and psychological problems with almost no regard to vulnerable people such as minors, torture victims, and disabled (Médecins Sans Frontiéres, 2015).

According to the CEAS, asylum applications should be made in the country of first entry. Thus, member states are supposed to return the asylum seekers to their entry points, and Greece is one of the main entry points to the EU. However, there have been two important court cases to prevent this implementation because of the conditions that asylum-seekers face in Greece.

In the Case of *M.S.S v. Belgium and Greece*,*30696/09-2011* an Afghan citizen applied for asylum in Belgium in 2008, however, his first point of entry was Greece (European Court of Human Rights, 2011). Belgium transferred him to Greece in June 2009. He was put into a detention center and then started to live on the street without any support. When the case went to the ECtHR, the ECtHR ruled against Greece underlining the detention conditions, living conditions, and deficiencies of the asylum system. The ECtHR also ruled against Belgium for sending him back to Greece despite knowing the deficient detention, living and asylum conditions there.

As for the second Case of *Bundesrepublik Deutschland v Kaveh Puid C-4/11-2013*, an Iranian citizen "Mr. Puid" applied for asylum in Germany, however, his first point of entry was Greece. The application was declared inadmissible in Germany under the Dublin II Regulation.[43] Mr. Puid was sent to Greece, but he filed an appeal for annulment of the decision rejecting his application to the Administrative Court in Frankfurt, Germany. Frankfurt Court decided that Germany had to examine the application because of the reception and processing conditions in Greece. Mr. Puid was granted refugee status by Germany. The Frankfurt decision was appealed to the Higher Administrative Court in Hesse, and the Hesse Court asked for clarification from the ECJ. On 14 November 2013, the ECJ ruled that Mr. Puid should not be returned to Greece because of the "real risk of being subjected to inhuman or degrading treatment"

43 See (European Union, 2003) for Dublin II.

(European Court of Justice, 2013). After these two cases, transfer to Greece has been suspended by the EU member states, and the Council of Europe has been monitoring the situation since.

The Commission, on the other hand, initiated several infringement procedures against Greece. On 31 March 2008, the European Commission initiated an infringement procedure against Greece. The Commission stated that Greece failed to adopt the laws, regulations and administrative measures necessary to effectively implement the Dublin Regulation. On 22 October 2008, this procedure was withdrawn when Greece undergone legislative changes.

On 3 November 2009, the Commission sent Greece a letter of formal notice about the issues of access to the asylum procedure, respect for fundamental rights, and the principle of *non-refoulement*. The second letter was sent on 24 June 2010. Greece presented an Action Plan to reform the asylum system in 2010, 2013, and 2015. The Commission monitors the progress and provides financial and technical support but yet admits that the reception conditions for the asylum seekers are not adequate (European Commission, 2015c).

In July 2013, the Commission sent the letter of formal notice about the failure of implementation of the Long Term Residents Directive and sent the reasoned opinion in February 2016 (European Commission, 2016h). In September 2015, the Commission sent letters of formal notice to Greece for having failed to fully transpose the revised Asylum Procedures Directive and the updated Reception Conditions Directive together with 17 and 18 other member states respectively (European Commission, 2015c). In December 2015, the Commission issued reasoned opinions for both cases as Greece did not reply in the given time period (European Commission, 2015b).

After informal warnings in August 2015, the Commission sent letters of formal notice to Greece together with Croatia and Italy in December 2015 on the basis of the failure of proper implementation of the Euradac regulation that necessitates member states to take fingerprints of the refugees within 72 hours of arrival (European Commission, 2015b). In December 2016, the Commission closed this infringement case as the progress was found satisfactory by the Commission (European Commission, 2016f).

None of the Commission infringement procedures took into systematic racism, discrimination and xenophobia account, which have been well-documented by various organizations. Racist Violence Recording Network (RVRN) records that the racist attacks against refugees increased in 2015, and argues that the authorities cannot manage the situation (Racist Violence Recording Network, 2016, p. 2). Moreover, the reports of NGOs, and even the Greek Ombudsman indicate that the authorities have direct responsibility either by conducting the attacks, refusing to arrest the perpetrators, not recording the incidents, or not recording the incidents as racist attacks (Gazakis, Syrri, & Takis, 2014, s. 23; The Greek Ombudsman, 2013; Human Rights Watch, 2017; Amnesty International, 2016a; 2016b). Most of the times, the attacks are not even reported by the refugees because of the fear of deportation (Amnesty International, 2012b).

While underlining the effects of economic crisis, the FRA report also claims that the "ineffective responses of public authorities over a considerable period of time" is also a contributing factor in the increase of the racism and discrimination in Greece (Fundamental Rights Agency, 2013c, p. 9). Moreover, the FRA continues that "in light of this, FRA found no evidence of systematic efforts to tackle racism, discrimination and intolerance through a multi-agency approach involving cooperation and coordination of law enforcement, local authorities, schools, health providers and public administration" (Fundamental Rights Agency, 2013c, p. 19).

The CERD, for example, mentions the situation, and ill-treatment of refugees in 1993 and 2009 reports, and recommends the efficient prosecution and punishment of the racially motivated crimes.

Table 16 Summary of the CERD Reports for Greece

1982	1993	2001	2009
*Situation of the Muslim minority *Details of domestic legislation	*Anti-discrimination legislation *Situation of different ethnic groups and minorities including gypsies *Status and treatment on refugees *Rights violations against Pomak and Turkish minorities	*More dialogue with minorities *Reinstatement of the citizenship for the persons deprived in the past.	*Situation of Muslim minorities of Turkish, Pomak and Roma origin *Prosecution and punishment of racially motivated crimes *Hate speech of organizations and media *Ill-treatment of immigrants *Ill-treatment against vulnerable groups including Roma by the police *Freedom of association for Turkish and Macedonian groups *Obstacles for Roma in housing, education, healthcare and employment

In 2009 report, the CERD underlines:

> "12. The Committee is concerned about reported cases of ill-treatment of asylum-seekers and illegal immigrants, including unaccompanied children. **The Committee recommends that the State party take more effective measures necessary to treat asylum-seekers humanely and to reduce as much as possible the period of detention of asylum-seekers, in particular children."** (CERD, 2009a).

Similarly, ECRI reports have been stating the situation of the immigrants since its first report and adding the conduct of the law enforcement officers since second, and the racist violence since fourth.

Table 17 Summary of ECRI Reports for Greece

First Cycle (1997-1999)	Second Cycle (1999-2002)	Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)
*Situation of the Muslim minority *Recently developing legal and illegal immigration *Mistrust against difference in public arena *Ratification of international legal instruments *Insufficient legislation *Vulnerability of Roma	*Situation of the Muslim, Albanian and Roma minorities *Situation of immigrants *Mistrust against difference in public arena *Ratification of international legal instruments *Insufficient legislation *Ill-treatment of police	*Situation of the Muslim, Albanian, Macedonians and Roma minorities *Situation of immigrants *Negative stereotypes towards minorities in public discourse *Ratification of international legal instruments *Insufficient legislation *Conduct of law enforcement officers *Anti-Semitism *Human trafficking	*Situation of the Muslim, Albanian, Macedonians and Roma minorities *Situation of immigrants *Racism in public discourse *Ratification of international legal instruments *Insufficient legislation *Conduct of law enforcement officers *Anti-Semitism *Racist violence	*Situation of the Muslim, Albanian, Macedonians and Roma minorities *Situation of immigrants *Racism in public discourse *Ratification of international legal instruments *Insufficient legislation *Conduct of law enforcement officers *Anti-Semitism *Racist violence

In the fifth report, ECRI underlines the racist violence and racial and ethnic profiling practices of the police officers:

> "69. For the year 2012, the RVRN reported a distinct category of 25 incidents of racist violence involving police officers. Seven of them occurred in police stations where irregular migrants are often detained for prolonged periods of time. In some cases, victims reported that they were brought to police stations, were detained and then ill-treated for a few hours. There was also at least one incident alleging collusion between port police officers and members of Golden Dawn during an assault on a migrant's house in Chios.
>
> 70…. ECRI's delegation was informed by the authorities that in 2013, 109 complaints about racist acts committed by police officers were lodged…
>
> 96. Many migrant organisations informed ECRI that the operation Xenios Zeus, consisting of stop-and-search measures by the police to identify and detain irregular migrants, had serious negative consequences on integration. Many long-term residents were subjected to racial profiling

> and treated with suspicion which alienated them from Greek society. Several migrants reported abusive language and improper behavior of police officers when they could not immediately produce their residence documents." (ECRI, 2015c, p. 25).

Greece case shows that the EU anti-racism system fails to protect the third country nationals as there is no clear competence for the Commission to act against racism, discrimination, and xenophobia against third country nationals on the immigration issues. The European Union has been taking several initiatives to assist and reform the dysfunctional immigration and asylum system in Greece however; the initiatives do not effectively address institutional racism against the immigrants and refugees. Therefore, the immigrants and refugees living on the EU soil are not effectively protected from racism, xenophobia, and discrimination by the EU law.

5.1.5 Evictions Targeting Roma

Evictions targeting Roma is another example of discriminatory state policies, which has been taking place all over Europe. Although there are international norms that states have to follow for evictions, EU member states often fail to comply with them especially when Roma is considered. There have been two landmark rulings of the ECtHR on the issue.

Belgium collectively expelled 74 Roma asylum-seekers from Slovakia in October 1999. In 2002, the ECtHR ruled that Belgium violated Article 5(1) (right to liberty and security of person); Article 5(4) (right to take proceedings by which lawfulness of detention shall be decided); Article 4 of Protocol 4 (prohibiting the collective expulsion of aliens); and Article 13 (right to an effective remedy) for the Case of *Conka vs. Belgium*. This was the first ruling when a violation of Article 4 of Protocol 4 is found and when the ECtHR ruled against a EU member state on the violation of Roma rights (ERRC, 2002a). For the second landmark ruling in 2012, the ECtHR ruled in the Case of *Yordanova and Others v. Bulgaria 25446/06-2012* that any forced evictions of Roma would violate Article 8 (respect for private and family life and home) (European Court of Human Rights, 2012).

Forced evictions targeting Roma is not only a violation of the Race Directive under direct discrimination, but also it is against many other regional and international

norms. The states have to respect Article 3 (freedom from torture or inhuman or degrading treatment), Article 8 (respect for private and family life and home), Article 14 (freedom of discrimination), and Article 1 of the First Protocol (right to property) of the European Convention of Human Rights; Article 16 (right of the family to appropriate social, legal and economic protection), Article 30 (protection against poverty and social exclusion) and Article 31 (right to housing) of the Revised European Social Charter; Article 5b (right to security of person and protection by the State against violence or bodily harm) and Article 6 (right to seek adequate reparation or satisfaction for any damage suffered as a result of discrimination) of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 11 (right to the highest attainable standard of physical and mental health) of the International Covenant on Economic, Social and Cultural Rights; Article 2 (freedom from discrimination of any kind), Article 16 (protection against arbitrary or unlawful interference with individual privacy and family), Article 27 (right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development) and Article 37 (freedom from torture or other cruel, inhuman or degrading treatment) of the Convention on the Rights of the Child (ERRC, 2012f).

International society also underlined the importance of proper housing and eviction conditions. Following the thematic discussion on the discrimination against Roma at the 57th session of the CERD in 2000, "the General Recommendation No 27 on discrimination against Roma" was adopted and it was stated that:

> "31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.
> 32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities" (CERD, 2000, p. 3).

Similarly, the CESCR "General Comment No. 7: The Right to Adequate Housing (Art 11.1): Forced Evictions" finds forced evictions a violation of the Covenant but suggests a procedure to follow, if inevitable:

> "a. An opportunity for genuine consultation with those affected;

b. Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
c. Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
d. Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
e. All persons carrying out the eviction to be properly identified;
f. Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
g. Provision of legal remedies;
h. provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts" (ERRC, 2012b).

ECRI also recommended its member states to "ensure that the questions relating to "travelling" within a country, in particular regulations concerning residence and town planning, are solved in a way which does not hinder the way of life of the persons concerned" as early as 1998 with its "General Policy Recommendation No 3: Combating racism and intolerance against Roma/Gypsies" (ECRI, 1998). In 2011, ECRI elaborated its recommendations and made further suggestions to the member states such as "to ensure that Roma are not evicted without notice and without opportunity for rehousing in decent accommodation" with "the General Policy Recommendation No. 13 on Combatting Anti-gypsyism and Discrimination against Roma" (ECRI, 2011).

Despite the existence of the international and regional norms, and the EU competence; forced evictions, and even deportations, targeting specifically Roma is a common example of discriminatory state policies in the EU member states. In this part, two cases are discussed to elaborate the issue. For both of the cases, the forced evictions and deportations are well-documented by the civil society, however, the Commission did not use its competence on the basis of Race Directive although it was expected to and called upon. The Commission initiated infringement procedures on the violation of other EU law but did not target the racism, discrimination, and xenophobia against Roma for these two cases.

5.1.5.1 France

According to the ERRC, the population of Roma in France is around 400.000, out of which only between 15.000 and 20.000 are migrant Roma (ERRC, 2012d). The exact number is not known as France does not recognize minorities officially, therefore does not gather ethnic data. Although the ERRC traces Roma evictions in France back to 2007; it started to take attention with 2010 events and deportations.

On the night of 16 July 2010, Luigi Duquenet, a 22-year-old French citizen who belonged to the travelers (Gens du voyage), was in a car driven by his brother. The car did not stop for the checkpoint, and he was shot dead by the gendarmeries in Saint Agnain. Roma community reacted to this event by several protests. Newly elected French President Nicolas Sarkozy, called for a cabinet meeting to discuss the issue. The meeting was held between President Sarkozy, the Prime Minister, Immigration Minister Eric Besson and Brice Hortefeux from Interior Ministry on 28 July 2010. The camps were determined to be evicted in three months, and an immigration law reform was decided. The extraordinary communiqué after the meeting described the situation as:

> "The President ... found [the] situation of lawlessness that characterized the Roma people [totally unacceptable]. 200 illegal settlements have been ... identified [as] sources of illicit trafficking, deeply unworthy living conditions, exploitation of children for begging, prostitution or crime. He asked the Government to proceed, within three months, the evacuation of these facilities whenever the existing law allows. [Additionally], legislative reform will be undertaken to make [the dismantling of illegal settlements] more efficient" (Jurist, 2010).

On 5 August 2010, Ministry of Interior issued a circular for regional authorities to implement President Sarkozy's policy. It was stated that "each region of France should commit itself to systematic action to dismantle the illegal camps, in priority those of the Roma" (Rieder, 2012, p. 131). According to the official figures, 128 illegal settlements and 979 Bulgarian and Romanian citizens were deported between 28 and 30 August 2010 (Statewatch, 2010). 151 of them were declared as forced evictions and while 828 as voluntary (Statewatch, 2010). They were declared as "voluntary" since they were paid (300 euros) to go back to their countries. France also issued re-entry bans as being threat to public security. The fingerprints were also taken from the returnees.

This practice was a clear violation of various European laws. First of all, it is a basic violation of norms regulating evictions. Secondly, the Free Movement Directive was violated, as Roma was also EU citizens. Although France claimed that the returns were voluntary, Roma were coerced to return and given money, which cannot be considered as voluntary. Thirdly, Roma from Bulgaria and Romania were specifically targeted by those actions, thus it is ethnic discrimination and ethnic profiling. It is a clear violation of the Race Directive; Article 21 of the Charter of Fundamental Rights and Freedoms; Article 14 of the ECHR; Article 5 of the ICERD; and Article 26 and 13 of the ICCPR (ERRC, 2010b). Lastly, it is a violation of the Data Protection Directive as some of the returnees signed documents that they did not understand and gave fingerprints (ERRC, 2010b).

In September 2010, Commissioners Reding, Andor, and Malström made a statement to emphasize the violation of EU laws:

- "Expelling people purely as a result of being Roma
- Expelling people without a case-by-case evaluation of their personal situation
- Enacting collective expulsions
- Authorities inciting hatred or violence against a specific group defined by criteria including race, nationality or ethnic origin" (Statewatch, 2010).

Reding clearly underlined the racism dimension:

> "Let me be very clear: Discrimination on the basis of ethnic origin or race has no place in Europe. It is incompatible with the values on which the European Union is founded. National authorities who discriminate ethnic groups in the application of EU law are also violating the EU Charter of Fundamental Rights, which all Member States, including France, have signed up to" (Reding, 2010).

The European Parliament also adopted a resolution on the issue stating their concern on the expulsion of Roma from France on 9 September 2010. While the resolution called for a suspension of the expulsion, it also criticized the "inflammatory and openly discriminatory rhetoric that has characterized political debate during the repatriations of Roma and statements linking minorities and immigration to crime, as they reinforce stereotypes and racist discourse, contrary to the duties of public authorities" (European Parliament, 2010a).

On 29 September 2010, the Commission requested France to explain first, how it would deal with the problems of transposition of the Free Movement Directive into French law; second, further information regarding the allegations of discriminatory application of the directive. On 15 October 2010, France replied the first question by providing a draft law for adoption of the Free Movement Directive correctly. The Commission found this reply adequate and stated that it would not go forward for the infringement proceedings. The second question was not answered, and it was not addressed by the Commission again. The lack of clarification by the Commission led President Sarkozy to announce that "I am very happy that truth triumphs … the Commission has decided not to advance with proceedings against France for discrimination for the simple reason that no discrimination took place" (Carrera, 2014, p. 40).

An important point is that the Commission did not initiate the procedure on the basis of Race Directive, but rather initiated the procedure on the basis of less controversial Free Movement Directive although the Commissioners underlined the racist characteristics of the implementation. When France targeted the concerns over the application of the Free Movement Directive, the case is closed. Another important point is the assumption that President Barroso prevented the case to go any further after the furious reaction of France (Carrera, 2014).

A Roma NGOs representative in France described the events as follows:

> "It started before 2007. There was a peak in 2010. The problem is the structure. Of course, the European Union has the legal tools to punish and to correct what is not correct in the policies of the member states… The French government was lying to her. This is what she said. She did not say anything exaggerated. She said 'enough is enough'. 'I did not think that such things can happen after the Second World War'. I don't know for which reason. There is a French expression '…/stop playing the touched virgin'. France was doing this. Sarkozy was doing this. At the moment, it was very cheap as a counter-attack. 'How do you dare the talk about Second World War? It has nothing to do with it. It is about immigration.' Politically speaking, Jose Manuel Barasso was owing his place to Nicolas Sarkozy. He supported his candidature. These are things that are known in those small circles. Sarkozy called Barasso said 'calmed down the lady'. He calmed down the lady. The circular was changed but actually… I don't know how to say it. They took out the word Rom but the circular was already in all of the prefects. It was circulated. The prefects knew this

order. They had meetings and they came up with a new one not saying 'Gypsy' there, but nothing changed. 'You can go guys, everything is as before.' There has been this threatening of infringement procedure. I really don't care. I don't trust anymore. I don't believe in this anymore." (Interview 12, 2017).

In August 2010, ECRI published a statement particularly about its concerns over the situation of Roma in France (ECRI, 2010). ECRI has also been underlining the problem of Roma deportation since its second report for France.

Table 18 Summary of ECRI Reports for France

First Cycle (1997-1999)	Second Cycle (1999-2002)	Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)
*Fine-tuning of legislation *Need for training for law enforcement *Education and awareness-raising at all levels *Possible tension because of France's policy of not recognizing minorities *Need to reconsider the refugee policy *Need to improve the statistical records in discrimination and racial harassment	*Effective implementation of the legislation *Discrimination against people of immigration origin and foreigners *Need to raise-awareness about multicultural and multiracial nature of French society *Anti-Semitist incidents *Expulsion of traveller Roma communities	*Ratification of international legal instruments *Implementation of the existing legislation *Improving the legislation *Raising-awareness of the law enforcement *Establishing a special body *Improving the situation of minorities including Roma, Travellers, Muslims, immigrants, asylum seekers, people with immigration background	*Ratification of international legal instruments *Implementation of the existing legislation *Improving the legislation *Raising-awareness of the law enforcement *Full support to the special body 'HALDE' *Statistics on racist incidents *Improving the situation of minorities including Roma, Travellers, Muslims, immigrants, asylum seekers, people with immigration background in housing, education, employment, access to good and services *Racism in public life, politics, media, sports, internet *Racial profiling of law	*Ratification of international legal instruments *Implementation of the existing legislation *Improving the legislation *Raising-awareness of the law enforcement *Full support to the special body 'HALDE' *Statistics on racist incidents *Improving the situation of minorities including Roma, Travellers, Muslims, immigrants, asylum seekers, people with immigration background in housing, education, employment, access to good and services *Racism and hate speech in public life, politics, media, sports, internet *Racial profiling of law enforcement *Ethnic data collection

			enforcement *Ethnic data collection	

Similarly, the CERD has been raising its concerns about the situation of Roma in France since 2000. France has submitted only three reports since 2000; in 2005 and 2010 and the CERD raised questions about the deportation of Roma in all.

Table 19 Summary of the CERD Reports for France between 1981 and 1990

1981	1983	1985	1990
*Situation of the aliens/immigrant workers *Anti-Nazism legislation extension to the police *Implementation of the Anti-Fascism legislation	*Situation of the people from former dependent territories *Situation of Basques, Breton, Alsatian minorities *Implementation of the Anti-Racism legislation *Situation of the aliens/immigrant workers *Educating police about racism	*Causes of racism and anti-Semitism *Number and situation of people from North Africa and Iberia *Xenophobia against especially immigrant workers, economic crisis, extreme right movements *Situation of the aliens/immigrant workers *Measures against xenophobia	*Authorization of the publication of 'Satanic Verses' *Unlawful actions of police officers against Algerians *Efficiency of the legislation

Table 20 Summary of the CERD Reports for France between 1995 and 2010

1995	2000	2005	2010
*Support to racist parties *Situation and rights of the different ethnic groups *Racist incidents *Discriminatory stop and search by the police *Training of officials for anti-discrimination *Asylum-laws *Segregation in housing and education	*Concerns over deportation of foreigners *Concerns over the depiction of Roma	*Inadequate statistical coverage on discrimination *Situation of immigrants and travellers in housing, education, employment *Situation of asylum-seekers *Increase in racist, anti-Semitic, xenophobic acts *Discrimination of police forces *Limited application of indirect discrimination *Religious and language rights	*Racist and discriminatory acts *Discrimination in housing and employment *Violence against Roma and expulsion of Roma *Situation of Roma and Travellers *Legislation and institutions

The CERD underlined in 2010 session that:

> "14. The Committee is concerned at the increase in manifestations of racism and racist violence against the Roma in the State party's territory. It takes note of the statement by the State party to the Committee that a framework has been put in place for the voluntary return of Roma to their country of origin. The Committee notes that, since the State party presented its report, there have been reports that groups of Roma have been returned to their country of origin without free, full and informed consent of all the individual concerned" (CERD, 2010, p. 4).

The Commission did not go forward with the infringement procedure in 2010, but Roma evictions continued in 2011 and created tragic situations in 2012, as well. Roma families continued to be evicted from one place to another without adequate living conditions and continued to face attacks. Although Francois Hollande sent a letter to RomEurope, condemning expulsion policies in March 2012 as a Presidential candidate, evictions and expulsions continued after he was elected in May 2012 as well as can be seen in Table 21 (Hollande, 2010).

Table 21 Number of the Evicted Roma in France between 2010 and 2015

2010	2011	2012	2013	2014	2015
500	9396	11.803	21.537	14.449	11.538

Source: (Fundamental Rights Agency, 2013a; 2014b; 2016a)

A NGO representative defines the interministrial circular as:

> "Nothing has changed with Hollande. He brought some Ministers together and wrote a circular to send to the European Commission. They were happy with it. His circular is on Anticipating and Accompanying Measures of Eviction of Illegal Settlements on 26 August 2012. This is the national strategy of France on Roma. Excellent… They don't care. They have this circular, which provides minimum standards for evictions for the prefects. You have to be careful for children not interrupt the school attendance. You have to be careful about pregnant women, elderly, small children not to remain without shelter, medical care. These are not respected. Actually this circular is signed by four Ministers but the only of which has real power on it is the Ministry of Interior. Police goes, break down everything, go away. In best of the cases, they take two or three families, most vulnerable of them to the social hotels for a few nights. Then, nothing." (Interview 12, 2017).

The Commission considered a possible infringement procedure for France in August 2012 because of dismantling of Roma settlements and the evictions of Roma.

However, it did not initiate the procedure when the information given by France found satisfactory (ERIO, 2012). France also prepared National Roma Integration Strategy under EU Framework for Roma integration (European Commission, 2015d).

The ERRC made a complaint about the issue to the Council of Europe's the European Committee of Social Rights. France was found guilty on the basis of Articles 16, 19, 30, 31 and E of the Revised European Social Charter on 1 March 2010 (ERRC, 2010a). The decision was about the housing situation and social inclusion of the Travellers and Roma as well as inhumane eviction conditions. In 2011, the ECSR ruled that France violated Articles 19, 31 and E of the Social Charter by the expulsion of Roma (Strasbourg Observers, 2011). In 2013, the ECSR ruled that France violated Articles 11, 13, 16, 17, 30, 31 in conjunction with Article E for the *Médecins du Monde - International v. France 67/2011-2012* case (European Committee of Social Rights, 2013).

In October 2013, the ECtHR ruled that France violated Article 8 and Article 14 in the eviction of 25 French travellers in 2003 for the *Winterstein and Others vs France 27013/07-2013* case (European Court of Human Rights, 2013). The *Hirtu and Others vs. France 24720/13-2013* case, which is about forced evictions of Romanian Roma citizens on the basis of Article 3, 8 and 13, has been pending since 2013 (European Court of Human Rights, 2014).

In spite of various warnings from the international society and civil society actors, the inaction of the Commission on the issue continues. During the elite interviews, a few reasons were stated for this. First of all, the unwillingness of the Commission to act against "big" or "influential" member states was underlined. It is also argued that when the Commission knows it cannot go any further with infringement procedure, it does not initiate it, not to seen as weak.

> "But in France, I know the France better. I think they felt that they … what they wanted. When you open the infringement ok you can go for I want a decision or I want change and I think Redding, she said ok I want change. And when she saw the French reacted and other countries reacted after she opened against France and number of other countries who were going to do the same as France … Therefore she saw this has an effect" (Interview 1, 2015).

> "Because we were up against a big member state and we were up against a member states who credibly claimed there is an objective problem and

there was an objective problem only the solution was purely legally wrong and so, they calmed down a bit. They acted less visibly when they tried to get people out of the territory from certain moment onwards. And the Commission in return realized there are conflicting norms as well. We have the norms that say even within the Schengen area, even within the free area of circulation, you cannot without adequate financial means and without adequate social security and what else overstay period of three months. And on the other hand, you have the rule that you cannot just kick somebody out who otherwise is a Union citizen. Bringing this into the Court is difficult. French knew it and the Commission knew it" (Interview 3, 2015).

"To give Commissioner Redding credit, she looked into the matter of infringement procedures in 2010 as regards France. She was held back by the President of the Commission, or others, or the politicians. We obviously don't know what was the reason but the political hype around it at that time seems to have put a break on this process. I assume it was not possible from her perspective to pursue this. But the new Commission saw this possibility. So, whatever this means; does the Commissioner matter? People always matter or political will always matters" (Interview 7, 2015).

"At that time Ms. Redding's remark was based on this memo asking Mayors to target the Roma settlements. This was addressed by French authorities later. It was changed. This particular case to which Ms. Redding was reacting was not existent any more. It was not prevalent… On the other hand, obviously, we have a lot of discrimination cases in France. And France should definitely be looked at by the Commission. We would welcome an infringement procedure against France on evictions" (Interview 7, 2015).

Secondly, the Commission officials claim that the infringement is not the only way to deal with an issue and they pursue some other ways to tackle the situation. However, no details were given for this claim during the interviews as being confidential.

"You part of a family, I don't need to take all the way if they see the action is taken." (Interview 1, 2015).

5.1.5.2 Italy

The history of Roma in Italy can be traced back to the 15th century. Since their arrival in Italy, Roma has been facing widespread discrimination. Especially 1938 Race Laws caused many Roma to end up in the concentration camps. It is assumed that currently there are 110.000-180.000 Roma living in Italy, out of which around 70.000 are

Italian Roma citizens (ERRC, 2012e). Around 90.000 Roma were born outside of Italy or were born to immigrant parents mostly from the Eastern Europe (ERRC, 2012e). Italy was one of the main destinations for Roma fleeing Yugoslav wars from Bosnia and Herzegovina, Kosovo, Serbia, and Montenegro during 1990s. During the last decade, Roma from Romania and Bulgaria have been moving to Italy.

Italy considers Roma as "Nomads" and regulates their affairs accordingly. Even the issues related with Italian citizens of Roma origin are handled through "Offices of Nomad Affairs" under Department of Immigration; and the local administrative offices are called "Nomad and Non-Europeans" (ERRC, 2012e). The institutional structure shows that Italy does not consider Roma as Italians, even if they are Italian citizens.

According to the ERRC, Roma resides in the camps although most of them are sedentary (ERRC, 2012e). There are three types of Roma camps; formal, semi-formal and informal. The formal camps are built by authorities and have basic facilities such as running water and electricity. The families live in caravans or containers. However, formal camps are usually surrounded by fences and walls, and monitored by cameras and security guards. The inhabitants of the camps cannot receive external visitors without permission. The semi-formal camps are either settlements that are later recognized by authorities as "camps" or formal camps to be evicted soon. Authorities provide only the basic services to semi-formal camps such as rubbish collection, water, and electricity. The last type of camps are informal that were built by Roma families themselves. They often do not have a sewer system, water, electricity, roads or gas. They are mostly built around waste dumps areas; therefore the health conditions are very poor (ERRC, 2012e).

As they are officially accepted as nomads, they are mostly not allowed for housing outside of the camps. Thus, their situation is called as "forced nomadism" (ERRC, 1999c; Bermann, 2011). Roma settlements are routine targets of the Italian authorities. They often face raids and evictions, which causes inhumane conditions for Roma as losing their property and shelter. As a result of forced evictions, many Roma becomes homeless and travel through from one camp to another. Some of them go missing and some of them are deported. The ERRC tries to record Roma evictions and deportations in Italy since 1999, and it is assumed that thousands of Roma have been affected by the forced evictions to the date.

The ECtHR gave the admissibility decision in March 2002 for the cases of Bosnian Roma families who were expelled in 2000. Italy agreed to settle the cases and pay over 160.000 Euro for the damages in March 2002 (European Court of Human Rights, 2002). The ERRC filed a collective complaint against Italy to the ECSR in 2004 (ERRC v Italy, Collective Complaint 27/2004). In April 2006, the ECSR decided that Italy violated Article 31 of the Revised Social Charter, which is about the right to housing (ERRC, 2006).

The situation of Roma in Italy got exceptionally worse since the end of 2007. On 31 October 2007, an Italian woman was murdered in Rome by a Romanian Roma. This event and other offences of Roma and Romanian citizens were used by media to foster the anti-Roma feeling in the society. The Mayor of Rome Walter Veltroni called for "emergency measures" against Roma, and Italian government adopted those measures two days later (ENAR, 2011). The measures included the expulsion of Romanian citizens under "national security reasons." The police raided and evacuated Roma camps in Rome; several of them were arrested or expelled; various attacks against Roma across the country were reported (ENAR, 2011).

Another critical point was on May 2008, when a 16-year-old Roma girl was caught while allegedly trying to kidnap a six-month-old baby in the Ponticelli district of Naples. The girl was timely saved by the lynch attempt of the neighbours and was put under detention. On the following days, Roma in Ponticelli faced numerous attacks such as stabbing, beating, arsening, looting, and harassment by the local community. Until May 15th, all Roma had to abandon their camps in Ponticelli and move into other districts (Fundamental Rights Agency, 2008).

The "nomad emergency" was already one of the main issues during the election of April 2008. After those events, the Italian government introduced a security package. On 21 May 2008, Italy declared State of Emergency for five regions in Italy; Lazio, Campania, Lombardy, Piedmont, and Veneto, during the term of former Prime Minister Silvio Berlusconi. Some measures under the state of emergency are as follows:

> "-the expulsion of an irregular immigrant, both from the EU and non-EU can be on the orders of a Giudice di Pace (Peace Judge);
> -failure to leave the country following an expulsion order issued by the judge will carry a jail term of one to four years;

-renting a house to an irregular immigrant will lead to confiscation of the apartment and a jail term of up to three years;
-for illegally resident immigrants found guilty of criminal offences, the penalties will be increased by a third;
-unauthorized entry into to country punishable with a six-months to four-years prison term, and introduces a fast track proceedings for immigration-related crimes;
-detention of irregular immigrants is to be prolonged from 60 days to maximum of 18 months" (Fundamental Rights Agency, 2008).

Also, Extraordinary Commissioners were appointed by the Minister of Interior to Lazio, Lombardy, and Campania in 2008, and to Veneto and Piedmont in 2009 in order to coordinate the rehabilitation and evacuation of Roma camps. Italy abolished the state of emergency in December 2011.

During the state of emergency, NGOs claimed that Italian authorities breached data protection laws by carrying out a census, taking the pictures and fingerprints of people. Moreover, forced evictions, deportations, and harassments violated many rights of Roma including housing and education. The ERRC claims that there were more than 500 evictions of Roma camps in Rome between 2009 and March 2013; and 300 evictions in Milan between January 2010 and May 2011 (ERRC, 2013a).

On 4 May 2009, three NGOs (the ERRC, the Open Society Justice Initiative, osservAzione) submitted a joint memorandum to the European Commission to initiate infringement procedure against Italy on the basis of processing sensitive ethnic data; racial discrimination; and breach of fundamental rights. The NGOs claim that Italy has breached Article 8(1) and Article 8(2) of the Data Protection Directive; Article 2 and Article 3(1)(h) of the Race Equality Directive; and Article 3, Article 8, Article 14 of ECHR (EC Joint Submission, 2009). The Memorandum claims that the Race Equality Directive is violated because:

"131. Roma and Sinti are an historically vulnerable group which has suffered and continues to suffer persecution and discrimination throughout Europe and who deserve special protection by the Italian Government (see paragraph 140-141 below). Not only are the 'positive measures' taken so far insufficient to protect Roma and Sinti and enable their inclusion into society, the Italian Government has done the opposite through the introduction of the Emergency Measures. There measures have lead directly to discriminatory treatment of Roma and Sinti in breach of the Directive by:

- Defining the mere presence of the Roma and Sinti as grounds for a state of emergency creating an intimidating, hostile, degrading, humiliating or offensive environment: Direct Discrimination, Harassment.
- A publicly proclaimed negative attitude towards Roma and Sinti by (the highest) public officials (see para. 11 above), as well as failing to prevent or condemn widespread and systematic racist violence against Roma and Sinti: Harassment.
- The adoption of Emergency Measures, explicitly calling on local authorities in Campania, Lombardia and Lazio to target Roma and Sinti in census activity: Instruction to discriminate.
- Granting enhanced and unchecked law enforcement and immigration measures that target Roma and Sinti exclusively, including emergency census of Roma and Sinti characterized by unnecessary police involvement: Direct Discrimination, Harassment.
- Directly discriminating against Roma and Sinti by conducting a compulsory census on the basis of their accommodation in camps for nomads created by the government: Discrimination in access to and supply of housing.
- The adoption and implementation of the Emergency Measures, allowing for the creation of an ethnic database of Roma and Sinti without adequate safeguards: Direct Discrimination.
- The adoption of the Emergency Measures, resulting in unlawful searches of the homes of Roma and Sinti: Discrimination in access to and supply of housing" (EC Joint Submission, 2009).

On 29 May 2009, the Centre on Housing Rights and Evictions (COHRE) made a complaint against Italy to the ECSR for the situation of Roma and Sinti (European Committee on Social Rights, 2010). The ECSR ruled that Italy violated Article E of the Revised Social Charter in conjunction with the Articles 31(1), 31(2), 31(3), 30, 16, 19(1), 19(4c), 19(8). In April 2012, two NGOs; Association for Legal Studies on Immigration (ASGI) and Associazione 21 Luglio made a complaint against the City of Rome to stop the construction of Roma-only La Barbuta camp. The Civil Court of Rome ruled that the camps are "a form of segregation and discrimination based on ethnic grounds," therefore a violation of the Italian and European law on 30 May 2015 (Associazione 21 Luglio, 2015).

In August 2009, the ERRC applied to the Council of State. In November 2011, the Italian Council of State ruled that the State of Emergency is not lawful and it creates *de facto* discrimination. The Council stated that there is no link between the Roma

settlements and public security. The ruling made all State of Emergency decrees illegal. However, the government went to the Court of Cassation to challenge the ruling of the Council of State. In April 2013, the Court of Cassation rejected the appeal of the government, thus, the state of emergency is declared as illegal since the ruling of the Council of State in 2011 (ERRC, 2012e).

The CERD has been underlining the situation of Roma, and racist actions of law enforcement officers since its report in 1996.

Table 22 Summary of the CERD Reports for Italy

1984	1996	1999	2001	2008	2012
*Situation and rights of immigrants and minorities *Cases of racial discrimination	*Concerns over extremist groups *Concerns over racially motivated attacks against Roma, Jews and people from North Africa *Situation of the minorities, Roma *Racial discrimination by the police forces *Asylum law, deportation, reception centers *Situation of non-EU workers *Legislation about racism	*Continuation of racially motivated acts including against Africans and Roma *Discrimination and segregation of Roma *Roma is not included to minority law *Behaviours of law enforcement officers	*Situation of Roma *Concerns over the racist organizations *Racist incidents during football matches *Discrimination in the labour market	*Lack of ethnic statistical data *No recognition of Roma as minority *Discrimination and ill-treatment against Roma *Hate speech by politicians and media *Ill-treatment against undocumented migrants *Conditions in Lampedusa	*Lack of statistical data *Insufficient institutional structure *Roma evictions *Racism and discrimination against Roma, Muslims and non-citizens *Situation of immigrants *Lack of training for law enforcement officers

In its latest report in 2012, the CERD states its concerns about sensitive data collection during the Nomad Emergency and recommends Italy to destroy them (CERD, 2012, p. 2). The CERD is also concerned about forced evictions, segregation, marginalization of Roma and discrimination against them, and recommends that:

> "The Committee encourages the State party to take the necessary measures to avoid forced evictions and provide adequate alternative housing to these communities. It also urges the State party to refrain from placing Roma in camps outside the populated areas without basic facilities such as health-services and education. Bearing in mind its general recommendations No. 27 (2000) on discrimination against Roma and No. 30 (2004), as well as the National Strategy for the inclusion of Roma, Sinti and Caminanti communities, the Committee encourages the State party to intensify efforts to avoid residential segregation of Roma and Sinti communities, both citizens and non-citizens, and to develop social housing programmes for them.
>
> In view of the ruling of the Council of State, the Committee recommends that the State party take appropriate measures to provide effective remedies to members of Roma and Sinti communities for all the negative effects that followed the implementation of the NED, including by providing appropriate housing for them, and ensuring that segregated camps are not the only housing solutions available to them" (CERD, 2012, p. 3).

Similarly, ECRI has been underlining the situation of Roma, the conduct of law enforcement officials, and racism in public discourse since its first report for Italy.

Table 23 Summary of ECRI Reports for Italy

First Cycle (1997-1999)	Second Cycle (1999-2002)	Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)

*Awareness-raising against intolerance *Implementation of existing legislation *A specialized body *Situation of immigrants and Roma *Insufficient legislation	*Awareness-raising against racism *Implementation of existing legislation *A specialized body *Situation of immigrants and Roma *Insufficient legislation *Ratification of international instruments *Racism in public discourse *Anti-Semitism	*Awareness-raising against racism *Implementation of existing legislation *Situation of immigrants and Roma *Insufficient legislation *Ratification of international instruments *Racism in public discourse *Anti-Semitism *Racist incidents *Conduct of law enforcement officials	*Awareness-raising against racism *Implementation of existing legislation *Situation of immigrants and Roma *Insufficient legislation *Ratification of international instruments *Racism in public discourse *Anti-Semitism *Racist incidents *Conduct of law enforcement officials	*Awareness-raising against racism *Implementation of existing legislation *Situation of immigrants and Roma *Insufficient legislation *Ratification of international instruments *Racism in public discourse *Anti-Semitism *Racist incidents *Conduct of law enforcement officials

In its latest report for Italy, ECRI recommends that:

> "95. the authorities ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of international law in such matters. In particular sufficient prior notice in writing should be given of any decision to evict Roma; they should be entitled to proper legal protection; and they should not be evicted without the possibility of being re-housed in suitable accommodation" (ECRI, 2016a, p. 30).

Although Italy assured the CERD that it deleted the database, no such measure has issued by the Ministry of the Interior according to the Open Society Foundation (OSF). The OSF claims that only during the first year of State of Emergency, census was carried out in 167 Roma camps to 12.346 people out of which 5436 were minors (Open Society Foundation, 2015a).

The European Commission contacted Italian authorities regarding the State of Emergency. Under the EU pilot, they asked for the information from Italy in September 2012. Again in July 2014, the European Commission contacted the Italian authorities about the forced evictions, segregation of Roma, and the right to access housing for

Roma. NGOs repeat their demands to the European Commission to open the formal infringement mechanism on the basis of the breach of the Race Directive (Associazione 21 Luglio, 2015; Amnesty International, 2014). However, no such action has been taken yet.

5.1.6 Segregation of Roma Children in Schools

Another example of discriminatory state policies in the EU member states is the segregation of Roma children in schools. The segregation of Roma children in education may take various forms. The European Commission identifies those forms as intra-school segregation, intra-class segregation, inter-school segregation and individual segregation (European Commission, 2014b). Intra-school segregation occurs when Roma are put into separate classrooms within a school, while intra-class segregation occurs when different standards are applied or separate study groups are formed for Roma within the classroom. Inter-school segregation occurs when Roma children are put into different schools.

The first cause of it is the residential segregation. As Rome often live in ghettos, their children go to the closest school that consist of only or predominantly Roma children. The second cause is the biased mental disability tests. In many countries, Roma children are coerced to take mental disability tests and put into special needs school despite having no mental disability. The third cause is the socio-economic disadvantages of Roma children. Roma children might not cover the tuition fees or extra requirements of some private schools. The last form, individual segregation occurs when the children are totally excluded from schooling (European Commission, 2014b).

When combined with socioeconomic disadvantages, harassment and bullying in schools, and sub-standard education; the segregation of Roma children in education contributes to the low expectations from the education and lead to high levels of absenteeism and drop-outs.

The right to education is underlined in Article 26 of the Universal Declaration of Human Rights, Article 5 of the ICERD, Article 29(1) of the Convention of the Rights of the Child, Article 14 of the Framework Convention for the Protection of National Minorities. Moreover, segregation in education violates Article 2(1), Article 2(2a), Article 3(1) of the Race Equality Directive; Article 14, Article 2 Protocol 1 of the ECHR; Article 21 (1) of the Charter of Fundamental Rights; Article 3 of the ICERD; the

Convention on the Rights of the Child and the Convention against Discrimination in Education.

The ECtHR ruled on *DH and Others v. the Czech Republic 57325/00-2007*; *Sampanis and Others v. Greece*; *Orsus and Others v. Croatia 32526/05-2008*; *Horvath and Kiss v. Hungary 11146/11-2013*; *Lavida and Others v. Greece 7973/10-2013* cases against the discrimination of Roma in education (European Court of Human Rights, 2016). Furthermore, the CERD General Recommendation XIX in 1995 condemns the practice (CERD, 1995) and the Committee of Ministers of the Council of Europe makes series of recommendations in 2009 to overcome the situation (The Committee of Ministers, 2009).

For the Roma inclusion, the European Commission adopted a "Communication on a EU Framework for National Roma Integration Strategies by 2020" in April 2011. In response, member states prepared national strategies for Roma integration and Commission annually monitors and evaluates the progress made by the member states without any enforcement power. In May 2012, the Commission evaluated these strategies. While these strategies were often found weak and insufficient (EU Observer, 2012); the Council adopted the first legal instrument for Roma inclusion in December 2013, which highlights the Commission recommendations for Roma inclusion including the area of education.

However, the efforts have not effectively halted the situation yet, and the Commission opened three infringement mechanisms on the basis of Race Directive against the Czech Republic, Slovakia, and Hungary so far. Those three cases are discussed in this part.

5.1.6.1 The Czech Republic

Roma has a problematic history in the Czech Republic. 95% of the Czech Roma were killed in the concentration camps during the Second World War. During the communist rule, Roma from Slovakia was forced to settle in the Czech part. While the communist regime provided housing, education, and employment; they also banned the nomadic lifestyle, and started to pursue a policy of coercive sterilization against the

Romani women in mid-1970s. When the communist rule ended, the minority status of Roma was recognized; however, discrimination against Roma became more widespread.

More dramatically, when Czechoslovakia was split into two, many of the Czech Roma found themselves as stateless because of the new citizenship law of the Czech Republic was recognizing only those who have the permanent residence; 5 years of clean criminal record and Czech language abilities as citizens. Denied citizenship rights caused Roma to fled abroad especially to Canada and the UK. With the pressures from these countries and the involvement of the OSCE, the situation was solved to a greater degree. However, Roma population in the Czech Republic, estimated to be 150.000 and 300.000 out of 10.500.000 general population (1.4 to 2.8%), still suffers from discrimination in healthcare, education, housing, and employment; segregation in schools and housing; racially motivated violence and impunity against anti-Roma crimes in the judicial system.

In its reports, the CERD documented these problems including the segregation of Roma children in schools.

Table 24 Summary of the CERD Reports for the Czech Republic

2007	2011
*Data collection especially about Roma *Lack of anti-discrimination law *Neo-Nazi concerts *Discrimination against Roma by police *Discrimination against Roma in healthcare, education, housing *Coerced sterilization of Roma women *Minority rights	*Lack of sufficient ethnic data *Insufficient legislation and institutions *Segregation of Roma in schools *Discrimination against Roma in housing, employment *Racism by the politicians and media *Ill-treatment by police *Discrimination against minority women *Compensation for the sterilization of Romani women *Situation of the immigrants and asylum-seekers *Human trafficking

In its final report for the Czech Republic in 2011, the CERD states its concerns as:

> "12. The Committee expresses its concern regarding the persistent segregation of Romani children in education as confirmed by the decision of the European Court of Human Rights of 2007 and the 2010 report of the Czech School of Inspection Authority. The Committee is concerned with reports that the practice of linking social disadvantage and ethnicity with disability for the purposes of school-class allocation has continued, not

removed by recent regulations. Furthermore, some amendments to regulatory decrees which take effect in September 2011 may reinforce discrimination against Romani children in education and that practical changes which will benefit Romani children under the Government National Action Plan for Inclusive Education are only envisaged from 2014 onwards (arts. 3 and 5)" (CERD, 2011).

ECRI has also been reporting the school segregation in its reports for the Czech Republic.

Table 25 Summary of ECRI Reports for the Czech Republic

Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)
*Conduct of law enforcement officials *Discrimination against Roma in housing, employment, education *Effective implementation of the existing legislation *Insufficient legislation *Ratification of international instruments *Segregation of Roma *Situation of immigrants *Anti-Semitism *Negative stereotypes by media	*Conduct of law enforcement officials *Discrimination against Roma in housing, employment, education *Effective implementation of the existing legislation *Insufficient legislation *Ratification of international instruments *Segregation of Roma *Situation of immigrants *Anti-Semitism *Racism in public discourse *Racist violence *Investigations on sterilization of Roma women	*Conduct of law enforcement officials *Discrimination against Roma in housing, employment, education *Effective implementation of the existing legislation *Insufficient legislation *Ratification of international instruments *Segregation of Roma *Situation of immigrants *Anti-Semitism *Racism in public discourse *Racist violence

In its latest report, ECRI states that:

"81. In education, ECRI's recommendations focused on the disproportionate representation of Roma in special schools for children with mental disabilities and the situation of Roma in mainstream schools. Both of these issues involve education segregation of Roma children. The former topic is dealt with in the section below on Interim follow-up recommendations of the fourth cycle. As for mainstream schooling, ECRI notes that many 'Roma-only' schools continue to exist with up to 90% of children of Roma ethnicity. This phenomenon is linked to segregation in housing, but also to the free choice of parents as to where to send their children to school. Many Roma parents fear bullying if their children attend mixed schools. Moreover, mainstream schools provide classes for children identified as having special needs, which invariably end up being

> predominantly Roma. In such schools and classes a reduced curriculum and lower quality education are provided. Such circumstances reinforce a tendency to place lower academic expectations on the pupils concerned. The system in place produces children with low achievement in education and a low level of employability, thus perpetuating the cycle of poverty of the Roma population" (ECRI, 2015b).

These problems are also underlined in the annual progress reports prepared by the Commission between 1998 and 2003, while the Czech Republic was a candidate for accession. The last Progress Report of 2002 states that:

> "The Czech Republic continues to respect human rights and freedoms. Some additional activities have been undertaken to improve the difficult situation facing the Roma community. However, more structural measures are needed in order to achieve significant results in remedying discrimination in access to education, housing and employment. The adoption of comprehensive anti-discrimination legislation would be an important step forward in this regard" (European Commission, 2002).

At the legislative level, the deadline for adopting the Race Equality Directive and the Employment Equality Directive was 1 May 2004, precisely the accession date since the candidates have to adopt all of the EU acquis before the membership. However, the Czech Republic did not adopt them before the membership and failed to adopt them afterwards. As a result, the EC initiated infringement procedures for the Czech Republic in June 2007, which were concluded when it adopted the directives in 2010, six years after the accession.

The ECtHR ruled in favour of the applicants for the ground-breaking *D.H. and Others vs. the Czech Republic 57325/00-2007* case in 2007, which confirms that Roma children had been systematically assigned to segregated schools based on their ethnic identity rather than intellectual capacities. The statistical evidence in the complaint shows that 75% of Roma children in the Czech Republic attend special schools, and 50% of the special school students in Ostrava are Roma although they constitute 5% of the primary school-age population.

The ruling did not make any substantial change as continuously reported by NGOs (ERRC, 2008b; 2008a; 2009; 2011; 2012c; 2014). Report of Czech Ombudsperson in 2012 found out that Romani children continue to be over-represented in schools and classes designed for children with mental disabilities (35% of all children) (ERRC, 2012a). The ERRC also states that although the rate of the Romani children under three is

around 3%; between 27% and 32% of them end up in childcare institutions (ERRC, 2012a). It is estimated that from 30% to 60% of all children under institutional care are Roma. The Open Society Justice Initiative, Amnesty International, and ERRC published a joint letter and made a complaint to the European Commission in April 2013 (Amnesty International, 2013).

In addition to the National Roma Integration Strategy for 2010-2013 that it adopted in December 2009 (Czech Republic Minister for Human Rights, 2009); in September 2011, the government approved the Strategy for Combating Social Exclusion for the period 2011-2015 (Agency for Social Inclusion, 2011). In the 2014 Assessment for the National Roma Strategy of the Czech Republic, the Commission recognized the implementation problems of National Strategy and the need for more legislative efforts, policy development, monitoring system and financial resources for fighting against discrimination in education, housing, employment and healthcare and provide social inclusion of Roma (European Commission, 2014c). The Czech Republic adopted its second National Roma Integration Strategy for 2014-2020 in 2014 (European Commission, 2016i).

As the policies did not bring any satisfactory results, on 25 September 2014, the Commission initiated the infringement procedure for the segregation of Roma children in schools on the basis of the Race Directive. In February 2015, the Czech Republic amended the Schools Act and announced a new Action Plan. The action plan was to be implemented in September 2016, and it was aimed to abolish practical schools by then. It also introduced mandatory pre-school year and kindergarten for all three-year-old children by 2018. However, NGOs warn that it is still possible to segregate students under the new legislation (ERRC, 2015b). The infringement case is still active.

The infringement case against the Czech Republic is the first case on the basis of the breach of the Race Directive that can be considered as institutional racism practices. The interviews underlined the importance of the ECtHR rulings and the warnings of the international society for the decision to act against the Czech Republic.

> "Why has the Czech case been the first one? Because of the DH Case. Obviously, it was the easiest country for the Commission to pursue. Because there is already an international court actually has found that system is discriminatory" (Interview 7, 2015).

> "I think the reason why they opened it now Czech Republic has now received so many warnings, Court decision, and number of others and not really reacting to it. Then they say ok, now we open it" (Interview 1, 2015).

Another point underlined during the interviews is the political will to act on the Roma issues to target the discrimination against Roma in the member states:

> "It is a sign of a political will to act on Roma. To me, it is a very clean sign… It started with the Roma Decade. The Commission started to work on the Roma issues. I do not think Slovakia will be the last one" (Interview 9, 2015).

5.1.6.2 Slovakia

Slovakia has a large Roma population as compared to its population. The Roma population in Slovakia is assumed to be between 320.000 and 480.000, which makes the 6-8% of the entire population (ERRC, 2012g). The discrimination against Roma in housing, employment, services is widespread in Slovakia, and the situation is not different in education.

In February 2003, a research made by the ERRC in Svinia (Eastern Slovakia) found out that only four Roma students attend regular elementary students out of 211. The rest of them are assigned to special schools designed for children with mental disabilities or specialized classes, which teach particular subjects (ERRC, 2003). According to the OECD report, in 2009 the highest level of education of 68% of Roma men and 77% of Roma women is secondary education, while it is 4% and 7% for the overall population (OECD, 2016). The number of Roma children who are put into special schools is high (World Bank, 2012). In 2013, Slovak Public Defender of Rights claimed that over 88% of Roma students are put into special classes and schools for children with mild mental disabilities (Open Society Foundation, 2015b). In 2010, only 28% of Roma children between the ages of 3-6 were attending pre-primary education, while it was 59% for non-Roma children (UNDP, 2012). Moreover, 43% of Roma children were enrolled in ethnically segregated classes (UNDP, 2012).

There have been controversial remarks and attempts about the issue in Slovakia. In May 2004, the European Commission's Ambassador to Slovakia made controversial

comments by suggesting Roma children should be taken from their families and placed into boarding schools (Independent, 2004). The European Commission did not back up this idea. However, on 8 March 2010, Slovak Prime Minister Robert Fico reiterated the idea of boarding schools for Roma students (EU Observer, 2010). In 2010, Slovakia initiated container schools in Roma neighborhoods, which were reinforcing segregation instead of combating it (Open Society Foundation, 2015b).

The Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva) made a complaint to the Regional Court in Prešov on the segregation of Roma children in the elementary school in the village of Šarišské Michaľany in 2010. The court ruled that the segregation of Roma students was a violation of Slovak anti-discrimination in October 2012 (Amnesty International, 2012c).

The segregation of Roma children in schools has been mentioned in all of the CERD reports for Slovakia.

Table 26 Summary of the CERD Reports for Slovakia

2004	2010	2013
*Racially motived incidents *Discrimination against Roma in schools, employment, housing *Police ill-treatment against minorities and Roma *Healthcare of Roma *Forced sterilization of Roma women	*Lack of reliable ethnic data *Implementation of legislation *Discrimination against Roma in education, housing, health, employment *Racially motivated attacks *Hate speech *Ill-treatment of law enforcement against minorities *Lack of human rights training *Asylum practices *Segregation of Roma in education, housing *Forced sterilizations of Roma women	*Resurgence of racism *Insufficient legislation *Racism in the media *Insufficient institutional structure *Discrimination against Roma *Lack of effective investigation on sterilization of Roma women *Insufficient awareness-raising activities

In 2013, the CERD stated its concerns as:

> "11. Despite some measures taken by the State party, including the 2008 Schools Act and the December 2011 ruling of the District Court in Prešov, which ordered the desegregation of Roma pupils in the Mainstream Elementary School in Sarišské Michaľany, the Committee is concerned about:

(a) The ongoing de facto segregation of Roma children in education, with the practice of Roma only schools or classes;
(b) The information that Roma children are dramatically overrepresented in special classes and "special" schools for children with intellectual disability; as well as the information that higher financial contributions to "special" schools for students with intellectual disability as compared to the ones on education of children from socially disadvantaged environment may explain this practice;
(c) The lack of enforcement of the 2008 Schools Act and the Anti-Discrimination Act regarding discrimination and segregation in education as well as the lack of clear enforcement measures;
(d) The information that the "Roma reform" re-introducing mandatory pre-school education for children from families affected by social exclusion might lead to discrimination and segregation (arts. 2, 3 and 5)" (CERD, 2013).

ECRI also underlined the problem in all of its reports.

Table 27 Summary of ECRI Reports for Slovakia

Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)
*Racially-motivated violence *Police brutality *Discrimination against Roma in housing, employment, education, access to welfare *Effective implementation of the exiting legislation *Insufficient legislation *Ratification of international instruments *Investigation for Roma sterilization *Human trafficking *Situation of immigrants	*Racially-motivated violence *Police brutality *Discrimination against Roma in housing, employment, education, access to welfare *Effective implementation of the exiting legislation *Ratification of international instruments *Investigation for Roma sterilization *Situation of immigrants and Hungarian minority *Racism in public discourse *Lack of ethnic data	*Racially-motivated violence *Police brutality *Discrimination against Roma *Effective implementation of the exiting legislation *Ratification of international instruments *Investigation for Roma sterilization *Situation of immigrants and Hungarian minority *Racism in public discourse *Lack of ethnic data

In its latest report, ECRI states that:

"126. Despite the ban on ethnic segregation guaranteed by the Anti-Discrimination Act and the School Act, de facto segregation continues to be practiced. For example, in August 2013 the Ombudsman expressed concerns over the ongoing existence of Roma-only classes in Slovak schools. Moreover the authorities have admitted that 30% of Roma pupils attend special schools for children with mental disabilities. Roma pupils are also overrepresented in special schools for pupils with health disabilities (between 60% and 85%). This is often due to an incorrect diagnosis as well as state subsidies which create incentives for school

> managers and Roma parents to enrol children in special schools. To counter this situation, Roma pupils are often placed in "zero-year classes" in primary schools to support their educational needs before being enrolled in regular classes. However, in most cases the class composition remains the same until the end of the education cycle, resulting in segregation" (ECRI, 2014).

On 29 April 2015, the European Commission initiated infringement mechanism against Slovakia on the basis of the breach of the Race Directive. It has been reported that the Slovak government tried to justify the practice by another racist remark as "One of the reasons for the more frequent occurrence of genetically conditioned diseases is the fact that Slovak Roma have the highest coefficient of inbreeding in Europe" (Romea, 2015).

On June 15, Slovakia promised to implement the necessary measures and amended the School Act in June 2015. However, NGOs found those amendments insufficient unless they are accompanied by "concrete and sustainable de-segregation policies and measures" (ERRC, 2016). In its working paper, the Commission underlined the ongoing segregation of Roma but also acknowledged the changes in the legislation for de-segregation (European Commission, 2016c). The infringement case is still active.

5.1.6.3 Hungary

The population of Roma in Hungary is around 750.000, which makes 7.49% of the entire population (ERRC, 2015a). Similar to the Czech Republic and Slovakia, Roma faces discrimination in housing, employment, services and often faces racist violence and hate speech in Hungary. The discrimination in education and the segregation of Roma children have been documented and targeted since the late 1990s, and according to the FRA, 45% of Roma children attend a school or class where all or many of their classmates are Roma (Fundamental Rights Agency, 2014a).

In 1998, the Ombudsman criticized Hungarian education system for discrimination against Roma children (ERRC, 1998). In 1999, the Ombudsman stated that Roma is placed to "special schools" not because of their mental abilities but because of their ethnicity (ERRC, 1999a). In 2002, the Ombudsman declared segregation as unlawful (ERRC, 2002b). In 1998, a local Hungarian court ruled against a school which

was segregating Roma, not allowing Roma children in gym or cafeteria, and holding a separate graduation ceremony for them (ERRC, 1999b). In 2004, the Budapest Court ruled against placing Roma children in special schools (ERRC, 2004b). In 2007, the Debrecen Court ruled against segregation of Roma children (ERRC, 2007). Despite all these warnings, the Hungarian Parliament amended Public Education Act in 2014 to endorse segregation in schools (Roma Education Fund).

In 2011, two Roma children, Mr. Horvath and Mr. Kiss, applied to the ECtHR for discrimination in education in Hungary. The claim was that the outdated and culturally biased tests were used to place Roma children into the special schools instead of mainstream schools. Thus, they were put into special schools because of their ethnic origin rather than their mental capacity. The Court ruled in 2013 that Hungary violated Article 2 of Protocol No.1 (right to education) in conjunction with Article 14 (prohibition of discrimination) (ERRC, 2013b).

Hungary has never submitted any report to the CERD, but the discrimination against Roma and the segregation of Roma children in schools were mentioned many times by ECRI reports.

Table 28 Summary of ECRI Reports for Hungary

Third Cycle (2003-2007)	Fourth Cycle (2008-2012)	Fifth Cycle (2013-2018)
*Insufficient legislation *Ratification of international legal instruments *Racially-motivated violence *Police brutality *Discrimination against Roma in healthcare, housing, employment, education *No integration policy for immigrants *Anti-Semitic, racist, xenophobic hate speech *Situation of non-citizens	*Insufficient legislation *Ratification of international legal instruments *Racially-motivated violence *Discrimination against Roma in healthcare, housing, employment, education *Anti-Semitic, racist, anti-Roma, xenophobic hate speech *Situation of non-citizens, refugees *No ethnic data *Ill-treatment of the police	*Insufficient legislation *Ratification of international legal instruments *Racially-motivated violence *Discrimination against Roma in healthcare, housing, employment, education *Anti-Semitic, racist, anti-Roma, xenophobic hate speech *Situation of non-citizens, refugees *Ill-treatment of the police

In its latest report for Hungary ECRI states that:

> "109. The common practice of streaming Roma children into "special" schools or classes results in Roma over-representation in schooling that is meant for children with disabilities or special needs. Although elsewhere

> in this report a technical distinction has been drawn between this problem and segregation, ECRI should stress that in reality, this special schooling constitutes another form of segregated education because activities in these facilities are separated and different from those associated with regular education. They also offer reduced curricula and rarely enable pupils to enter mainstream schools.
>
> 110. ECRI is very concerned that Hungary continues to place disproportionate numbers of Roma children in schools for pupils with learning disabilities, thereby perpetuating the cycle of under-education, poverty and exclusion. According to the Roma Education Fund, 44 research estimates that Roma account for between 20 and 90 % of pupils in special schools in Hungary. According to another estimate,45 around 90 % of children in special schools are Roma and very few have any actual disabilities. It is claimed that local committees, made up of teachers, psychologists and psychiatrists, often rush decisions, sometimes without proper testing, or even without the child or the parents being present" (ECRI, 2015a).

Although the European Commission underlines the improvements in the country report for Hungary, it also states the lack of equal access to quality education (European Commission, 2016b). As a result, in May 2016, the European Commission initiated the infringement procedure against Hungary over the "concerns in relation to both Hungarian legislation and administrative practices which lead to the result that Roma children are disproportionately over-represented in special schools for mentally disabled children and also subject to a considerable degree of segregated education in mainstream schools" (European Commission, 2016g). The infringement case is still open.

6.2 Individual Applications to the European Court of Justice

As of October 2016, no case is referred to the European Court of Justice as a result of the infringement procedure on the basis of Race Directive by the European Commission. However, there have been three cases carried to the ECJ by individual applicants on the basis of the Race Directive.

6.2.1 Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v. Firma Feryn C-54/07-2008 Case

For the first case, Centrum voor gelijkheid van kansen en voor racismebestrijding (Center for equal opportunities and combating racism) was the applicant and Firma Feryn NV was the defendant. The Center applied to the labour court

in Belgium on the basis of the discriminatory public statements of the director of Feryn. Accordingly, he stated that his firm does not employ "immigrants" as the customers were reluctant to let them into their houses. The Court dismissed the case saying there was no specific victim for discrimination. The Center appealed the decision to the Labour Court of Brussels. It referred to question to the ECJ for preliminary ruling to decide whether there was a direct discrimination or not. 10 July 2008, the Second Chamber of the CJEU rules it was not important there was no identifiable victim, and the public statement of the Firm constitutes direct discrimination (European Court of Justice, 2008).

6.2.2 CHEZ Razpredelenie Bulgaria v. Komisia za Zashtita ot Dikriminatsia C-83/14-2015 Case

The second case is between CHEZ Razpredelenie Bulgaria (CHEZ RB) and Komisia za zashtita ot dikriminatsia (Commission for Protection against Discrimination KZD). Ms. Nikolova ran a shop at a Roma neighbourhood in the town of Dupnitsa, Bulgaria. In 1999 and 2000, the electricity company CHEZ Razpredelenie Bulgaria built electricity meters at the height of six-seven meters in that neighbourhood, while the practice at issue is 1.70 meters. Ms. Nikolova made a complaint that the action was a discrimination on the basis of nationality as it was a Roma neighbourhood and she was not able to check her consumption at that height. Although Komisia za zashtita ot dikriminatsia (Commission for Protection against Discrimination KZD) ruled that, it was discrimination on the basis of nationality; the Supreme Administrative Court annulled the decision as there was no other nationality. KZD changed its ruling to discrimination on the grounds of personal situation. CHEZ RB appealed to the Administrative Court of Sofia. The Court referred to the ECJ as the discrimination ground should have been ethnic origin although Ms. Nikolova stated it as nationality and the KZD as personal situation, and it hesitated whether it was direct or indirect discrimination. On 16 July 2015, Grand Chamber of the Court (Grand Chamber) ruled that it was discrimination on the grounds of ethnic origin and it constituted direct discrimination (European Court of Justice, 2015).

6.2.3 Runevič-Vardyn and Wardyn C-391-09-2011 Case

For the third case, the complainant is a Lithuanian citizen who belonged to Polish minority, Malgožata Runevič-Vardyn, and her husband, the Polish citizen Łukasz Paweł Wardyn, and the defendants are the Vilniaus miesto savivaldybės administracija (Municipal Administration of the City of Vilnius), the Lietuvos Respublikos teisingumo ministerija (Ministry of Justice of the Republic of Lithuania), the Valstybinė lietuvių kalbos komisija (State Commission on the Lithuanian Language) and the Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius (Civil Registry Division of the Legal Affairs Department of the Municipal Administration of the City of Vilnius; the Vilnius Civil Registry Division). Ms. Runevič-Vardyn complained that her and her husband's name were denied to be amended by the Lithuanian institutions to be written in their originals in Polish. On 12 May 2011, the Second Chamber of the Court ruled that the question did not fall under the scope of the Race Directive (European Court of Justice, 2011).

6.3 Concluding Remarks

In this chapter, the enforcement mechanisms of the EU for effectively implementing the anti-racism legislation are discussed. It is the European Commission and the European Court of Justice, which have the competence to enforce the EU law. However, the analysis shows that the Commission does not have the competence to act against every breach to the EU law, and even if it has the competence, it does not act against every breach. Thus, the Commission needs some pre-conditions to act.

First of all, it has to have competence. As the Greek Case illustrates, the Commission cannot act against the racism against refugees in Greece because the Race Directive has limitations on the protection of third country nationals on the immigration issues. Secondly, it cannot act against every single breach but it has to be convinced about ongoing trends. This is also related with the third point, which is the documentation by NGOs, reports of the CERD and ECRI, and the ECHR rulings matter for the Commission to act. The documentation is not only necessary for providing proofs of the ongoing breaches but also for contributing to the legitimacy of its actions. Fourth point is that the Commission tends to act when it feels it can make a difference. Considering the

pressure on the Commission, especially when it uses its competences on the sensitive issues, it refrains from overstepping and consequently seen weak. Fifth point is that the personalities of both the Commissioner and the President matter. They have to be proactive and willing to act on these issues. Sixth, there has to be a political will by the member states to target the issue. Otherwise, the Commission is left alone in its pursuit. Lastly, it seems the Commission also refrains from acting against big or influential states on the basis of institutional racism.

The low number of infringement cases on the basis of the Race Directive and no referral to the ECJ also show that the Commission prefers to deal with the issue with other means, which are mostly not open to public. As a result, the use of the enforcement mechanisms for the effective implementation of the anti-racism regime of the EU is limited and rarely public.

The analysis shows the tension between intergovernmental and supranational actors of the EU. While the Commission shows high level of socialization and social learning with the other actors working in this area, it is also limited in its actions due to the rational calculations. These rational calculations are directly linked to the rational calculations of the member states. As much as the Commission aims and tries to act in accordance with the logic of appropriateness, it is observed that it also acts in accordance with the logic of consequentalism in certain cases.

7. CONCLUSION

The idea of "race" was born and developed in Europe together with the ideas of "nation-state" and "human rights" through the transformations brought by geographical expeditions, slavery, colonialism, Enlightenment, scientism, and modernity. In the Medieval Europe, the race started to be used as a justification for the slavery in religious terms. The proto-racism of the Medieval Europe later picked up during the Enlightenment especially under the influence of the ideas of scientism and progress. The "scientists" and intellectuals accepted the existence of separate races with different essentialist characteristics and agreed that the European race is a superior race. These ideas were combined with Darwinism and led Social Darwinism, scientific racism, and eugenicism to emerge. These claims of racial superiority paved the way for tragic results when combined with the state apparatus such as the Holocaust and atrocities in the colonies.

It was not a coincidence for racism to be combined with the state apparatus. The idea of the nation-state was also developed during the similar period in Europe affected by similar developments. Since the beginning, the nation-state and racism were often combined to different degrees and with different strategies through their claims on belonging and non-belonging and criteria on exclusion and inclusion. The inevitable connection between modern nation-states and racism is historical and ideological, and it still affects the state policies and societies.

The tragic consequences of state racism after the Second World War led world powers to create international and regional systems to institutionalize "human rights," which were developing in parallel to racism, sometimes by the same thinkers. Despite their universalist claims, neither "human rights" nor "equality" meant to include the whole population. Rather they were first designed to protect the interests of certain parts of the society and their inclusion of all human beings, even in theory, required time. Nonetheless, the "equality" and "non-discrimination" principles found their places in the post-Second World War system. Moreover, since the end of the Second World War, the theories on scientific racism have been discredited.

The United Nations, the Council of Europe, and the European Union are three of the institutions that were built after the Second World War. While the UN was first

designed to promote peace, the Council of Europe to human rights, and the EU to economic development; all three have obtained powers to combat against racial and ethnic discrimination throughout the last decades. However, racism has not been eliminated in Europe and continued its existence by including cultural elements and demonstrating itself in overt, benign and institutional forms. The racial discrimination in the member states of the EU is still persistent. It shows its face through discrimination in education, labour market, housing, healthcare, access to services; and through social exclusion and poverty, hate crimes, hate speech, racist attacks, forced deportations, mistreatment of law enforcement officers, restricted citizenship, and immigration policies. Despite targeting it at local, national, intergovernmental and supranational levels, it still persists.

This research aims to examine the role of the EU in this process by analyzing the EU competences in the area of racial and ethnic discrimination and the use of the competences. To do that, firstly the United Nations and the Council of Europe systems are compared as all of the EU members are part of these systems, and their actions are very crucial for the EU.

When the legal basis is compared, it is seen that the United Nations provides a wider protection with the ICERD. However, the implementation of the ICERD remains as the greatest challenge as it lacks an enforcement mechanism. The Council of Europe, on the other hand, has a better enforcement mechanism with the existence of ECtHR. However, this is only valid for the individual complaint mechanisms. None of these institutions has necessary enforcement mechanisms for their reporting, early/urgent action or general recommendation procedures. Moreover, individual complaint mechanisms seem to have limited visibility and usage among the public. Also, their actions can sometimes be redundant, which raises the question of the necessity of the existence of these similar structures.

Despite their limited powers and redundant procedures, both institutions have contributed to the clarification of the concepts related to racism. Moreover, their contributions are proven necessary for the agenda setting; naming and framing the norm violators; monitoring the state parties; setting the standards; being a reference for other international institutions; constructing a dialogue with the national authorities; and providing venues for individual and social justice. Therefore, their weakness is caused by

their design. Both of the institutions are well known and followed by the EU circles. However, the relations with the Council of Europe and the effects of its institutions are more prominent in the EU institutions.

When it comes to the development of the EU policies against racism, xenophobia, and discrimination, it is seen that it has three phases. The first phase starts with the establishment of the Communities and ends with the Joint Declaration by the Council, Commission, and Parliament in 1986. During this phase, the main debate was the inclusion of the fundamental rights to the Community competences. The issues as the EU Charter of Fundamental Rights and the accession of the EU to the European Convention of Human Rights have started to be discussed within this period. The legislation about the non-discrimination on the basis of gender directives was also developed within this period. With the increase of immigration to the Communities, the concerns were raised about racism, xenophobia, and discrimination.

In 1986, the Council, Commission, and Parliament stated their concerns with the Joint Declaration, which marks the beginning of the second phase. During this phase, the EP and the civil society increased their activism in order to have a common anti-racism policy at the European level. The Council, on the other hand, considered the existing UN and Council of Europe systems sufficient and wanted to keep the issue as a member state competence.

The breaking point came with the Amsterdam Treaty of 1997. The Amsterdam Treaty has a clause on non-discrimination including the prohibition on racial discrimination. This is the beginning of the third phase. After the Amsterdam Treaty, there have been four major instruments to tackle racism in the EU. The Race Equality Directive (2000), the Framework Directive (2000), the Framework Decision (2008) and the Audiovisual Media Services Directive (2010).

When the roles of different actors are compared, it is seen that the European Parliament has been the most active European institution to have a policy against racial and ethnic discrimination at the European level. The Council, on the other hand, tried to keep the issue under the national competence as much as it could and regularly underlined the international system the member states are part of. Most of the time, the Commission tries to keep the balance between these two actors. Yet, the inclusion of the

non-discrimination clause to the Amsterdam Treaty is a breaking point, and it could not happen without a Council decision.

It is seen that the historical institutionalism has a better explanatory power in the integration in this area. Accordingly, the activism of the EP and the civil society were putting a lot of pressure on the member states. When it was combined with the rise of the far-right parties, especially the FPÖ in Austria, the member states came to the point of no return. Particularly when the tragic past of the continent is considered, they could no longer ignore the demands for a treaty change for a non-discrimination clause. They could not be seen passive against racism, and they needed common policies to deal with it.

As the theory suggests, the integration in this area is rather an unintended consequence of the long-term implications of the decisions taken in the past. Several decisions taken in the past created a path for the EU and its institutions to follow. Therefore, the EU was indeed locked in to the process to have a common policy at the EU level while its institutions also followed their own paths in accordance with their own organizational cultures and interests. The change was gradual though and it arrived when combined with the inside pressures deriving from domestic politics and EU level activism, and socialization and social learning among the actors.

As stated, the EU competence against racial discrimination is based on the Amsterdam Treaty, the Lisbon Treaty and the Charter of Fundamental Rights; and the Race Directive, the Equality Directive, the Framework Decision, and the Audiovisual Media Services Directive are developed in order to operationalize this competence. The Race Directive provides protection against racial and ethnic discrimination, while the Equality Directive includes religious discrimination, however only in the area of employment. The definition of discrimination in the EU system includes direct discrimination, indirect discrimination, harmonization and victimisation, and the member states are obliged to undertake certain actions to prevent racial discrimination. With the Framework Decision, hate speech in the EU is also criminalized, and with the Audiovisual Media Services Directive protection against incitement hatred on the grounds of race and religion are extended to the media. The Commission thinks that the legislation is sufficiently transposed, but underlines various challenges in the application of the legislation.

The non-discrimination system of the EU is fragmented; the grounds of race, ethnicity, and gender have better protection than the other discrimination grounds, which makes a hierarchy among discrimination grounds. The calls for a single, more harmonized and comprehensive "Horizontal Directive" by the civil society could not be successful so far. Moreover, unlike the Council of Europe system, the EU system has limitations for the protection of non-citizens from racial discrimination.

With regards to actors, the Commission and the EP are the most active actors for the application and the development of the non-discrimination legislation with the help of the civil society. Especially the civil society representatives based in Brussels are well-integrated to the process and do not have any difficulty in access to the Commission and the EP. Especially the interviews revealed that there is a high degree of socialization and social learning among the actors working in this area. However, the EP is not a homogenous actor; certain political groups are easier to reach and more active on the issue of racial discrimination. Moreover, the increasing representation of the far-right also has consequences for the civil society. Lastly, the Council is mostly missing in these interactions, showing their reluctance to involve in supranational processes.

Regarding the enforcement, it is the European Commission and the European Court of Justice, which have the competence to enforce the EU law. However, the analysis shows that the Commission does not have the competence to act against every breach to the EU law, and even if it has the competence, it does not act against every breach. Thus, the Commission needs some pre-conditions to act.

First of all, it has to have a competence. As the Greek Case illustrates, the Commission cannot act about the racism against refugees in Greece because the Race Directive has limitations on the protection of third country nationals on the immigration issues. Secondly, it cannot act against every single breach, but it has to be convinced about the ongoing trends. This is also related to the third point, which is that the documentation by NGOs, reports of the CERD and ECRI, and the ECtHR rulings matter for the Commission to act. The documentation is not only necessary for providing proofs of the ongoing breaches but also for contributing to the legitimacy of its actions. The fourth point is that the Commission tends to act when it feels it can make a difference. Considering the pressure on the Commission, especially when it uses its competences on the sensitive issues, it refrains from overstepping and is consequently seen weak. The

unsuccessful case of France shows that the Commission became much more careful in acting to avoid another failure. The fifth point is that the personalities of both the Commissioner and the President matter. They have to be proactive and willing to act on these issues again proven by the French case. Sixth, the member states need to show the political will to target the issue. Otherwise, the Commission is left alone in its pursuit. Lastly, it seems the Commission also refrains from acting against big or influential states on the basis of the Race Directive as the cases of France and Italy show.

The low number of infringement cases on the basis of the Race Directive and no referral to the ECJ also show that the Commission prefers to deal with the issue with other means, which are mostly not open to the public. As a result, the use of the enforcement mechanisms for the effective implementation of the anti-racism regime of the EU is limited and rarely public.

The tension between intergovernmental and supranational actors of the EU is also observed. While the Commission shows high level of socialization and social learning with the other actors working in this area, its actions are limited due to the rational calculations. These rational calculations are caused by to the rational calculations of the member states. As much as the Commission aims and tries to act in accordance with the logic of appropriateness, it is observed that it also acts in accordance with the logic of consequentalism in certain cases.

Therefore, it is seen that the ideas, norms, and rules developed especially after the Second World War, as well as the material factors, have influenced the EU and its institutions in socialization and social learning to develop policies in this area, however, the use of the competences is limited. The failure of the Horizontal Directive, limited scope of the Race Directive, failure of the Commission to use its enforcement competence against big and influential states, increasing opinion differences within the EP also prove the existence of rational calculations. Although it is not the aim of this research to analyze the reasons of this limited usage; it is still observed that the domestic politics, institutional racism, weakness of the enforcement powers of the EU, and the reluctance of member states to pool sovereignty to the supranational institutions of the EU might be determinant in this situation.

In any case, it is crucial for the EU to decide the path it will take; will it be committed to the human rights and use its competence boldly to combat institutional

racism or will it be oppressed under the pressure coming from the member states and let institutional racism to persist? The answer is important especially considering the criticisms to the EU for trying to create a Fortress Europe and European nationalism. As the EU uses very similar methods with the nation-states to be able to create a demos and "Europeans," it will not be difficult for it to repeat the same mistakes with its member states. Therefore, its choice will be determinant in what kind of "Europe" and "Europeans" it will be creating in the future.

BIBLIOGRAPHY

Articles

Adler, E. (1997). Seizing the Middle Ground: Constructivism in World Politics. *European Journal of International Relations , 3* (3), 319-363.

Allais, L. (2016). Kant's Racism. *Philosophical Papers , 45* (1-2), 1-36.

Ammon, O. (1900). Zur Theorie der reinen Rassetypen. *Zeitschrift für Morphologie und Anthropologie , 2* (3), 679-685.

Anthias, F. (1999). Institutional Racism, Power and Accountability. *Sociological Research Online, 4(1)*.

Arendt, H. (1944). Race-Thinking Before Racism. *The Review of Politics , 6* (1), 36-73.

Armstrong, J. A. (2004). Definitions, Periodization, and Prospects for the Longue Duree. *Nations and Nationalism , 10* (1/2), 9-18.

Bois, W. E. (1915). The African Roots of War. *The Atlantic Monthly* , 707-714.

Bonilla-Silva, E. (1997). Rethinking Racism: Toward a Structural Interpretation. *American Sociological Review , 62* (3), 465-480.

Bourne, J. (2001). The Life and Times of Institutional Racism. *Race and Class, 43(2),* 7-22.

Bradbury, S. (2013). Institutional Racism, Whiteness, and the Under-Representation of Minorities in Leadership Positions in Football in Europe. *Soccer and Society*, 14(3), 296-314.

Bridges, L. (2000). The Lawrence Inquiry – Incompetence, Corruption and Institutional Racism. *Journal of Law and Society, 26(3),* 289-322.

Brown, C. (2002). The Race Directive: Towards Equality for All the People of Europe? *Yearbook of European Law , 21*, 195-227.

Brown, D. (1999). Are there Good and Bad Nationalisms? *Nations and Nationalism , 5* (2), 281-302.

Bulmer, S. (1994). Institutions and Policy Change in the European Communities: The Case of Merger Control. *Public Administration , 72* (3), 423-444.

Bulmer, S. (2009). Politics in Time Meets the Politics of Time: Historical Institutionalism and the EU tTmescape. *Journal of European Public Policy , 16* (2), 307-324.

Capoccia, G., & Keleman, D. (2007). The Study of Critical Junctures: Theory, Narrative and Counterfactuals in Historical Institutionalism. *World Politics , 5*, 341-369.

Carbado, D., & Harris, C. I. (2011). Undocumented Criminal Procedure. *UCLA Law Review , 58*, 1543-1616.

Carmichael, S. (1966). Toward Black Liberation. *The Massachusetts Review , 7* (4), 639-651.

Craig, P. (2013). EU Accession to the ECHR: Competence, Procedure and Substance. *Fordham International Law Journal* , 1114-1150.

Crenshaw, K. W. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine. *University of Chicago Legal Forum* , 139-167.

Donnelly, J. (1986). International Human Rights: A Regime Analysis. *International Organization , 40* (3), 599-642.

Eckes, C. (2013). EU Accession to the ECHR: Between Autonomy and Adaptation. *The Modern Law Review , 76* (2), 254-285.

Felice, W. F. (2002). The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Human Rights. *Human Rights Quarterly , 24* (1), 205-236.

Fernando, S. (1993). Racism and Xenophobia. *Innovation: The European Journal of Social Science Research,* 6 (1), 9-19.

Gaertner, S. L., Dovidio, J. F., & Johnson, G. (1982). Race of Victim, Nonresponsive Bystanders, and Helping Behavior. *The Journal of Social Psychology , 117* (1), 69-77.

Garman, J. (2008). The European Union Combats Racism and Xenophobia by Forbidding Expression: An Analysis of the Framework Decision. *U. Tol. L. Rev.* , 843.

Georgescu, C. (2014). Europeanization Theories Revisited through Historical Institutionalism. EU as a Public Policy Role Model for Post-Communist South-Eastern Europe in the Field of Security. *Revista de Stiinte Politice , 42*, 135-146.

Glausser, W. (1990). Three Approaches to Locke and Slave Trade. *Journal of the History of Ideas , 51* (2), 199-216.

Greif, A., & Laitin, D. D. (2004). A Theory of Endogenous Institutional Change. *American Political Science Review , 98* (4), 633-652.

Hall, P. A., & Taylor, R. (1996). Political Science and the Three New Institutionalisms. *Political Studies , 44* (5), 936-957.

Hall, P. A., & Thelen, K. (2009). Institutional Change in Varieties of Capitalism. *Socio-Economic Review , 7* (1), 7-34.

Hepple, B. (2004). Race and Law in Fortress Europe. *The Modern Law Review, 67 (1),* 1-15.

Howard, E. (2007). The EU Race Directive: Time for Change? *International Journal of Discrimination and the Law , 8*, 237-261.

Hutchinson, D. L. (1997). Out yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse. *Connecticut Law Review , 29*, 561-645.

Jacqué, J. (2011). The Accession of the European Union to the European Convention on Human Rights and Fundamental Freedoms. *Common Market Law Review , 48*, 995-1023.

James, L., James, S. M., & Vila, B. J. (2016). The Reverse Racism Effect. *Criminology & Public Policy , 15* (2), 457-479.

Joerges, C., & Neyer, J. (1997). Transforming Strategic Interaction into Deliberative Problem-Solving: European Comitology in the Foodstuffs Sector. *Journal of European Public Policy , 4*, 609-625.

Johnson, C. S. (2009). Reading between the Lines: Kathryn Gines on Hannah Arendt and Antiblack Racism. *Southern Journal of Philosophy , 47* (S1), 77-83.

Jupille, J., & Caporaso, J. (1999). Institutionalism and the European Union: Beyond International Relations and Comparative Politics. *Annual Review of Political Science , 2*, 429-444.

Jupille, J., Caporaso, J. A., & Checkel, J. T. (2003). Integration Institutions: Rationalism, Constructivism, and the Study of the European Union. *Comparative Political Studies , 6* (1/2), 7-40.

Katz, I., & Hass, G. R. (1988). Racial Ambivalence and American Value Conflict: Correlational and Priming Studies of Dual Cognitive Structures. *Journal of Personality and Social Psychology , 55* (6), 8983-905.

Kinder, D. R., & Sears, D. O. (1981). Prejudice and Politics: Symbolic Racism versus Racial Threat to the Good Life. *Journal of Personality and Social Psychology , 40* (3), 414-431.

Kohn, H. (1950). Romanticism and the Rise of German Nationalism. *The Review of Politics , 12* (4), 443-472.

Kreutzer, P. (2006). Violent Civic Nationalism versus Civil Ethnic Nationalism: Contrasting Indonesia and Malay(si)a. *National Identities , 8* (1), 41-59.

Kuijer, M. (2011). The Accession of the European Union to the ECHR: A Gift for the ECHR's 60th Anniversary or an Unwelcome Intruder at the Party? *Amsterdam Law Forum , 3* (4), 17-32.

Lasan, N. (2012). Can Historical Institutionalism Explain the Reforms of the Common Agricultural Policy? *Romanian Journal of European Affairs , 12* (1), 76-85.

Lauren, P. G. (1983). First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter. *Human Rights Quarterly , 5*, 1-26.

Lea, J. (2000). The Macpherson Report and the Question of Institutional Racism. *The Howard Journal, 39(3),* 219-233.

Lemkin, R. (1947). Genocide as a Crime under International Law. *The American Journal of International Law , 41* (1), 145-151.

Lock, T. (2010). EU Accession to the ECHR: Implications for the Judicial Review in Strasbourg. *European Law Review , 35*, 777.

Madley, B. (2005). From Africa to Auschwitz: How German South West Africa Incubated Ideas and Methods Adopted and Developed by the Nazis in Eastern Europe. *European History Quarterly , 35* (3).

March, J. G., & Olsen, J. P. (1998). The Institutional Dynamics of International Political Orders. *International Organization , 52* (4), 943-969.

McInerney, S. (2003). Legal Protection against Discrimination based on Racial and Ethnic Origin under European Union Law - Necessary but not Sufficient? *International Journal of Discrimination and the Law , 6* (1), 3-43.

Meertens, R. W., & Pettigrew, T. F. (1997). Is Subtle Prejudice Really Prejudice? *Public Opinion Quarterly , 61* (1), 54-71.

Moellendorf, D. (1992). Racism and Rationality in Hegel's Philosophy of Subjective Spirit. *History of Political Thought , XIII* (2), 243-255.

Moravcsik, A. (2000). The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization , 54* (2), 217-252.

Mukhopadhyay, C., & Moses, Y. (1997). Re-establishing Race in Anthropological Discourse. *American Anthropologist , 99* (3), 517-533.

O'Meara, N. (2011). A More Secure Europe of Rights - The European Court of Human Rights, the Court of Justice of the European Union and EU Accession to the ECHR. *German Law Journal* , 1813.

Parsons, C. (2002). Showing Ideas as Causes: The Origins of the European Union. *International Organization , 56* (1), 47-84.

Pempel, T. J. (1998). Japan's Search for a New Path. *Current History , 97*, 431-436.

Pettigrew, T. F., & Meertens, R. W. (2001). In Defense of the Subtle Prejudice Concept: A Retort. *European Journal of Social Psychology , 31* (3), 299-309.

Pierson, P. (1996). The New Politics of the Welfare State. *World Politics , 48* (2), 143-179.

Pierson, P. (1996). The Path to European Integration: A Historical Institutionalist Perspective. *Comparative Political Studies , 29* (2).

Pollack, M. (1997). Delegation, Agency, and Agenda Setting in the European Community. *International Organization , 51* (01), 99-134.

Puchala, D. (1971). Of Blind Men, Elephants and International Integration. *Journal of Common Market Studies , 10* (3), 267-284.

Purtschert, P. (2010). On the Limit of Spirit: Hegel's Racism Revisited. *Philosophy and Social Criticism , 36* (9), 1039-1051.

Rieder, S. (2012). The EU and its Internal Outsiders. The French Deportation of Roma in the Summer of 2010 – an Infringement of the Lisbon Treaty? *Österreichische Zeitschrift für Politikwissenschaf , 41* (2), 125-140.

Risse, T. (2000). "Let's Argue!": Communicative Action in World Politics. *International Organization , 54* (1), 1-39.

Risse, T., & Wiener, A. (1999). 'Something Rotten' and the Social Construction of Social Constructivism: A Comment on Comments. *Journal of European Public Policy , 6* (5), 775-782.

Schimmelfennig, F. (2016). A Differentiated Leap Forward: Spillover, Path-dependency, and Graded Membership in European Banking Regulation. *West European Politics , 39* (3), 483-502.

Schimmelfennig, F. (2001). The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union. *International Organization , 55* (1), 47-80.

Spencer, H. (1872). The Survival of the Fittest. *Nature , 5* (118), 263.

Solomos, J. (1999). Social Research and the Stephen Lawrence Inquiry. *Sociological Research Online, 4(1).*

Tafira, K. (2011). Is Xenophobia Racism?. *Anthropology Southern Africa*, 34(3-4), 114-121.

Tarman, C., & Sears, D. O. (2005). The Conceptualization and Measurement of Symbolic Racism. *Journal of Politics , 67* (3), 731-761.

Thielemann, E. R., & Armstrong, C. (2013). Understanding European Asylum Cooperation under the Schengen/Dublin System: A Public Goods Framework. *European Security. 22* (2), 148-164.

Verdun, A. (2015). A Historical Institutionalist Explanation of the EU's Responses to the Euro Area Financial Crisis. *Journal of European Public Policy , 22* (2), 219-137.

Ville, F. D. (2013). The Promise of Critical Historical Institutionalism for EU Trade Policy Analysis. *Journal of Contemporary European Research , 9* (4), 618-632.

Yack, B. (1996). The Myth of the Civic Nation. *Critical Review , 10* (2), 193-211.

Books

Alan Goodman, Y. M. (Ed.). (2012). *Race: Are We So Different?* New York: Wiley-Blackwell.

Anderson, B. (2006). *Imagined Communities: Reflections on the Origin and Spread of Nationalism.* London, New York: Verso.

Armstrong, K. A., & Bulmer, S. (1998). *The Governance of the Single European Market.* Manchester: Manchester Univeristy Press.

Augoustinos, M., & Reynolds, K. J. (2001). *Understanding Prejudice, Racism and Social Conflict.* London; California: SAGE.

Börzel, T. A., & Risse, T. (2007). Europeanization: The Domestic Impact of European Union Politics. In K. E. Jorgensen, M. A. Pollack, & B. Rosamond (Eds.), *Handbook of European Union Politics* (pp. 483-505). London: SAGE Publications.

Büthe, T. (2016). Historical Institutionalism and Institutional Development in the EU. In L. A. Thomas Rixen (Ed.), *Historical Institutionalism and International Relations: Explaining Institutional Development in World Politics* (pp. 39-67). Oxford: Oxford University Press.

Baar, H. v. (2014). The Emergence of a Reasonable Anti-Gypsyism in Europe. In T. Agarin (Ed.), *When Stereotype Meets Prejudice: Antiziganism in European Societies (pp. 27-45).* Stuttgart: Ibidem Press.

Bagehot, W. (2001). *The English Constitution.* Cambridge: Cambridge University Press.

Balibar, E. (1991). Racism and Nationalism. In I. Wallerstein, *Race, Nation, Class Ambigious Identities* (37-86). New York; London: Verso.

Bantekas, I., & Oette, L. (2013). *International Human Rights: Law and Practice.* Cambridge: Cambridge University Press.

Barker, M. (1981). *The New Racism: Conservatives and the Ideology of the Tribe.* London: Junction Books.

Bauman, Z. (2005). An Adventure Named Europe. In D. Wildemeersch, V. Stroobants, & M. Bron Jr. (Eds.), *Active Citizenship and Multiple Identities in Europe: A Learning Outlook.* Frankfurt am Main: Peter Lang GmbH.

Bauman, Z. (2002). Holocaust. In D. T. Goldberg, & J. Solomos (Eds.), *A Companion to Racial and Ethnic Studies* (pp. 46-64). Oxford: Blackwell.

Baur, E., Fischer, E., & Lenz, F. (1931). *Human Heredity.* London: G. Allen & Unwin Limited.

Bell, M. (2008). *Racism and Equality in the European Union.* Oxford: Oxford University Press.

Benedict, R. (1943). *Race: Science and Politics.* New York: The Viking Press.

Boas, F. (1965). *The Mind of Primitive Man.* New York: Free Press.

Bois, W. E. (1945). *Color and Democracy: Colonies and Peace.* New York: Harcourt.

Bois, W. E. (1999). *Darkwater: Voices from within the Veil.* New York: Dover Publications.

Bois, W. E. (2007). *The World and Africa.* New York: Oxford University Press.

Bond, M. (2010). The EU and the Council of Europe: Difference, Duplication or Delegation? In D. J. Galbreath, & C. Gebhard (Eds.), *Cooperation or Conflict? Problematizing Organizational Overlap in Europe* (pp. 11-29). Surrey: Ashgate.

Bowser, B. P. (1995). Introduction: The Global Community, Racism, and Anti-Racism . In B. Bowser (Ed.), *Racism and Anti-Racism in World Perspective* (1-27). California: Sage Publications.

Breuilly, J. (1993). *Nationalism and the State.* Manchester: Manchester University Press.

Briggs, C. (2002). Genocide. In D. T. Goldberg, & J. Solomos (Eds.), *A Companion to Racial and Ethnic Studies* (31-46). Oxford: Blackwell.

Brown, D. (2004). *Contemporary Nationalism.* New York: Taylor & Francis.

Buck-Morss, S. (2009). *Hegel, Haiti, and Universal History.* Pittsburgh: University of Pittsburgh Press.

Burchill, R. (2010). Cooperation and Conflict in the Promotion and Protection of Democracy by European Regional Organizations. In D. J. Galbreath, & C. Gebhard (Eds.), *Cooperation or Conflict? Problematizing Organizational Overlap in Europe* (pp. 59-77). Surrey: Ashgate.

Burgers, J. H. (2012). The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century. In D. Weissbrodt, F. D. Aolain, & M. Rumsey (Eds.), *The Development of International Human Rights Law* (pp. 57-89). Surrey: Ashgate Publishing Limited.

Carmichael, S., & Hamilton, C. V. (1967). *Black Power: The Politics of Liberation in America.* New York: Random House.

Carrera, S. (2014). The Framing of Roma as Abnormal EU Citizens: Assessing European Politics on Roma Evictions and Expulsions in France. In C. G. Elspeth Guild (Ed.), *The Reconceptualization of European Union Citizenship* (pp. 33-65). Leiden; Boston: Brill Nijhoff.

Cetti, F. (2012). Asylum and the European 'Security State': the Construction of the Global Outsider. In L. S. Talani (Ed.), *Globalisation, Migration and the Future of Europe: Insiders and Outsiders.* London: Routledge.

Checkel, J. T. (2007). Constructivism and EU Politics. In K. E. Jorgensen, M. A. Pollack, & B. Rosamond (Eds.), *Handbook of European Union Politics* (pp. 57-77). London: SAGE Publisher.

Checkel, J. T. (2006). Social Construction and Integration. In M. Eilstrup-Sangiovanni (Ed.), *Debates on European Integration: A Reader* (406-420). New York: Palgrave Macmillan.

Clapham, A. (2015). *Human Rights: A Very Short Introduction.* New York: Oxford University Press.

Clifford, J. (2013). Equality. In D. Shelton (Ed.), *The Oxford Handbook of International Human Rights Law* (pp. 420-445). Oxford: Oxford University Press.

Cohen, P. (1999). *New Ethnicities Old Racisms.* London: Zed Books.

Cornelisse, G. (2010). *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty.* Leiden; Boston: Martinus Nijhoff Publishers.

Council of Europe. (2014). *Barabaripen: Young Roma Speak about Multiple Discrimination.* Budapest: Council of Europe.

Council of Europe. (2015). *Mirrors: Manual on Combating Antigypsyism through Human Rights Education.* Budapest: Council of Europe.

Council of Europe. (2017). *Right to Remember.* Budapest: Council of Europe.

Darwin, C. (2013). *The Descent of Man and Selections in relation to Sex.* Hertfordshire: Wordsworth Editions.

Darwin, C. (1991). *The Origin of Species by Means of Natural Selection.* Amherst: Prometheus Books .

Diez, T. (2006). Speaking 'Europe': The Politics of Integration Discourse. In *Debates on European Integration: A Reader* (420-437). New York: Palgrave Macmillan.

Donnelly, J. (2013). *Universal Human Rights in Theory and Practice.* Ithaca: Cornell University Press.

Dovidio, J. F., & Gaertner, S. L. (1986). *Prejudice, Discrimination and Racism.* Orlando: Academic Press.

Drouard, A. (2015). Social Darwinism. In J. D. Wright (Ed.), *International Encyclopedia of the Social & Behavioral Sciences* (pp. 686-691). Elsevier.

Edmundson, W. A. (2012). *An Introduction to Rights.* New York: Cambridge University Press.

Eisenstein, Z. (2004). *Against Empire: Feminisms, Racism, and the West.* London, New York: Zed Books Ltd.

Ellis, E., & Watson, P. (2012). *EU Anti-Discrimination Law.* Oxford: Oxford University Press.

Essed, P. (2002). Everyday Racism. In D. T. Goldberg, & J. Solomos (Eds.), *A Companion to Racial and Ethnic Studies* (202-217). Oxford: Blackwell.

Evens Foundation. (2001). *Europe's New Racism: Causes, Manifestations and Solutions.* New York; Oxford: Berghahn Books.

Falk, R. A. (1981). *Human Rights and State Sovereignty.* New York: Holmes & Meier Publishers.

Feagin, J. R. (2006). *Systemic Racis: A Theory of Oppression.* New York: Routledge.

Feagin, J. R., & Feagin, C. B. (2003). *Racial and Ethnic Relations.* NJ: Prentice Hall.

Feagin, J. R., & Hernan, V. (2000). *White Racism The Basics.* Hoboken: Taylor and Francis.

Featherstone, K., & Radaelli, C. M. (2003). *The Politics of Europeanization.* Oxford: Oxford University Press.

Fichte, J. G. (2008). *Addresses to the German Nation.* Cambridge; New York: Cambridge University Press.

Fredrickson, G. (2002). *Racism: A Short History.* New Jersey: Princeton University Press.

Freeman, M. (2014). Origins: The Rise and Fall of Natural Rights. In D. Weissbrodt, F. D. Aolain, & M. Rumsey (Eds.), *The Development of International Human Rights Law* (pp. 3-21). Surrey: Ashgate Publishing Limited.

Günther, H. F. (1927). *The Racial Elements of European History.* London: Methuen.

Galbreath, D. J., & McEvoy, J. (2012). *The European Minority Rights Regime towards a Theory of Regime Effectiveness.* New York: Palgrave Macmillan.

Garner, S. (2010). *Racisms: An Introduction.* London: SAGE.

Geertz, C. (1973). *The Interpretation of Cultures.* New York: Basic Books.

Gellner, E. (2006). *Nations and Nationalism.* Oxford: Blackwell.

Givens, T. E., & Case, R. E. (2014). *Legislating Equality: The Politics of Antidiscrimination Policy in Europe.* Oxford: Oxford University Press.

Gobineau, C. D. (1999). *The Inequality of Human Races.* New York: H. Fertig.

Goldberg, D. T. (2002). Racial States. In D. T. Goldberg, & J. Solomos (Eds.), *A Companion to Racial and Ethnic Studies* (233-259). Oxford: Blackwell.

Goldberg, D. T. (2009). *The Threat of Race: Reflections on Racial Neoliberalism.* Oxford: Wiley-Blackwell.

Goldschmidt, J. E. (2013). Strategic Litigation by Equality Bodies and National Human Rights Institutions to Promote Equality. In Y. Haeck, B. M. Leyh, C. Burbano-Herrera, & D. Contreras-Garduno (Eds.), *The Realisation of Human Rights: When Theory Meets Practice* (pp. 461-474). Cambridge: Intersentia Publishing Ltd.

Gorski, P. S. (2006). Pre-modern Nationalism: An Oxymoron? The Evidence from England. In G. Delanty, & K. Kumar, *The SAGE Handbook of Nations and Nationalism* (pp. 143-157). London: SAGE Publications.

Grear, A. (2012). 'Framing the Project' of International Human Rights Law: Reflections on the Dysfunctional 'Family' of the Universal Declaration. In C. Gearthy, & C.

Douzinas (Eds.), *The Cambridge Companion to Human Rights Law* (pp. 17-35). New York: Cambridge University Press.

Gumplowicz, L. (1980). *Outlines of Sociology.* New Brunswick: Transaction Book.

Haas, E. (1964). *Beyond the Nation-State: Functionalism and International Organization.* California: Stanford University Press.

Haas, E. (1958). *The Uniting of Europe: Political, Social and Economic Forces 1950-1957.* California: Stanford University Press.

Habermas, J. (1989). *The New Conservatism: Cultural Criticism and the Historian's Debate.* Cambridge: Harvard University Press.

Haeckel, E. (1879). *The Evolution of Man: A Popular Exposition of the Principal Points of Human Ontogeny and Phylogeny.* New York: Appleton.

Hastings, A. (1997). *The Construction of Nationhood: Ethnicity, Religion and Nationalism.* Cambridge: Cambridge University Press.

Healey, J. F. (2006). *Race, Ethnicity, Gender, and Class: The Sociology of Group Conflict and Change.* California: Pine Forge Press.

Hechter, M. (2000). *Containing Nationalism.* Oxford, New York: Oxford University Press.

Hegel, G. W. (2001). *The Philosophy of History.* Ontario: Batoche Books.

Hobsbawm, E. J. (1992). *The Invention of Tradition.* Cambridge: Cambridge University Press.

Hoffmann, F. (2012). Foundations Beyond Law. In C. Gearty, & C. Douzinas (Eds.), *The Cambridge Companion to Human Rights Law* (pp. 81-96). Cambridge: Cambridge University Press.

Hollo, L. Y. (2012). The European Commission against Racism and Intolerance (ECRI). In G. de Beco (Ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (127-150). Oxon: Routledge.

Hooghe, L., & Marks, G. (2001). *Multi-level Governance and European Integration.* Oxford: Rowman & Littlefield.

Howard, E. (2010). *The EU Race Directive: Developing the Protection against Racial Discrimination within the EU.* New York: Routledge.

Hutchinson, J. (1987). *The Dynamics of Cultural Nationalism: The Gaelic Revival and the Creation of the Irish Nation State.* London: Allen & Unwin.

Huxley, J. S., & Haddon, A. C. (1938). *We Europeans: A survey of "Racial" Problems.* London: J. Cape .

Jackson, J., & Weidman, N. (2004). *Race, Racism and Science: Social Impact and Interaction.* California: ABC-CLIO Inc.

Kant, I. (2007). *Anthropology, History and Education.* Cambridge: Cambridge University Press.

Kant, I. (2011). *Observations on the Feeling of the Beautiful and Sublime and Other Writings.* New York: Cambridge University Press.

Kedourie, E. (1993). *Nationalism.* Oxford: Blackwell.

Keohane, R. O., & Hoffmann, S. (Eds.). (1991). *The New European Community: Decisionmaking And Institutional Change.* Westview Press.

Kronsell, A., & Manners, I. (2015). Single Policy Study: Three Variations in Design. In K. Lynggaard, I. Manners, & K. Löfgren (Eds.), *Research Methods in European Union Studies* (pp. 86-101). New York: Palgrave Macmillan.

Lemkin, R. (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress.* Washington: Carnegie Endowment for International Peace.

Lenin, V. I. (1996). *Imperialism: The Highest Stage of Capitalism.* London: Pluto Press.

Levi, M. (1997). A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis. In A. S. Zuckerman, & M. I. Lichbach (Eds.), *Comparative Politics: Rationality, Culture, and Structure* (117-133). Cambridge: Cambrdige University Press.

Lindberg, L. (1963). *The Political Dynamics of European Economic Integration.* California: Stanford University Press.

Lopez, I. H. (2003). *Racism on Trial: The Chicano Fight for Justice.* Cambridge: Harvard University Press.

Majone, G. (1996). *Regulating Europe.* New York: Routledge.

Mann, M. (2004). *Fascists.* Cambridge: Cambridge University Press.

Mann, M. (2005). *The Dark Side of Democracy: Explaining Ethnic Cleansing.* Cambridge: Cambridge University Press.

March, J. G., & Olsen, J. P. (1989). *Rediscovering Institutions: The Organizational Basis of Politics.* New York: Free Press.

Maxwell, J. A., & Reybold, L. E. (2015). Qualitative Research. In J. D. Wright (Ed.), *International Encyclopedia of the Social & Behavioral Sciences* (pp. 685–689). Elsevier Ltd.

Meijer, M. (Ed.). (2001). *Dealing with Human Rights: Asian And Western Views on the Value of Human Rights.* Kumarian Press.

Miles, R., & Brown, M. (2003). *Racism.* London: Routledge.

Mills, C. W. (1997). *The Racial Contract.* Ithaca: Cornell University Press.

Morsink, J. (2014). World War Two and the Universal Declaration. In D. Weissbrodt, F. D. Aolain, & M. Rumsey (Eds.), *The Development of International Human Rights Law* (pp. 89-137). Surrey: Ashgate Publishing Limited.

Mowbray, A. (2007). *Cases, Materials, and Commentary on the European Convention on Human Rights.* Oxford: Oxford University Press.

Mutua, M. (2014). Savages, Victims, and Saviors: The Metaphor of Human Rights. In D. Weissbrodt, F. D. Aolain, & M. Rumsey (Eds.), *The Development of International Human Rights Law* (pp. 173-219). Surrey: Ashgate Publishing Limited.

Myjer, E. (2012). The European Court of Human Rights and Social Justice. In I. Lintel, A. Buyse, & M. B. Leyh (Eds.), *Defending Human Rights: Tools for Social Justice* (pp. 11-20). Cambridge: Intersentia Publishing Ltd.

Nairn, T. (1997). *Faces of Nationalism: Janus Revisited.* London, New York: Verso.

Niessen, J., & Chopin, I. (2004). *The Development of Legal Instruments to Combat Racism in a Diverse Europe.* Brill Academic Publishers.

Nowak, M. (2012). A World Court of Human Rights: Utopia? In I. Lintel, A. Buyse, & B. M. Leyh (Eds.), *Defending Human Rights: Tools for Social Justice* (pp. 161-164). Cambridge: Intersentia Publishing Ltd.

Omi, M., & Winant, H. (2015). *Racial Formation in the United States.* New York: Routledge.

Pearson, K. (1905). *National Life from the Standpoint of Sciences.* London.

Pieterse, J. N. (2002). Europe and Its Others. In D. T. Goldberg, & J. Solomos, *A Companion to Racial and Ethnic Studies* (17-25). Oxford: Blackwell.

Rattansi, A. (2007). *Racism: A Very Short Introduction.* Oxford: Oxford University Press.

Reynolds, S. (2005). The Idea of the Nation as a Political Community. In L. Scales, & O. Zimmer, *Power and Nation in European History* (pp. 54-67). Cambridge: Cambridge University Press.

Richards, G. (2004). *Race, Racism and Psychology Towards a Reflexive History.* Hoboken: Taylor and Francis.

Richardson, J. (2006). Policy-making in the EU: Interests, Ideas and Garbage Cans of Primeval Soup. In J. Richardson (Ed.), *European Union: Power and Policy-Making* (3-31). Oxon: Routledge.

Richardson, J., & Mazey, S. (1996). *European Union: Power and Policy-Making.* New York: Routledge.

Risse, T. (2009). Social Constructivism and European Integration. In A. Wiener, & T. Diez (Eds.), *European Integration Theory* (pp. 144-160). New York: Oxford University Press.

Rosamond, B. (2000). *Theories of European Integration.* London: Macmillan Press Ltd.

Rose, R. (Ed.). (1995). *The Nazi Genocide of the Sinti and Roma.* Heidelberg: Documentary and Cultural Centre of German Sinti and Roma.

Said, E. W. (1979). *Orientalism.* New York: Vintage Books.

Sanchez-Mazas, M. & Licata, L. (2015). Xenophobia: Social Psychological Aspects. In Wright, J. D. (Ed.), *International Encyclopedia of the Social and Behavioral Sciences* (pp. 802-807). Elsevier Ltd.

Smith, A. D. (2009). *Ethno-symbolism and Nationalism: A Cultural Approach.* London; New York: Routledge.

Smith, R. (1987). Human Destructiveness and Politics: The Twentieth Century as an Age of Genocide. In I. Wallimann, & M. N. Dobkowski, *Genocide and the Modern Age: Etiology and Case Studies of Mass Death* (pp. 21-39). Westport: Greenwood Press.

Smith, S. (2000). International Theory and European Integration. In M. Kelstrup, & M. C. Williams (Eds.), *International Relations Theory and The Politics of European Integration: Power, Security and Community* (33-57). London: Routledge.

Solomos, J., Findlay, B., Jones, S., & Gilroy, P. (1982). The Organic Crisis of British Capitalism and Race: The Experience of the Seventies. In C. f. Studies (Ed.), *The Empire Strikes Back: Race and Racism in 70s Britain* (7-45). London: Hutchinson & Co. Ltd.

Somersan, S. (2004). *Sosyal Bilimlerde Etnisite ve Irk.* İstanbul: İstanbul Bilgi Üniversitesi Yayınları.

Stern, B. J., & Locke, A. (1942). *When Peoples Meet: A study in Race and Culture Contracts.* New York: Committee on Workshops, Progressive Education Association .

Streeck, W., & Thelen, K. A. (2005). In W. Streeck, & K. A. Thelen (Eds.), *Beyond Continuity: Institutional Change in Advanced Political Economies.* Oxford; New York: Oxford University Press.

Thelen, K., & Steinmo, S. (1992). Historical Institutionalism in Comparative Politics. In S. Steinmo, K. Thelen, & F. Longstreth (Eds.), *Structuring Politics: Historical Institutionalism in Comparative Analysis* (1-32). Cambridge: Cambridge University Press.

Waever, O. (2009). Discursive Approaches. In A. Wiener, & T. Diez (Eds.), *European Integration Theory.* Oxford: Oxford University Press.

Wallerstein, I. (1991). The Construction of Peoplehood: Racism, Nationalism, Ethnicity. In E. Balibar, & I. Wallerstein, *Race, Nation, Class: Ambiguous Identities* (71-86). London; New York: Verso.

Weir, M. (1992). Ideas and the Politics of Bounded Innovation. In S. Steinmo, K. Thelen, & F. Longstreth (Eds.), *Structuring Politics: Historical Institutionalism in Comparative Analysis* (pp. 188-216). Cambridge: Cambridge University Press.

White, R. C., & Ovey, C. (2010). *The European Convention on Human Rights.* Oxford: Oxford University Press.

Wiener, A., Christiansen, T., & Jorgensen, K. E. (Eds.). (2001). *The Social Construction of Europe.* London: Sage.

Wouters, J., Brems, E., Smis, S., & Schmitt, P. (Eds.). (2010). *Accountability for Human Rights Violations by International Organisations.* Antwerp: Intersentia Publishers.

Young, J. (1999). *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity.* London; California; New Delgi: Sage Publications.

Zimmerman, A. (2001). *Anthropology and Antihumanism in Imperial Germany.* Chicago: University of Chicago Press.

Case Law

European Court of Human Rights. (2013). *Case of Winterstein and Others v. France 27013/07.* Retrieved January 24, 2017, from http://hudoc.echr.coe.int/eng?i=001-127539#{"itemid":["001-127539"]}

European Court of Human Rights. (2012). *Eviction of Roma from a Settlement in the Bulgarian Capital would Breach Their Human Rights.* Retrieved January 24, 2017, from https://cs.coe.int/team20/cahrom/documents/Chamber%20judgment%20Yordanova%20and%20Others%20v%20%20Bulgaria%2024%2004%2012.pdf

European Court of Human Rights. (2014). *Laurentiu Constantin HIRTU et autres contre la France 24720/13.* Retrieved Janaury 24, 2017, from http://hudoc.echr.coe.int/eng?i=001-144127#{"itemid":["001-144127"]}

European Court of Human Rights. (2011). *M.S.S. v. Belgium and Greece 30696/09.* Retrieved January 24, 2017, from http://www.refworld.org/docid/4d39bc7f2.html

European Court of Human Rights. (2016). *Romanlar ve Göçerler.* Retrieved January 2017, from http://www.echr.coe.int/Documents/FS_Roma_TUR.pdf

European Court of Human Rights. (2002). *Sulejmanovic and Others and Sejdovic and Sulejmanovic v. Italy 57574/00.* Retrieved January 24, 2017, from http://echr.ketse.com/doc/57574.00-57575.00-en-20021108/

European Court of Justice. (2013). *Bundesrepublik Deutschland v Kaveh Puid C-4/11.* Retrieved January 24, 2017, from http://curia.europa.eu/juris/liste.jsf?num=C-4/11

European Court of Justice. (1996). *Case C-237/94.* Retrieved 12 3, 2016, from EUR-Lex: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61994CJ0237

European Court of Justice. (2008). *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV C-54/07*. Retrieved January 24, 2017, from http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d5b5bbb59ad0564b839ad5e5ce04678e71.e34KaxiLc3eQc40LaxqMbN4Pa3aSe0?text=&docid=67586&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=514313

European Court of Justice. (2015). *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia C-83/14*. Retrieved January 24, 2017, from http://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=514541

European Court of Justice. (2011). *Malgožata Runevič-Vardyn, Łukasz Paweł Wardyn v Vilniaus miesto savivaldybės administracija, Lietuvos Respublikos teisingumo ministerija, Valstybinė lietuvių kalbos komisija, Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyriu C-391/09, .* Retrieved January 24, 2017, from http://curia.europa.eu/juris/document/document.jsf?text=&docid=82046&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=194718

Conference Proceedings

Bermann, K. (2011). Forced Nomadism and "Frozen Transience": Roma Mobilities in Rome Today. *Architecture Conference Proceedings and Presentations.*

Schweitz, L. M. (1995). NGO Participation in International Governance: The Question of Legitamcy. *Proceedings of the Annual Meeting. 89*, pp. 415-426. American Society of International Law.

Government Documents

Agency for Social Inclusion. (2011). *Strategy for Combating Social Exclusion for the period 2011-2015.* Retrieved January 24, 2017, from http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vylouceni/

Czech Republic Minister for Human Rights. (2009). *Roma Integration Concept for 2010–2013* . Retrieved January 24, 2017, from http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf

Macpherson, W. (1999). *The Stephen Lawrence Inquiry*. London: Stationary Office.

The Greek Ombudsman. (2013). *The Phenomenon of Racist Violence and How to Deal with It.* Retrieved January 11, 2017, from http://www.synigoros.gr/?i=human-rights.el.diakritiki-metaxeirisi-astunomiki-prostasia.125089

Interviews

Interview 1. (2015, June 8). Member of the CERD and ECRI, Director of a NGO. Istanbul, Turkey.

Interview 2. (2015, June 11). NGO Worker. Skype.

Interview 3. (2015, June 15). Member of the European Parliament. Brussels, Belgium.

Interview 4. (2015, June 15). Former Staff of the DG Enlargement, European Commission. Brussels, Belgium.

Interview 5. (2015, June 16). Member of the European Parliament. Brussels, Belgium.

Interview 6. (2015, June 17). Staff of the DG Justice, European Commission. Brussels, Belgium.

Interview 7. (2015, June 17). NGO Worker. Brussels, Belgium.

Interview 8. (2015, June 19). NGO Worker. Brussels, Belgium.

Interview 9. (2015, June 19). NGO Worker. Brussels, Belgium.

Interview 10. (2015, July 10). NGO Worker. Skype.

Interview 11. (2016, May 2). NGO Worker. Skype.

Interview 12. (2017, April 10). NGO Worker. Happenheim, Germany.

Legislation

Council of Europe. (1950). *European Convention on Human Rights*. Retrieved October 26, 2016, from http://www.echr.coe.int/pages/home.aspx?p=basictexts

Council of Europe. (1961). *European Social Charter.* Retrieved May 28, 2016, from https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168006b642

Council of Europe. (2000). *Explanatory Report to the Protocol No. 12.* Retrieved May 30, 2016, from https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cce48

Council of Europe. (2016). *High Level Meting*. Retrieved July 5, 2016, from http://wayback.archive-it.org/1365/20140719015104/http://hub.coe.int/en/web/coe-portal/event-files/our-events/council-of-europe-meeting-for-roma

Council of Europe. (1990). *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Retrieved October 26, 2016, from http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx

Council of Europe. (2000). *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*. Retrieved October 26, 2016, from https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177

Council of Europe. (2002). *Resolution.* Retrieved May 22, 2016, from http://www.coe.int/t/dghl/monitoring/ecri/About/Res(2002)8%20amended%20-%20Statute%20ECRI%20-%20revised%20February%202014.pdf

EESC. (1988). *Opinion of EESC on the Proposal for a Council Resolution on the Fight Against Racism and Xenophobia 1988.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1989:023:0033:0035:EN:PDF

European Commission. (2015c). *More Responsibility in Managing the Refugee Crisis: European Commission Adopts 40 Infringement Decisions to Make European Asylum System Work.* Retrieved December 31, 2016, from http://europa.eu/rapid/press-release_IP-15-5699_en.htm

European Commission. (2016d). *Code of Conduct*. Retrieved 12 3, 2016, from http://europa.eu/rapid/press-release_IP-16-1937_en.htm

European Commission. (1998). *An Action Plan against Racism. Communication from the Commission.* Retrieved 2016 from http://aei.pitt.edu/5109/1/5109.pdf

European Commission. (2016a). *Assessing the Implementation of the EU Framework for National Roma Integration Strategies and the Council Recommendation on Effective Roma integration measures in the Member States 2016.* Retrieved 2016, from http://ec.europa.eu/justice/discrimination/files/roma-report-2016_en.pdf

European Commission. (2016e). *Code of Conduct–Illegal Online Hate Speech Questions and Answers*. Retrieved 2016, from http://ec.europa.eu/justice/fundamental-rights/files/code_of_conduct_hate_speech_en.pdf

European Commission. (1990). *Commission Communication on Community Accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Some of its Protocols 1990* . Retrieved 2014, from http://aei.pitt.edu/3680/1/3680.pdf

European Commission. (2006). *Commission Decision of 20 January 2006 Establishing a High-level Advisory Group on Social Integration.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:021:0020:0021:EN:PDF

European Commission. (1976). *Commission Report (submitted to the European Parliament and the Council), The protection of fundamental rights as Community law is created and developed.* Retrieved 2015, from http://aei.pitt.edu/5377/

European Commission. (2016b). *Commission Staff Working Document Country Report Hungary 2016*. Retrieved January 24, 2017, from http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_hungary_en.pdf

European Commission. (2016c). *Commission Staff Working Document Country Report Slovakia 2016*. Retrieved January 24, 2017, from http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_slovakia_en.pdf

European Commission. (1992). *Commission Working Paper Comparative Assessment of the Legal Instruments Implemented in the Various Member States to Combat all Forms of Discrimination, Racism and Xenophobia and Incitement to Hatred and Racial Violence.* Retrieved 2014, from http://aei.pitt.edu/8697/1/8697.pdf

European Commission. (2011). *Communication form the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions An EU Framework for National Roma Integration Strategies up to 2020.* Retrieved 2015, from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173&from=EN

European Commission. (2012a). *Communication form the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions National Roma Integration Strategies: A First Step in the Implementation of the EU Framework.* Retrieved 2016, from http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1444910230246&uri=CELEX:52012DC0226

European Commission. (2010a). *Communication form the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions The Social and Economic Integration of the Roma in Europe.* Retrieved 2015, from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0133&from=EN

European Commission. (2015a). *Communication form the Commission to the Council, the European Parliament, the European Economic and Social Committee and the*

Committee of the Regions Report on the Implementation of the EU Framework for National Roma Integration Strategies 2015. Retrieved 2016, from http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf

European Commission. (1995). *Communication from the Commission on Racism, Xenophobia and Anti-Semitism and Proposal for a Council Decision Designating 1997 as European Year against Racism.* Retrieved 2014, from http://aei.pitt.edu/2777/1/2777.pdf

European Commission. (2010b). *Communication from the Commission Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union.* Retrieved 2015, from EUR-Lex: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF

European Commission. (2004a). *Communication from the Commission The Fundamental Rights Agency Public Consultation Document.* Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0693:FIN:EN:PDF

European Commission. (2004a). *Communication from the Commission The Fundamental Rights Agency Public Consultation Document.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0693:FIN:EN:PDF

European Commission. (1997). *Communication from the Commission to the Council 14 May 1997.* Retrieved 2014, from http://aei.pitt.edu/13850/1/sec_(97)_882_final.pdf

European Commission. (1988). *Communication from the Commission to the Council on the Fight against Racism and Xenophobia OFJ 214 16.08.1988 Submitted to Commission 29.06.1988.* Retrieved 2014, from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1988:214:FULL&from=EN

European Commission. (2005). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Non-discrimination and Equal Opportunities for All -*

A Framework Strategy, 1 June 2005. Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0224:FIN:EN:PDF

European Commission. (2008a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Non-discrimination and Equal Opportunities: A Renewed Commitment.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0420:FIN:EN:PDF

European Commission. (2016f). *December Infringements Package: Key Decisions*. Retrieved January 24, 2017, from http://europa.eu/rapid/press-release_MEMO-16-4211_en.htm

European Commission. (2016g). *European Commission - Fact Sheet*. Retrieved January 24, 2017, from http://europa.eu/rapid/press-release_MEMO-16-1823_en.htm

European Commission. (2010d). *Ex-Post REFIT Evaluation of the Audiovisiual Media Services Directive.* Retrieved August 11, 2017, from https://ec.europa.eu/digital-single-market/en/news/ex-post-refit-evaluation-audiovisual-media-services-directive-201013eu

European Commission. (2004b). *Green Paper - Equality and Non-discrimination in an Enlarged European Union, 28 May 2004*. Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0379:FIN:EN:PDF

European Commission. (2016h). *Implementing the Common European Asylum System: Commission Acts on 9 Infringement Proceedings*. Retrieved January 24, 2017, from http://europa.eu/rapid/press-release_IP-16-270_en.htm

European Commission. (2015b). *Implementing the Common European Asylum System: CommissionEescalates 8 infringement proceedings*. Retrieved January 24, 2017, from http://europa.eu/rapid/press-release_IP-15-6276_en.htm

European Commission. (2014a). *Joint Report on theAapplication of Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation ('Employment Equality Directive').* Retrieved 2016, from http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

European Commission. (2010c). *Member States' Notifications of the Temporary Reintroduction of Border Control at Internal Borders Pursuant to Article 25 et seq. of the Schengen Borders Code*. Retrieved May 24, 2017, from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/docs/ms_notifications_-_reintroduction_of_border_control_en.pdf

European Commission. (1979). *Memorandum from the Commission on the Accession of the Communities to the European Convention on Human Rights.* Retrieved 2014, from http://aei.pitt.edu/6356/4/6356.pdf

European Commission. (2015c). *More Responsibility in Managing the Refugee Crisis: European Commission Adopts 40 Infringement Decisions to Make European Asylum System Work.* Retrieved January 20, 2017, from http://europa.eu/rapid/press-release_IP-15-5699_en.htm?locale=en

European Commission. (2015d). *National strategy for Roma integration*. Retrieved January 25, 2017, from http://ec.europa.eu/justice/discrimination/roma-integration/france/national-strategy/national_en.htm

European Commission. (2016i). *National Strategy for Roma Integration*. Retrieved January 24, 2017, from http://ec.europa.eu/justice/discrimination/roma-integration/czech-republic/national-strategy/national_en.htm

European Commission. (2008b). *Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief,*

Disability, Age or Sexual Orientation. Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF

European Commission. (2002). *Regular Report on Czech Republic's Progress Towards Accession.* Retrieved from https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/2002/cz_en.pdf

European Commission. (2008c). *Renewed Commitment for Non-discrimination and Equal Opportunities.* Retrieved 2015, from http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:dh0001&from=EN

European Commission. (2012b). *Report From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2011 Report on the Application of the EU Charter of Fundamental Rights.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0169:FIN:EN:PDF

European Commission. (1999). *Report of the European Commission on the Implementation of Europan Year against Racism (1997).* Retrieved 2014, from http://aei.pitt.edu/5966/1/003144_1.pdf

European Commission. (2014b). *Report on Discrimination of Roma Children in Education.* Retrieved January 24, 2017, from http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf

European Commission. (2014c). *Report on the Implementation of the EU Framework for National Roma Integration Strategies.* Retrieved 2016, from http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf

European Commission. (2014c). *Report on the Implementation of the EU Framework for National Roma Integration Strategies.* Retrieved January 24, 2017, from http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf

European Committee of Social Rights. (2013). *Médecins du Monde – International v. France Complaint No. 67/2011.* Retrieved January 24, 2017, from http://hudoc.esc.coe.int/eng/?i=cc-67-2011-dmerits-en#{"ESCDcIdentifier":["cc-67-2011-dmerits-en"]}

European Committee on Social Rights. (2010). *Centre on Housing Rights and Evictions (COHRE) v. Italy, Collective Complaint No. 58/2009.* Retrieved January 24, 2017, from https://www.escr-net.org/caselaw/2011/centre-housing-rights-and-evictions-cohre-v-italy-collective-complaint-no-582009

European Council. (1997a). *Amended proposal for a Council Regulation (EC) establishing a European Monitoring Centre for Racism and Xenophobia 14 May 1997.* Retrieved 2014, from http://aei.pitt.edu/12634/1/12634.pdf

European Council. (1995a). *Cannes European Council of 25-26 June 1995 Presidency Conclusions.* Retrieved 2014, from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00211-C.EN5.htm

European Council. (2010). *Council Conclusions on Advancing Roma Inclusion June 2010.* Retrieved 2015, from http://ec.europa.eu/social/BlobServlet?docId=5578&langId=en

European Council. (2011a). *Council Conclusions on the Fifth Report on Economic, Social and Territorial Cohesion February 2011.* Retrieved 2015, from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/119400.pdf

European Council. (2009). *Council Conclusions on the Inclusion of the Roma and the Common Basic Principles on Roma Inclusion annexed thereto une 2009.* Retrieved 2015, from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/108377.pdf

European Council. (2008a). *Council Decision of 28 February 2008 Implementing Regulation (EC) No 168/2007 as regards the Adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:063:0014:0015:EN:PDF

European Council. (1997c). *Council Directive 97/80/EC.* Retrieved 2016, from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31997L0080

European Council. (2008b). *Council Framework Decision 2008/913/JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF

European Council. (2013). *Council Recommendation of 9 December 2013 on Effective Roma Integration Measures in the Member States.* Retrieved 2016, from http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224%2801%29

European Council. (1997b). *Council Regulation (EC) No 1035/97 of 2 June 1997 Establishing a European Monitoring Centre on Racism and Xenophobia.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R1035:EN:HTML

European Council. (2007a). *Council Regulation (EC) No 168/2007 of 15 February 2007 Establishing a European Union Agency for Fundamental Rights.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:053:0001:0014:EN:PDF

European Council. (1985). *Council Resolution of 16 July 1985 on Guidlines for a Community Policy on Migration (OJC 186, 26.7.1985).* Retrieved 2014, from

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1985:186:0003:0004:EN:PDF

European Council. (2011b). *European Council Conclusions, EUCO 23/11 of 23 and 24 June 2011.* Retrieved 2015, from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123075.pdf

European Council. (1989). *European Council in Madrid 26-27 June 1989.* Retrieved 2014, from European Parliament: http://www.europarl.europa.eu/summits/madrid/default_en.htm

European Council. (1994a). *European Council Meeting on 9 and 10 December 1994 in Essen Presidency Conclusions.* Retrieved 2014, from http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00300-1.EN4.htm

European Council. (1996a). *Florence European Council 21 and 22 June 1996 Presidency Conclusions.* Retrieved 2014, from http://www.europarl.europa.eu/summits/fir1_en.htm

European Council. (1996b). *Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, Concerning Action to Combat Racism and Xenophobia.* Retrieved 2014, from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996F0443

European Council. (1993). *Presidency Conclusion Copenhagen, 21-22 June 1993*. Retrieved 2015, from http://www.europarl.europa.eu/enlargement_new/europeancouncil/pdf/cop_en.pdf

European Council. (1990a). *Presidency Conclusion Dublin, 25-26 July 1990.* Retrieved 2015, from http://aei.pitt.edu/view/instauthor/IAE005.html

European Council. (1992). *Presidency Conclusion Edinburgh, 11-12 December 1992*. Retrieved 2015, from http://www.europarl.europa.eu/summits/edinburgh/default_en.htm

European Council. (1991). *Presidency Conclusion Maastricht, 9-10 December 1991*. Retrieved 2015, from http://www.europarl.europa.eu/summits/maastricht/default_en.htm

European Council. (1990b, December). Presidency Conclusion Rome, 14-15 December 1990.

European Council. (1995b). *Presidency Conclusions Annex 4: Combating Racism and Xenophobia 15-16 December 1995*. Retrieved 2014, from http://www.europarl.europa.eu/summits/mad2_en.htm#annex4

European Council. (1995b). *Presidency Conclusions Annex 4: Combating Racism and Xenophobia 15-16 December 1995*. Retrieved 2014, from http://www.europarl.europa.eu/summits/mad2_en.htm#annex4

European Council. (1994b). *Presidency Conclusions Corfu 24-25 June 1994*. Retrieved 2014, from EUR-Lex: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1992:337:FULL:EN:PDF

European Council. (1994c). *Presidency Conclusions Essen, 9 and 10 December 1994*. Retrieved 2014, from http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00300-1.EN4.htm

European Council. (2007b). *Presidency Conclusions of the European Council 14 December 2007*. Retrieved 2015, from https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressData/en/ec/97669.pdf

European Council. (1996c). *Proposal for a Council Regulation (EC) Establishing a European Monitoring Centre for Racism and Xenophobia. COM (96) 615 Final,*

27 November 1996. Retrieved 2014, from http://aei.pitt.edu/13167/1/COM_(96)_615_final.pdf

European Council. (1996d). *Resolution of the Council and the Representatives of the Governments of the Member States, Meeting within the Council of 23 July 1996 Concerning the European Year against Racism (1997) (96/C 237/01).* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:237:0001:0004:EN:PDF

European Council. (1990c). *Resolution of the Council and the Representatives of the Governments of the Member States, Meeting within the Council of 29 May 1990 on the Fight Against Racism and Xenophobia (90/C 157/01).* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1990:157:0001:0003:EN:PDF

European Council. (1995c). *Resolutions of the Council and the Representatives of the Governments of the Member States, Meeting within the Council of 23 October 1995 on the Response of Educational Systems to the Problems of Racism and Xenophobia.* Retrieved 2014, from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1995:312:FULL&from=EN

European Council. (2008c). *The Council Conclusions on the Inclusion of the Roma 8 December 2008.* Retrieved 2015, from http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/104561.pdf

European Council. (2008d). *The Presidency Conclusion of the European Council 19-20 June 2008.* Retrieved 2015, from http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/101346.pdf

European Parliament. (1998). *Annex 6 Racism B4-0108/98 Resolution on Racism, Xenophobia and Anti-semitism and the Results of the European Year against Racism (1997).* Retrieved 2014, from http://www.europarl.europa.eu/workingpapers/libe/102/text5_en.htm#annex6

European Parliament. (1993a). *Annual Report: The European Community and Human Rights 1993.* Retrieved 2014, from http://aei.pitt.edu/3128/1/3128.pdf

European Parliament. (1985). *Committee of Inquiry into to Rise of Fascism and Racism in Europe.* Retrieved 2014, from http://aei.pitt.edu/49120/

European Parliament. (1982). *EP Resolution embodying the opinion of the European Parliament on the memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, Minutes of Proceedings of the Sitting of 29.20.1982* . Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1982:304:0252:0273:EN:PDF

European Parliament. (1995a). *EP Resolution on a Day to Commemorate the Holocaust 15 June 1995.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:166:0077:0157:EN:PDF

European Parliament. (1990a). *EP Resolution on Carpentras 17 May 1990.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1990:149:FULL:EN:PDF

European Parliament. (1995b). *EP Resolution on discrimination against the Roma 13 July 1995.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:249:FULL:EN:PDF

European Parliament. (1986). *EP Resolution on the Rise of Racism and Fascism in Europe, Minutes of Proceedings of the Sitting of 16.01.1986, OJC 26.* Retrieved

2014, from http://www.epgencms.europarl.europa.eu/cmsdata/upload/96a92562-f0c0-4b57-9ab7-40368f4edcfc/PE2_AP_RP!POLI.1984_A2-0012!860010EN.pdf

European Parliament. (2006). *EP Resolution on the Situation of Roma Women in the EU June 2006.* Retrieved 2015, from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0244+0+DOC+XML+V0//EN

European Parliament. (2011). *EU Strategy on Roma Inclusion March 2011.* Retrieved 2015, from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0092+0+DOC+XML+V0//EN

European Parliament. (1990b). *European Communities European Parliament Session Documents Report Drawn on behalf of the Committee of Inquiry into Racism and Xenophobia 23.07.1990.* Retrieved 2014, from http://aei.pitt.edu/3128/1/3128.pdf

European Parliament. (1989a). *European Parliament Resolution Adopting the Declaration of Fundamental Rights and Freedoms OJC 120 16.05.1989.* Retrieved 2014, from http://www.europarl.europa.eu/charter/docs/pdf/a2_0003_89_en_en.pdf

European Parliament. (1973). *European Parliament Resolution concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1973:026:0001:0011:EN:PDF

European Parliament. (2010a). *European Parliament Resolution of 9 September 2010 on the Situation of Roma and on Freedom of Movement in the European Union.* Retrieved January 24, 2017, from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0312+0+DOC+XML+V0//EN

European Parliament. (2015). *International Roma Day – anti-Gypsyism in Europe and EU Recognition of the Memorial Day of the Roma Genocide during WW II.*

Retrieved 2016, from http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0095

European Parliament. (1996). *Official Journal of the European Communities, C 152, 27 May 1996.* Retrieved 2014, from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AC%3A1996%3A152%3ATOC

European Parliament. (2010b). *Opinion of Committee of Regions on the Social and Economic Integration of the Roma in Europe December 2010.* Retrieved 2015, from http://cor.europa.eu/en/news/highlights/documents/6407a07a-a343-4e22-b072-fb8c5119b776.pdf

European Parliament. (1993b). *Resolution of EP of 21 April 1993, European Parliament 1993/94 Session No. C150/127-132, 31.05.1993.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1993:150:FULL:EN:PDF

European Parliament. (1994a). *Resolution of EP of 21 April 1994 on the Situation of Gypsies in the Community.* Retrieved 2014, from http://www.radioradicale.it/exagora/gypsies-in-the-community

European Parliament. (1990c). *Resolution of EP on Measures to Combat Racism and Xenophobia, (OJ-C175, 33) 14 June 1990.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1990:175:FULL:EN:PDF

European Parliament. (1991). *Resolution of EP on Racism and Xenophobia 10 October 1991.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1991:280:FULL:EN:PDF

European Parliament. (1993c). *Resolution of EP on Racism and Xenophobia, 2 December 1993.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1993:342:0011:0045:EN:PDF

European Parliament. (1992a). *Resolution of EP on Racism, Xenophobia and Anti-Semitism, 30 October 1992.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1992:305:FULL:EN:PDF

European Parliament. (1992b). *Resolution of EP on Support for Demonstrations in favour of Democracy and Tolerance and against Racism and Xenophobia 12 March 1992.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1990:284:FULL:EN:PDF

European Parliament. (1990d). *Resolution of EP on the Intergovernmental Conferences in the Context of the European Parliament's Strategy for European Union, 22 November 1990.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1990:324:FULL:EN:PDF

European Parliament. (1989b). *Resolution of EP on the Proposal from the Commission to the Council on a Resolution Concerning the Fight against Racism and Xenophobia, 14 February 1989.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1989:069:FULL:EN:PDF

European Parliament. (1990e). *Resolution of EP on the Report by the Committee of Inquiry into Racism and Xenophobia, 10 October 1990.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1990:284:FULL:EN:PDF

European Parliament. (1992c). *Resolution of EP on the Riots Rostock-Lichtenhagen and Other Cities of the New Lander, 17 September 1992.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1992:284:FULL:EN:PDF

European Parliament. (1997). *Resolution of the European Parliament on Racism, Xenophobia and Anti-semitism and the European Year against Racism (1997) 30 January 1997 (OJ C 55/17, 24.2.97)* . Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:055:0011:0061:EN:PDF

European Parliament. (1995c). *Resolution of the European Parliament on Racism, Xenophobia and Anti-semitism, 26 October 1995 (OJ C 308/140, 20.11.1995).* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:308:0095:0464:EN:PDF

European Parliament. (1994b). *Resolution of the European Parliament on Racism, Xenophobia, and Anti-semitism, 27 October 1994 (OJ C 323/154, 20.11.1994).* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1994:323:0111:0483:EN:PDF

European Parliament. (2010c). *Situation of the Roma People in Europe September 2010.* Retrieved 2015, from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0312+0+DOC+XML+V0//EN

European Parliament. (2009). *Social situation of the Roma and their improved access to the labour market in the EU March 2009.* Retrieved 2015, from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0117+0+DOC+XML+V0//en

European Union. (1957). *Treaty Establishing the European Economic Community.* Retrieved 2014, from http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_3_antlasmalar/1_3_1_kurucu_antlasmalar/1957_treaty_establishing_eec.pdf

European Union. (1997). *Amsterdam Treaty.* Retrieved 2014, from http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_of_amsterdam/treaty_of_amsterdam_en.pdf

European Union and Council of Europe. (2008c). *Agreement between the European Community and the Council of Europe on Cooperation between the European Union Agency for Fundamental Rights and the Council of Europe.* Retrieved 2015, from http://eur-

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:186:0007:0011:EN:PDF

European Union. (2000a). *Charter of Fundamental Rights of the European Union.* Retrieved 2015, from http://www.europarl.europa.eu/charter/pdf/text_en.pdf

European Union. (2008a). *Consolidated version of the Treaty on the Functioning of the European Union*. Retrieved January 21, 2017, from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008E258

European Union. (2004). *Constitutional Treaty.* Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:FULL:EN:PDF

European Union. (2006a). *Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:315:0001:0008:EN:PDF

European Union. (2006b). *Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007) — towards a just society.* Retrieved 2015, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:146:0001:0007:EN:PDF

European Union. (2010). *Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the Coordination of Certain Provisions laid down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive.* Retrieved November 11, 2016, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF

European Union. (2003). *Dublin II Regulation.* Retrieved May 23, 2017, from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33153

European Union. (2008b). *Framework Decision.* Retrieved 12 3, 2016, from http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/framework-decision/index_en.htm

European Union. (2016a). *Implementing the EU-Turkey Statement – Questions and Answers*. Retrieved December 13, 2016, from http://europa.eu/rapid/press-release_MEMO-16-1664_en.htm

European Union. (2007). *Lisbon Treaty.* Retrieved 2016, from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12007L/TXT&from=EN

European Union. (1992). *Maastricht Treaty, 1992.* Retrieved 2014, from http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

European Union. (2016b). *Member States' Support to Emergency Relocation Mechanism*. Retrieved December 13, 2016, from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf

European Union. (2000b). *Racial Equality Directive.* Retrieved 2016, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML

European Union. (1987). *Single European Act.* Retrieved 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1987:169:FULL:EN:PDF

High Level Advisory Group. (2007). *Report on the High Level Advisory Group of Experts on the Social Integration of Ethnic Minorities and their Full Participation on the Labour Market.* Retrieved 2015, from http://ec.europa.eu/justice/discrimination/files/social_integration_ethnicminorities_en.pdf

Joint Declaration by the European Parliament, the Council and the Commission against racism and xenophobia. (1986). Retrieved 2014, from http://www.europarl.europa.eu/workingpapers/libe/102/text5_en.htm

Joint Declaration of the European Parliament, the Council and the Commission. (1977). Retrieved 2014, from http://aei.pitt.edu/31844/1/P_30_77.pdf

Kahn. (1995). *Final Report from: Consultative Commission on Racism and Xenophobia (Kahn Report) May 1995.* Retrieved 2014, from http://aei.pitt.edu/1588/1/Kahn_report.pdf

The Committee of Ministers. (2009). *Recommendation CM/Rec(2009)4 of the Committee of Ministers to member states on the education of Roma and Travellers in Europe*. Retrieved January 25, 2017, from https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805b0a1c

UN. (2016). *World Conference Against Racial Discrimination*. Retrieved July 3, 2016, from www.un.org: http://www.un.org/WCAR/

UNESCO. (1960, December 14). *Convention against Discrimination in Education 1960.* Retrieved June 2016, from http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html

United Nations. (1989). *Convention on the Rights of the Child*. Retrieved October 26, 2016, from http://www.ohchr.org/en/professionalinterest/pages/crc.aspx

United Nations. (1948). *Convention on Prevention and Punishment of the Crime of Genocide.* Retrieved August, 11, 2017, from https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf

United Nations. (1965). *International Convention on the Elimination of All Forms of Racial Discrimination*. Retrieved October 26, 2016, from http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

United Nations. (1966a). *International Covenant on Civil and Political Rights*. Retrieved October 26, 2016, from http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

United Nations. (1966b). *International Covenant on Economic, Social and Cultural Rights*. Retrieved October 26, 2016, from http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

United Nations. (1945). *Charter of the United Nations*. Retrieved October 26, 2016, from http://www.un.org/en/charter-united-nations/

United Nations. (1948). *Universal Declaration of Human Rights*. Retrieved October 26, 2016, from http://www.un.org/en/universal-declaration-human-rights/

Newspaper Articles

AlJazeera. (2016, July 19). *Roma Women Share Stories of Forced Sterilisation*. Retrieved May 10, 2017, from http://www.aljazeera.com/indepth/features/2016/07/roma-women-share-stories-forced-sterilisation-160701100731050.html

Balkan Insight. (2016, October 25). *Slovenia's Border Fence Alarms Migrant Experts in Croatia.* Retrieved January 4, 2017, from http://www.balkaninsight.com/en/article/slovenian-migrant-border-fence-could-lead-to-violence-10-24-2016

BBC. (2015a, October 18). *Migrant Crisis: Thousands enter Slovenia after Hungary Closes Border.* Retrieved January 4, 2017, from http://www.bbc.com/news/world-europe-34564830

BBC. (2015b, August 19). *Migrants Crisis: Slovakia 'will only accept Christians'.* Retrieved January 4, 2017, from http://www.bbc.com/news/world-europe-33986738

BBC. (2017, February 15). *'Record Hate Crimes' after EU referendum*. Retrieved May 10, 2017, from http://www.bbc.com/news/uk-38976087

Bloomberg. (2016, June 30). *Denmark Confiscates Valuables From Migrants After Law Passed.* Retrieved January 1, 2017, from https://www.bloomberg.com/news/articles/2016-06-30/denmark-confiscates-valuables-from-migrants-after-law-passed

Bordermonitoring. (2016, August 15). *Push-Backs: Bulgarian-Turkish Cooperation Leads to More Violation of Human Rights*. Retrieved December 13, 2016, from http://bulgaria.bordermonitoring.eu/2016/08/15/push-backs-bulgarian-turkish-cooperation-will-lead-to-more-violation-of-human-rights/

Daily Mail. (2016, March 25). *Return of the Iron Curtain*. Retrieved January 4, 2017, from http://www.dailymail.co.uk/news/article-3509429/Return-Iron-Curtain-

Soviet-era-barbed-wire-fence-rebuilt-Bulgaria-prevent-migrants-reaching-Europe-new-Turkish-route-Prime-Minister-announces-plans-wall-Greek-border.html

EU Observer. (2012, May 23). *Brussels Critical of National Strategies on Roma.* Retrieved 2017, from http://euobserver.com/social/116355

Euractiv. (2015, December 11). *More Infringement Procedures for Italy*. Retrieved January 20, 2017, from https://www.euractiv.com/section/med-south/news/more-infringement-procedures-for-italy/

Euractiv. (2016, February 10). *Only 3% of Italy and Greece's Migrants Sent Back or Settled Last Year*. Retrieved January 20, 2017, from https://www.euractiv.com/section/social-europe-jobs/news/only-3-of-italy-and-greece-s-migrants-sent-back-or-settled-last-year/

EurActive. (2016, October 18). *EU Sounds out Egypt on Possible Refugee Deal*. Retrieved December 13, 2016, from https://www.euractiv.com/section/global-europe/news/eu-sounds-out-egypt-on-possible-refugee-deal/

EU Observer. (2010, March 10). *Brussels Cautions Slovakia over Boarding Schools for Roma*. Retrieved January 24, 2017, from https://euobserver.com/social/29665

Guardian. (2016, October 2). *Hungary's Refugee Referendum not Valid after Voters Stay Away*. Retrieved December 13, 2016, from https://www.theguardian.com/world/2016/oct/02/hungarian-vote-on-refugees-will-not-take-place-suggest-first-poll-results

Huffington Post. (2015, September 24). *Why Greece Shut The Shortest, Safest Route For Migrants And Refugees*. Retrieved January 24, 2017, from http://www.huffingtonpost.com/entry/greece-turkey-border-fence_us_55f9ab73e4b0d6492d63ec12

Independent. (2016, August 27). *Hungary Planning 'Massive' New Border Fence to Keep out Refugees as PM Vows to 'Hold Them Back by Force'*. Retrieved January 4, 2017, from http://www.independent.co.uk/news/world/europe/hungary-

massive-new-border-fence-to-keep-out-refugees-prime-minister-orban-turkey-eu-hold-them-back-a7212696.html

Independent. (2016, December 20). *Angela Merkel Comes under Fire from Political Allies and Rivals for Immigration Policy after Berlin Attack.* Retrieved August 11, 2017 from http://www.independent.co.uk/news/world/europe/angela-merkel-berlin-attack-germany-immigration-security-policy-political-allies-a7486531.html

Independent. (2004, May 14). *Take Roma children away from Parents, Says Envoy*. Retrieved January 24, 2017, from http://www.independent.co.uk/news/world/europe/take-roma-children-away-from-parents-says-envoy-563285.html

Jurist. (2010, July 29). *France President Announces New Measures against Illegal Roma.* Retrieved 2017, from http://jurist.org/paperchase/2010/07/france-president-announces-new-measures-against-illegal-roma.php

Politico. (2016a, January 18). *Czech President says Muslim Integration 'Practically Impossible'*. Retrieved May 9, 2017, from http://www.politico.eu/article/czech-president-zeman-muslim-communities-integration-practically-impossible-europe/

Politico. (2016b, November 22). *Europe's Migration Campaign Pivots to Africa*. Retrieved December 13, 2016, from http://www.politico.eu/article/europes-migration-campaign-pivots-to-africa-libya-immigration/

Politico. (2015, October 19). *The Top 10 Wackiest Anti-refugee Remarks*. Retrieved May 9, 2017, from http://www.politico.eu/article/toxic-news-refugees-migrants-eu/

Public Radio International. (2013, November 21). *14 Unbelievably Racist Things European (and Canadian) Politicians are Saying about the Roma*. Retrieved May 9, 2017, from https://www.pri.org/stories/2013-11-21/14-unbelievably-racist-things-european-and-canadian-politicians-are-saying-about

Romea. (2016, January 16). *Czech President Zeman wants Disabled Children Educated Separately, Experts Sharply Criticize Him*. Retrieved January 24, 2017, from

http://www.romea.cz/en/news/czech-president-zeman-wants-disabled-children-educated-separately-experts-sharply-criticize-him

Romea. (2015, June 19). *Slovak Gov't Says High Number of Roma in "Special Schools" is due to Incest*. Retrieved January 24, 2017, from http://www.romea.cz/en/news/slovak-gov-t-says-high-number-of-roma-in-special-schools-is-due-to-incest

Strasbourg Observers. (2011, December 6). *French Roma Policy Violates European Social Charter*. Retrieved January 25, 2017, from https://strasbourgobservers.com/2011/12/06/french-roma-policy-violates-european-social-charter/

The Guardian. (2015, September 16). *Refugee Crisis: Hungary Uses Teargas and Water Cannon at Serbia Border – as it Happened.* Retrieved January 4, 2017, from https://www.theguardian.com/world/live/2015/sep/16/first-refugees-head-for-croatia-after-hungarys-border-crackdown-live-updates

The Guardian. (2015, November 24). *Sweden Slams Shut its Open-door Policy towards Refugees.* Retrieved January 4, 2017, from https://www.theguardian.com/world/2015/nov/24/sweden-asylum-seekers-refugees-policy-reversal

Washington Post. (2014, May 24). *8 Ridiculous, Racist Things Actually Said by Far-right EU Politicians*. Retrieved May 9, 2017, from https://www.washingtonpost.com/news/worldviews/wp/2014/05/24/8-ridiculous-racist-things-actually-said-by-far-right-eu-politicians/?utm_term=.bbef57cb778f

Washington Post. (2015, September 7). *Denmark Puts ad in Lebanese Newspapers: Dear Refugees, Don't Come Here.* Retrieved January 4, 2017, from https://www.washingtonpost.com/news/worldviews/wp/2015/09/07/denmark-places-an-advertisement-in-lebanese-newspapers-dear-refugees-dont-come-here/?utm_term=.f2e26787105a

Reports

Academy of European Law. (2014). *Introduction to EU Anti-discrimination Law*. Retrieved November 11, 2016, from http://www.era-comm.eu/anti-discri/e_learning/

Alliance Against Antigypsyism. (2016). *Antigypsyism - A Reference Paper.* Retrieved 2016, from http://antigypsyism.eu/

Amnesty International. (2017). *A Blueprint for Despair: Human Rights Impact of the EU-Turkey Deal.* Retrieved 2017, from https://www.amnesty.org/en/documents/eur25/5664/2017/en/

Amnesty International. (2016a). *Amnesty International Report 2015/16: The State of the World's Human Rights.* Retrieved January 15, 2017, from https://www.amnesty.org/en/documents/pol10/2552/2016/en/

Amnesty International. (2012a). *Choice and Prejudice: Discrimination Against Muslims in Europe.* Retrieved 2017, from http://www.amnesty.eu/content/assets/REPORT.pdf

Amnesty International. (2016b). *EU's Reckless Refugee Returns to Turkey Illegal*. Retrieved December 13, 2016, from https://www.amnesty.org/en/latest/news/2016/06/eus-reckless-refugee-returns-to-turkey-illegal/

Amnesty International. (2014). *Follow up on Amnesty International's Complaint of 20 July 2012 on Discrimination Against Roma in Italy.* Retrieved January 24, 2017, from http://www.amnesty.eu/content/assets/Letters2014/B1589_Follow-up_on_AI_complaint_on_discrimination_against_Roma_in_IT.pdf

Amnesty International. (2016c). *Germany Failing to Tackle Rise in Hate Crime*. Retrieved January 11, 2017, from https://www.amnesty.org/en/latest/news/2016/06/germany-failing-to-tackle-rise-in-hate-crime/

Amnesty International. (2015). *Greece: Farmakonisi Migrant Tragedy - One Year on and still no Justice for Victims*. Retrieved December 13, 2016, from https://www.amnesty.org/en/latest/news/2015/01/greece-farmakonisi-migrant-tragedy-one-year-and-still-no-justice-victims/

Amnesty International. (2016d). *Hotspot Italy: How EU's Flagship Approach Leads to Violations of Refugee and Migrant Rights.* Retrieved 2017, from https://www.amnesty.org/en/documents/eur30/5004/2016/en/

Amnesty International. (2016e). *Living in Insecurity: How Germany is Failing Victims of Racist Violence.* Retrieved 2017, from https://www.amnestyusa.org/reports/living-in-insecurity-how-germany-is-failing-victims-of-racist-violence/

Amnesty International. (2012b). *Police Violence in Greece: Not Just 'Isolated Incidents'.* Retrieved January 15, 2017, from https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/3724_Greece_cover_%20%20contents%20web?CMD=VEROBJ&MLKOB=31754011212

Amnesty International. (2012c). *Slovak Court Rules Segregation of Roma in Schools Unlawful*. Retrieved January 24, 2017, from https://www.amnesty.org/en/latest/news/2012/10/slovak-court-rules-segregation-roma-schools-unlawful/

Amnesty International. (2013). *The Czech Republic's Discriminatory Treatment Of Roma Breaches EU Race Directive.* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/czech-roma-submission-the-czech-republics-discriminatory-treatment-of-roma-breaches-eu-race-directive-19-april-2013.pdf

Associazione 21 Luglio. (2015). *Municipality Of Rome Condemned For La Barbuta Camp: For The First Time In Europe An Official Roma-Only Settlement Ruled Discriminatory.* Retrieved January 24, 2017, from http://www.21luglio.org/en/tag/open-society-foundations-en

CERD. (1993). *Annex III.* Retrieved November 29, 2015, from http://www2.ohchr.org/english/bodies/cerd/docs/A_48_18_Annex_III_English.pdf

CERD. (2012). *Committee on the Elimination of Racial Discrimination Eightieth Session.* Retrieved January 24, 2017, from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2flTA%2fCO%2f16-18&Lang=en

CERD. (2010). *Committee on the Elimination of Racial Discrimination Seventy-seventh Session.* Retrieved January 24, 2017, from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2ffFRA%2fCO%2f17-19&Lang=en

CERD. (1995). *Committee On The Elimination Of Racial Discrimination, General Recommendation 19, The Prevention, Prohibition And Eradication Of Racial Segregation And Apartheid*. Retrieved January 25, 2017, from http://hrlibrary.umn.edu/gencomm/genrexix.htm

CERD. (2013). *Concluding Observations On The Ninth To The Tenth Periodic Reports Of Slovakia, Adopted By The Committee At Its Eightysecond Session (11 February–1 March 2013)*. Retrieved January 24, 2017, from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSVK%2fCO%2f9-10&Lang=en

CERD. (2009a). *Consideration Of Reports Submitted By States Parties Under Article 9 Of The Convention : Concluding Observations Of The Committee On The Elimination Of Racial Discrimination: Greece.* Retrieved January 11, 2017, from http://www.refworld.org/publisher,CERD,CONCOBSERVATIONS,GRC,4aba17fe2,0.html

CERD. (2016). *Early Warning Measures*. Retrieved October 10, 2015, from http://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx

CERD. (2000). *Fifty-Seventh Session (2000) General Recommendation XXVII On Discrimination Against Roma.* Retrieved January 24, 2017, from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7499&Lang=en

CERD. (2004). *General Recommendation No. 30 on Discrimination Against Non-Citizens*. Retrieved October 29, 2016, from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7502&Lang=en

CERD. (2009b). *General Recommendation No. 32.* Retrieved May 24, 2016, from http://www.refworld.org/docid/4adc30382.html

CERD. (2011). *Report of the Committee on the Elimination of Racial Discrimination Seventy-eighth session (14 February–11 March 2011) Seventy-ninth session (8 August – 2 September 2011).* Retrieved January 24, 2017, from http://www2.ohchr.org/english/bodies/cerd/docs/A.66.18.pdf

EC Joint Submission. (2009). *Memorandum To The European Commission Violations Of Ec Law And The Fundamental Rights Of Roma And Sinti By The Italian Government In The Implementation Of The Census In "Nomad Camps".* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/media/03/D5/m000003D5.pdf

ECRE. (2014). *European Commission Launches Infringement Procedures Against Bulgaria And Italy For Possible Refoulement Of Syrian Refugees*. Retrieved December 31, 2016, from http://www.ecre.org/european-commission-launches-infringement-procedures-against-bulgaria-and-italy-for-possible-refoulement-of-syrian-refugees/

ECRI. (1998). *ECRI General Policy Recommendation N° 3: Combating Racism And Intolerance Against Roma/Gypsies.* Retrieved January 24, 2017, from http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N3/Recommendation_3_en.asp

ECRI. (2011). *ECRI General Policy Recommendation No.13 On Combating Anti-Gypsyism And Discrimination Against Roma.* Retrieved January 24, 2017, from http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf

ECRI. (2011). *ECRI General Policy Recommendation No.13 On Combating Anti-Gypsyism And Discrimination Against Roma.* Retrieved January 24, 2017, from http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf

ECRI. (2015c). *ECRI Report on Greece.* Retrieved January 11, 2017, from http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf

ECRI. (2015a). *ECRI Report On Hungary (Fifth Monitoring Cycle)*. Retrieved January 24, 2017, from https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf

ECRI. (2016a). *ECRI Report On Italy (Fifth Monitoring Cycle).* Retrieved January 24, 2017, from https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/ITA-CbC-V-2016-019-ENG.pdf

ECRI. (2014). *ECRI Report On Slovakia (Fifth Monitoring Cycle)*. Retrieved January 24, 2017, from https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-V-2014-037-ENG.pdf

ECRI. (2015b). *ECRI Report On The Czech Republic (Fifth Monitoring Cycle).* Retrieved January 24, 2017, from https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-V-2015-035-ENG.pdf

ECRI. (2016b). *ECRI Statements/Declarations*. Retrieved December 12, 2015, from http://www.coe.int/t/dghl/monitoring/ecri/activities/Statements_en.asp

ECRI. (2010). *Statement By The European Commission Against Racism And Intolerance On The Situation Of Roma Migrants In France.* Retrieved January 24, 2017, from

http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/70-24_08_2010_Roma_Migrants_en.asp

ENAR. (2009). *Ethnic Profiling*. Retrieved May 10, 2017, from http://cms.horus.be/files/99935/MediaArchive/pdf/FS40%20-%20ethnic%20profiling.pdf

ENAR. (2016). *Forgotten Women: The Impact of Islamophobia on Muslim Women.* European Network Against Racism. Retrieved 2017, from http://www.enar-eu.org/Forgotten-Women-the-impact-of-Islamophobia-on-Muslim-women

ENAR. (2017). *Racism and Discrimination in the Context of Migration in Europe.* European Network Against Racism. Retrieved 2017, from http://www.enar-eu.org/Shadow-Reports-on-racism-in-Europe-203

ENAR. (2011). *Racist Violence in Italy.* Retrieved January 24, 2017, from http://cms.horus.be/files/99935/MediaArchive/Racist%20Violence%20Report%20Italy%20-%20online.pdf

ERA. (n.d.). *EU Anti-Discrimination Law*. Retrieved 2016, from http://www.era-comm.eu/anti-discri/e_learning/module2_1.html

ERIO. (2012). *ERIO Met With The European Commission To Discuss Current EU Developments For Roma Inclusion*. Retrieved January 25, 2017, from http://erionet.eu/blog/2012/11/22/erio-met-with-the-european-commission-to-discuss-current-eu-developments-for-roma-inclusion

ERRC. (2015a). *10 Facts about Hungarian Roma.* Retrieved January 26, 2017, from http://www.errc.org/article/10-facts-about-hungarian-roma/4426

ERRC. (2004a). *Coercive Sterilisations in the Czech Republic*. Retrieved May 10, 2017, from http://www.errc.org/article/coercive-sterilisations-in-the-czech-republic/2014

ERRC. (2012a). *Czech Republic Country Profile 2011-2012.* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/czech-republic-country-profile-2011-2012.pdf

ERRC. (2014). *Czech Republic Must Put An End To Unlawful Segregation Of Romani Children.* Retrieved January 24, 2017, from http://www.errc.org/article/czech-republic-must-put-an-end-to-unlawful-segregation-of-romani-children/4330

ERRC. (2015b). *Czech Republic: Eight Years After The D.H. Judgement A Comprehensive Desegregation Of Schools Must Take Place*. Retrieved January 24, 2017, from http://www.errc.org/article/czech-republic-eight-years-after-the-dh-judgement-a-comprehensive-desegregation-of-schools-must-take-place/4431

ERRC. (2006). *European Committee of Social Rights finds Italy in Violation of the Revised European Social Charter.* Retrieved January 24, 2017, from http://www.errc.org/article/european-committee-of-social-rights-finds-italy-in-violation-of-the-revised-european-social-charter/2683

ERRC. (2012b). *Eviction of Roma in Vaulx-en-Velin, Lyon.* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/france-letter-evictions-21-march-2012-en.pdf

ERRC. (2013a). *Factsheet on the State of Emergency: Italy's Disastrous Policies for Roma.* Retrieved January 24, 2017, from http://www.errc.org/cikk.php?cikk=4114

ERRC. (2012c). *Five More Years of Injustice: Segregated Education for Roma in the Czech Republic.* Retrieved January 24, 2017, from http://www.errc.org/article/five-more-years-of-injustice-segregated-education-for-roma-in-the-czech-republic/4067

ERRC. (2012d). *France Country Profile 2011-2012.* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/france-country-profile-2011-2012.pdf

ERRC. (2010a). *France Discriminates Against Roma And Travellers In Violation Of The European Social Charter*. Retrieved January 25, 2017, from

http://www.errc.org/article/france-discriminates-against-roma-and-travellers-in-violation-of-the-european-social-charter/3578

ERRC. (1999a). *Horizontal Rule Parliamentary Ombudsman For Minority Rights Declares Hungarian Education System Discriminatory.* Retrieved January 27, 2017, from http://www.errc.org/article/parliamentary-ombudsman-for-minority-rights-declares-hungarian-education-system-discriminatory/1153

ERRC. (2013b). *Horváth and Kiss v Hungary.* Retrieved January 27, 2017, from http://www.errc.org/article/horvath-and-kiss-v-hungary/4200

ERRC. (1999b). *Hungarian Court Rules Against Segregation.* Retrieved January 26, 2017, from http://www.errc.org/article/hungarian-court-rules-against-segregation/2026

ERRC. (2012e). *Italy Country Profile 2011-2012.* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/italy-country-profile-2011-2012.pdf

ERRC. (2002a). *Landmark Decision by Strasbourg Court in Expulsion Case*. Retrieved January 20, 2017, from http://www.errc.org/article/landmark-decision-by-strasbourg-court-in-expulsion-case/771

ERRC. (2007). *Legal Victory in Hungarian Roma School Segregation Case.* Retrieved January 27, 2017, from http://www.errc.org/article/legal-victory-in-hungarian-roma-school-segregation-case/2777

ERRC. (1998). *Ombudsman Criticises Education Policy For Hungary's Ethnic Minorities.* Retrieved January 26, 2017, from http://www.errc.org/article/ombudsman-criticises-education-policy-for-hungarys-ethnic-minorities/511

ERRC. (2002b). *Ombudsman Finds Discrimination against Roma in Education in Hungary.* Retrieved January 27, 2017, from http://www.errc.org/article/ombudsman-finds-discrimination-against-roma-in-education-in-hungary/921

ERRC. (2008a). *Ostrava Case: D.H. and Others v. The Czech Republic.* Retrieved January 24, 2017, from http://www.errc.org/article/ostrava-case-dh-and-others-v-the-czech-republic/2945

ERRC. (2009). *Persistent Segregation of Roma in the Czech Education System.* Retrieved January 24, 2017, from http://www.errc.org/article/persistent-segregation-of-roma-in-the-czech-education-system/3049

ERRC. (2008b). *Racial Segregation Continues in Czech Schools Despite Landmark European Court Ruling.* Retrieved January 24, 2017, from http://www.errc.org/article/racial-segregation-continues-in-czech-schools-despite-landmark-european-court-ruling/2992

ERRC. (1999c). *Roma in Italy: Forced Nomadism*. Retrieved January 25, 2017, from http://www.errc.org/article/roma-in-italy-forced-nomadism/835

ERRC. (2004b). *School Segregation Declared Unlawful by Hungarian Courts.* Retrieved January 27, 2017, from http://www.errc.org/article/school-segregation-declared-unlawful-by-hungarian-courts/2024

ERRC. (2003). *Segregated Education for Romani Children in Slovakia*. Retrieved January 24, 2017, from http://www.errc.org/article/segregated-education-for-romani-children-in-slovakia/1093

ERRC. (2012g). *slovakia: Country Profile 2011-2012.* Retrieved January 26, 2017, from http://www.errc.org/cms/upload/file/slovakia-country-profile-2011-2012.pdf

ERRC. (2010b). *Submission In Relation To The Analysis And Consideration Of Legality Under Eu Law Of The Situation Of Roma In France.* Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-august-2010.pdf

ERRC. (2011). *Systemic Segregation In Education Continues.* Retrieved January 24, 2017, from http://www.errc.org/article/systemic-segregation-in-education-continues/3838

ERRC. (2012f). *Violence against Roma in Marseille.* Retrieved May 24, 2017, from http://www.errc.org/cms/upload/file/france-letter-violence-1-october-2012.pdf

ERRC. (2016). *Written Comments Of The European Roma Rights Centre And Center For Civil And Human Rights, Concerning Slovakia For Consideration by the Committee on the Rights of the Child for the consideration at its 72nd Session (17 May - 3 June 2016)*. Retrieved January 24, 2017, from http://www.errc.org/cms/upload/file/slovakia-crc-submission-april-2016.pdf

Frontex. (2016). *Frontex Risk Analysis Network Quarterly* . Retrieved January 25, 2017, from http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_2016_Q2.pdf

Fundamental Rights Agency. (2012b). *The Racial Equality Directive: Application and Challenges.* Retrieved 2016, from http://fra.europa.eu/sites/default/files/fra_uploads/1916-FRA-RED-synthesis-report_EN.pdf

Fundamental Rights Agency. (2015). *Antisemitism: Overview of Data Available in the European Union 2004-2014.* Fundamental Rights Agency. Retrieved 2017, from http://fra.europa.eu/en/publication/2015/antisemitism-overview-data-available-european-union-2004-2014

Fundamental Rights Agency. (2014a). *Education: theSsituation of Roma in 11 EU Member States.* Retrieved January 27, 2017, from http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf

Fundamental Rights Agency. (2009). *EU-MIDIS European Union Minorities and Discrimination Survey Main Results Report.* Fundamental Rights Agency. Retrieved 2017, from http://fra.europa.eu/en/publication/2012/european-union-minorities-and-discrimination-survey-main-results-report

Fundamental Rights Agency. (2016a). *Fundamental Rights Report 2016.* Retrieved December 13, 2016, from http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-fundamental-rights-report-2016-2_en.pdf

Fundamental Rights Agency. (2013a). *Fundamental Rights: Challenges And Achievements in 2012*. Retrieved January 25, 2017, from http://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf

Fundamental Rights Agency. (2014b). *Fundamental Rights: Challenges And Achievements in 2013*. Retrieved January 25, 2017, from https://www.google.com.tr/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=fra+annual+report+2013

Fundamental Rights Agency. (2008). *Incident Report Violent attacks against Roma in the Ponticelli district of Naples, Italy.* Retrieved January 24, 2017, from http://fra.europa.eu/sites/default/files/fra_uploads/196-Incid-Report-Italy-08_en.pdf

Fundamental Rights Agency. (2013b). *Inequalities and multiple discrimination in access to and quality of healthcare.* Retrieved 2017, from http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare

Fundamental Rights Agency. (2012a). *Racial Equality Directive: Application and Challenges.* Retrieved 2016, from http://fra.europa.eu/sites/default/files/fra_uploads/1916-FRA-RED-synthesis-report_EN.pdf

Fundamental Rights Agency. (2013c). *Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary.* Retrieved January 15, 2017, from http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf

Fundamentals Rights Agency. (2010). *Handbook on European Non-Discrimination Law.* Retrieved 12 3, 2016, from

http://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_EN.pdf

Fundamentals Rights Agency. (2016b). *Second European Union Minorities and Discrimination Survey - Roma Selected Findings.* Retrieved 2017, from http://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings

Gazakis, A., Syrri, D., & Takis, A. (2014). *Racism and Discrimination in Greece Today.* Retrieved January 12, 2017, from https://gr.boell.org/en/2014/10/23/racism-and-discrimination-greece-today

Human Rights Watch. (2016c). *Bulgaria: Pushbacks, Abuse at Borders*. Retrieved December 13, 2016, from https://www.hrw.org/news/2016/01/20/bulgaria-pushbacks-abuse-borders

Human Rights Watch. (2016a). *EU: Turkey Mass-Return Deal Threatens Rights*. Retrieved December 13, 2016, from https://www.hrw.org/news/2016/03/15/eu-turkey-mass-return-deal-threatens-rights

Human Rights Watch. (2015). *Greece: Attacks on Boats Risk Migrant Lives*. Retrieved December 13, 2016, from https://www.hrw.org/news/2015/10/22/greece-attacks-boats-risk-migrant-lives

Human Rights Watch. (2016b). *Hungary's Xenophobic Anti-Migrant Campaign*. Retrieved December 13, 2016, from https://www.hrw.org/news/2016/09/13/hungarys-xenophobic-anti-migrant-campaign

Human Rights Watch. (2017). *World Report 2017.* Retrieved January 15, 2017, from https://www.hrw.org/world-report/2017/country-chapters/european-union#6b7186

IMADR. (2011). *A Guide for Civil Society Actors.* Retrieved November 13, 2015, from ilga.org: http://ilga.org/wp-content/uploads/2016/02/Guide-for-Civil-Society-Actors.pdf

Médecins Sans Frontiéres. (2015). *Invisible Suffering.* Retrieved January 11, 2017, from http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf

Migration Policy Group. (2007). *Segregation Of Roma Children In Education: Addressing Structural Discrimination Through The Race Equality Directive.* Retrieved January 24, 2017, from http://www.migpolgroup.com/portfolio/segregation-of-roma-children-in-education-addressing-structural-discrimination-through-the-race-equality-directive/

Migration Policy Institute. (2016). *The Paradox of the EU-Turkey Refugee Deal*. Retrieved December 13, 2016, from http://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal

OECD. (2016). *School Education in the Slovak Republic* . Retrieved January 24, 2017, from http://www.oecd-ilibrary.org/education/oecd-reviews-of-school-resources-slovak-republic-2015/school-education-in-the-slovak-republic_9789264247567-5-en

Open Society Foundation. (2015a). *Anti-Roma Measures Violate European Law.* Retrieved January 24, 2017, from https://www.opensocietyfoundations.org/litigation/ec-v-italy

Open Society Foundation. (2015b). *European Commission Targets Slovakia over Roma School Discrimination*. Retrieved January 24, 2017, from https://www.opensocietyfoundations.org/press-releases/european-commission-targets-slovakia-over-roma-school-discrimination

Open Society Foundations. (2011). *The Problem of Ethnic Profiling in Europe*. Retrieved May 10, 2017, from https://www.opensocietyfoundations.org/sites/default/files/ethnic-profiling-europe-20110505.pdf

Pew Research Center. (2016). *Negative Views of Minorities, Refugees Common in EU*. Retrieved May 8, 2017, from http://www.pewglobal.org/2016/07/11/negative-views-of-minorities-refugees-common-in-eu/

Racist Violence Recording Network. (2016). *Racist Violence Recording Network 2015 Annual Report.* Retrieved January 11, 2017, from http://rvrn.org/wp-content/uploads/2016/04/Report_2015eng.pdf

Roma Education Fund. (n.d.). *Hungary and Roma Education.* Retrieved January 27, 2017, from http://www.romaeducationfund.hu/news/ref/ref-media/hungary-and-roma-education

Statewatch. (2010). *France Collective Expulsions of Roma People Undermines EU's Founding Principles.* Retrieved January 24, 2017, from http://www.statewatch.org/analyses/no-109-france-collective-expulsions-of-roma-people.pdf

UNDP. (2012). *Report on the Living Conditions of Roma Households in Slovakia 2010.* Retrieved January 25, 2017, from http://www.eurasia.undp.org/content/dam/rbec/docs/Report-on-the-living-conditions-of-Roma-households-in-Slovakia-2010.pdf

UNHCR. (2015). *Global Trends: World at War.* Retrieved December 13, 2016, from http://www.unhcr.org/556725e69.pdf

UNHCR. (2016). *UNHCR on EU-Turkey deal: Asylum safeguards must prevail in implementation*. Retrieved December 13, 2016, from http://www.unhcr.org/news/press/2016/3/56ec533e9/unhcr-eu-turkey-deal-asylum-safeguards-must-prevail-implementation.html

World Bank. (2012). *Diagnostics And Policy Advice On The Integration Of Roma In The Slovak Republic: Main Report.* Retrieved January 25, 2017, from http://documents.worldbank.org/curated/en/570461468303056342/Main-report

Yougov. (2015, June 5). *Roma People And Muslims Are The Least Tolerated Minorities In Europe*. Retrieved May 8, 2017, from https://yougov.co.uk/news/2015/06/05/european-attitudes-minorities/

Statements

Brunner, G. (1977). *Address of welcome by Dr. Guido Brunner, Member of the Commission of the European Communities, to the Congress of the Federation of European Liberals and Democrats.* Retrieved 2014, from http://aei.pitt.edu/11107/

Burke, R. (1978). *Login Speech by Mr. R. Burke, European Commission representative at the joint meeting of the European Parliament and the Parliamentary Assembly of the Council of Europe.* Retrieved 2014, from http://aei.pitt.edu/11259/

Hollande, F. (2010, March 27). Retrieved January 24, 2017, from http://www.romeurope.org/IMG/pdf/Reponse_Parti_Socialiste.pdf

Reding, V. (2010, September 14). *Statement On The Latest Developments On The Roma Situation.* Retrieved January 24, 2017, from http://europa.eu/rapid/press-release_SPEECH-10-428_en.htm

APPENDIXES

Appendix 1 Interview Questions

1. Would you please explain your professional experiences on anti-racism? How are you involved to work in this area?

2. Which aspects (e.g. groups/countries/cases) do you focus on with your work? Why do you think it is important to work on these aspects? What are the most striking/important moments for you so far?

3. How do you evaluate the effectiveness of your work and your institution? What do you think are the major strengths and obstacles of your work and institution? Would you please provide successful and unsuccessful examples?

4. Which actors do you think are the most influential ones to fight against racism on national (member states), international (United Nations, Council of Europe, Organization of Security and Cooperation in Europe) and supranational level (European Union)? What about the roles of the Non-Governmental Organizations? Why?

5. Why do you think that the member states preferred to give competence to the EU in the area of anti-racism?

6. Do you think the mechanisms of the EU to fight against racism and discrimination are sufficient? If no, what else could be done?

7. Would you please elaborate the cases below that the Commission initiated infringement mechanism, if you have knowledge on them? Do you think the infringement mechanisms were justifiable? What were the roles of the actors? Was the result satisfactory for you?

    - France on Roma evictions

- Italy on Roma evictions
- Greece on Dysfunctional Asylum System
- Czech Republic on Roma Discrimination
- Slovakia on Roma Discrimination

8. Would you like to add any other comments?

Appendix 2 Ratification of the CERD

Participant	Signature	Accession (a), Succession (d), Ratification
Austria	22.07.1969	09.05.1972
Belgium	17.08.1967	07.08.1975
Bulgaria	01.06.1966	08.08.1966
Croatia		12.10.1992 d
Cyprus	12.12.1966	21.04.1967
The Czech Republic		22.02.1993 d
Denmark	21.06.1966	09.12.1971
Estonia		21.10.1991 a
Finland	6 Oct 1966	14.07.1970
France		28.07.1971 a
Germany	10.02.1967	16.05.1969
Greece	07.03.1966	18.06.1970
Hungary	15.09.1966	04.05.1967
Ireland	21.03.1968	29.12.2000
Italy	13.03.1968	05.01.1976
Latvia		14.04.1992 a
Lithuania	08.06.1998	10.12.1998
Luxembourg	12.12.1967	01.05.1978
Malta	05.09.1968	27.05.1971
Netherlands	24.10.1966	10.12.1971
Poland	07.03.1966	05.12.1968
Portugal		24.08.1982 a
Romania		15.09.1970 a
Slovakia		28.05.1993 d
Slovenia		06.07.1992 d
Spain		13.09.1968 a
Sweden	05.05.1966	06.12.1971
The United Kingdom of Great Britain and Northern Ireland	11.10.1966	07.03.1969

Appendix 3 CERD Reports

EU 10

	1981	1982	1983	1984	1985
Belgium	N/A	N/A	N/A	*Situation of the immigrant workers/naturalization *Situation of minorities *Implementation of the Race Act of 1981	N/A
Denmark	*Situation of the aliens/immigrant workers *Situation of Greenland and Faroe Islands population *Racism in the media	N/A	N/A	*Voting right to immigrants, Ombudsman *Situation of Greenland and the Faroe Islands *Naturalization, rights and situation of immigrants	N/A
France	*Situation of the aliens/immigrant workers *Anti-Nazism legislation extension to the police *Implementation of the Anti-Fascism legislation	N/A	*Situation of the people from former dependent territories *Situation of Basques, Breton, Alsatian minorities *Implementation of the Anti-Racism legislation *Situation of the aliens/immigrant workers *Educating police about racism	N/A	*Causes of racism and anti-semitism *Number and situation of people from North Africa and Iberia *Xenophobia against especially immigrant workers, economic crisis, extreme right movements *Situation of the aliens/immigrant workers *Measures against xenophobia

Germany	*Naturalization, voluntary return, education, rights of aliens/immigrant workers *Situation of gypsies *Existence of Neo-Nazi groups	N/A	*High rate of illiteracy among gypsies and attending sub-normal schools *Education and political representation of Danish minority *Stricter punishment for racist crimes *Naturalization, voluntary return, education, rights of aliens/immigrant workers *Need for education on racism and Holocaust	N/A	*Numbers of the different ethnic groups, asylum seekers *Naturalization, rights of immigrant workers *Situation and reparation of gypsies *Existence of Nazi ideology and groups
Greece	N/A	*Situation of the Muslim minority *Details of domestic legislation	N/A	N/A	
Ireland	N/A	N/A	N/A	N/A	
Italy	N/A	N/A	N/A	*Situation and rights of immigrants and minorities *Cases of racial discrimination	N/A
Luxembourg	*Sufficiency of the national legislation *Equality, education, political rights of aliens/immigrant workers	N/A	N/A	*Rights of immigrants/naturalization	N/A

Netherlands	*Situation of the people from ex-colonies, minority status, discrimination *Existence of racist political parties *Sufficiency of national legislation *Situation, education of aliens/immigrant workers	N/A	N/A	*Voting rights for immigrants *Situation and rights of immigrants *Implementation of anti-discrimination legislation	N/A
The United Kingdom	N/A	N/A	*Exemptions on Race Relations Act of 1976 *Racial disorders of 1981 *Racism of the police *Sufficiency of the national legislation *Status of the people from ex-colonies and dependent territories	N/A	*Extension of Race Relations Act to Northern Ireland *Religious discrimination in Northern Ireland *Number and status of the people from ex-colonies and dependent territories *Positive steps in fighting against discrimination of police forces *Efficiency of anti-discrimination bodies

EU 12

	1987	1988	1990	1991	1992	1993	1994
Belgium	N/A	N/A	N/A	N/A	N/A	*Situation and rights of the immigrants *Anti-discrimination measures *Low	N/A

						conviction rates for racism complaints	
Denmark	*Situation, education, rights of the aliens, naturalization *Situation of Greenland *Efficiency of the anti-discrimination measures	N/A	N/A	*Situation, education, rights of the aliens, naturalization *Situation of Greenland *Efficiency of the anti-discrimination measures *Anti-discrimination actions, 'green jackets'	N/A	N/A	N/A
France	N/A	N/A	*Authorisation of the publication of 'Satanic Verses' *Unlawful actions of police officers against Algerians *Efficiency of the legislation	N/A	N/A	N/A	N/A

Germany	N/A	N/A	*Naturalization, rights of immigrant workers	N/A	N/A	N/A	*Rejected asylum-seekers of Sinti and Romany origin *Integration, situation, and rights of foreigners, naturalization *Efficiency of anti-discrimination legislation, measures, bodies *Role of the police *Asylum law *Racial discrimination and violence
Greece	N/A	N/A	N/A	N/A	N/A	*Anti-discrimination legislation *Situation of different ethnic groups and minorities including gypsies *Status and treatment on refugees *Rights violations against Pomak and	N/A

						Turkish minorities	
Ireland	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Italy	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Luxembourg	*Rights of immigrants/naturalization *Xenophobia against aliens	N/A	*Rights of aliens, immigrants/naturalization *Xenophobia against aliens	N/A	N/A	N/A	N/A
Netherlands	*Positive steps for anti-discrimination, minority rights *Situation and rights of non-citizen migrant workers *Center Party *Efficiency of anti-discrimination measures	N/A	N/A	*Situation of minorities including gypsies *Situation and rights of non-citizen migrant workers *Racist political party *Efficiency of anti-discrimination measures	N/A	N/A	N/A
Portugal	N/A	N/A	N/A	N/A	*Existence of racist groups *Efficiency of anti-discrimination	N/A	N/A

					bodies *Situation of different ethnic groups including gypsies		
Spain	N/A	*Positive steps on discrimination against gypsies *Situation, rights, and policies about gypsies *Situation of foreigners.	N/A	N/A	N/A	N/A	N/A
The United Kingdom	*Religious discrimination in Northern Ireland *Racist incidents *Situation and rights of the ethnic minorities *Positive steps in fighting against discrimination of police forces *Efficiency of anti-discrimination	N/A	N/A	N/A	*Efficiency of legislation *Racially motivated crimes *British National Party *Situation of minorities	N/A	*Census details *Situation of Northern Ireland *Efficiency of anti-discrimination measures *Situation and rights of different groups *Policies for asylum-seekers *British National Party

	bodies						

EU 15 between 1995 and 1999

	1995	1996	1997	1998	1999
Austria	N/A	N/A	N/A	N/A	*Concerns over legislation. *Concerns over minorities. *Concerns over extremist organizations. *Concerns over growing racially motivated attacks. *Police brutality against minorities (including Roma). *Discrimination in private sector.
Belgium	N/A	N/A	*Restricted genocide denial law. *Concerns over legislations. *Extremist organizations. *Situation of foreigners and foreign origin Belgium citizens. *Concerns over discrimination by law enforcement officers. *Concerns over immigration law.	N/A	N/A

Denmark	N/A	*Insensitivity of some government institutions *Growing racism against foreigners *Concerns over discrimination of minorities *Unacceptable behaviour of police officers to non-Danish people *Situation in Greenland	*Situation of special schools. *Concerns over dissemination of racist ideas. *Discrimination in housing, education, banking.	N/A	N/A
Finland	N/A	*Increase in racially motivated activities *No hate crime law. *Concerns over Sami people. *Romany rights. *Insufficient education on human rights and minority rights. *Concerns over refugee law. *Discrimination against foreigners in the labour market. *Concerns over the training of	N/A	N/A	*Growing racially motivated acts. *Discrimination in the labour market, housing, education. *Concerns of extremist organizations. *Situation of immigrants, Roma, Sami people. *Denial of access to public places to different ethnic groups.

		law enforcement officials on human rights.			
France	*Support to racist parties *Situation and rights of the different ethnic groups *Racist incidents *Discriminatory stop and search by the police *Training of officials for anti-discrimination *Asylum-laws *Segregation in housing and education	N/A	N/A	N/A	N/A
Germany	N/A	N/A	*Racially motivated actions *Police brutality against foreigners *Lack of legislation *De facto segregation	N/A	N/A
Greece	N/A	N/A	N/A	N/A	N/A
Ireland	N/A	N/A	N/A	N/A	N/A

Italy	N/A	*Concerns over extremist groups. *Concerns over racially motivated attacks against Roma, Jews and people from North Africa. *Situation of the minorities, Roma. *Racial discrimination by the police forces. *Asylum law, deportation, reception centers. *Situation of non-EU workers. *Legislation about racism.	N/A	N/A	*Continuation of racially motivated acts including against Africans and Roma. *Discrimination and segregation of Roma. *Roma is not included to minority law. *Behaviours of law enforcement officers.
Luxembourg	*Remedies for racial discrimination *Anti-discrimination education *Racist organizations, racist and xenophobic acts *Situation of non-EU member nationals	N/A	*Racially motivated actions. *Racist organizations. *Training of law enforcement officers about human rights.	N/A	N/A

Netherlands	N/A	N/A	N/A	*Concerns over extremist organizations. *Segregation in the cities. *Concerns over the entry and control rules for foreigners. *Discrimination in the labour market, education and housing. *Effectiveness of the institutions.	N/A
Portugal	N/A	N/A	N/A	N/A	*Racially motivated acts against immigrants, blacks, Roma, foreigners. *Concerns over extremist organizations. *
Spain	*Situation of the gypsies *Racism and discrimination against immigrants and gypsies *Asylum policy *Racist organizations *Anti-discrimination mechanisms *Training of the law enforcement officers	*Increasing racial discrimination against foreigners and Gypsy. *Behaviour and training of law enforcement officers. *Concerns over extremist organizations.	N/A	N/A	N/A

Sweden	*Minority rights *Racist organizations *Racist crimes *Situation and rights of the Sami population *Efficiency of the anti-racism measures *Manifestations of racism and xenophobia	N/A	*Growing racially motivated actions. *Situation of Roma. *Low participation of non-nationals in the elections. *Concerns over extremist organizations.	N/A	N/A
The United Kingdom	N/A	*Large number of racially motivated attacks *Weakening of Race Relations Act through other rules *Anti-Muslim sentiments *Police brutality against minorities. *Low representation of minorities. *Discrimination against minorities in education and labour market. *Situation of Irish Travellers. *Situation in Northern	*Large number of racially motivated attacks. *Situation in Northern Ireland. *Discrimination in the labour market, housing, education. *Stop and search by the police. *Concerns over the new asylum law.	N/A	N/A

		Ireland. *Concerns over the new asylum law.			

EU 15 between 2000 and 2003

	2000	2001	2002	2003
Austria	N/A	N/A	*Concerns over the legislation. *Clarification for autochthonous and other minorities. *Increasing racial attitudes. *Behaviours of the law enforcement officers. *Concerns over asylum-seekers.	N/A
Belgium	N/A	N/A	*Lack of legislation on racist organizations. *Xenophobic political parties. *Concerns over the legislation and procedures. *Concerns over the law enforcement officers. *Discrimination in housing and employment. *Occurrences of racial acts against minorities.	N/A

Denmark	*Concerns over the integration legislation. *Concerns over the extremist organizations. *Housing of refugees and asylum-seekers. *Discrimination of foreigners and minorities in the labour market.	N/A	*Concerns over the integration legislation. *Increase in the hate speech. *Concerns over the extremist organizations. *Housing of refugees and asylum-seekers. *Discrimination of foreigners and minorities in employment, education, housing. *Increasing harassment to Arabs and Muslims.	N/A
Finland	*Lack of anti-discrimination legislation *Discrimination against Roma in housing, education, employment. *Rights of Sami population. *Concerns over refugee law. *Concerns over the behaviours of law enforcement officers. *Discrimination against immigrants, refugees, minorities. *Increasing number of racially motivated actions.	N/A	N/A	*Situation of the Sami. *Racist attitudes in the society. *Racism on the Internet. *Concerns over the asylum law. *Discrimination against Roma in the employment, housing, education and public places.
France	*Concerns over deportation of foreigners *Concerns over the depiction of Roma	N/A	N/A	N/A

Germany	N/A	*Increasing racism related incidents. *Concerns over behaviours of law enforcement officers. *Concerned over the racist propaganda on the Internet.	N/A	N/A
Greece	N/A	*More dialogue with minorities *Reinstatement of the citizenship for the persons deprived in the past.	N/A	N/A
Ireland	N/A	N/A	N/A	N/A
Italy	N/A	*Situation of Roma. *Concerns over the racist organizations. *Racist incidents during football matches. *Discrimination in the labour market.	N/A	N/A
Luxembourg	N/A	N/A	N/A	N/A
Netherlands	*Unemployment among minorities. *Discrimination in the labour market. *Concerns over high number of minority members leaving the police force. *De facto segregation in schools.	N/A	N/A	N/A
Portugal	N/A	*Incidents of racial discrimination and xenophobia. *Discrimination against immigrants in the labour market. *Situation of minorities, refugees, foreign workers, Roma.	N/A	N/A

Spain	*Concerns over judicial proceedings of racially motivated actions *Need for a long-term strategy to combat racial discrimination and violence *Violence against Moroccan persons in Almeria *Information on the habitants of Ceuta and Melilla is needed. *Discrimination in employment, education and housing. *Education of Roma. *Effectiveness of the training of law enforcement officers.	N/A	N/A	N/A
Sweden	*Increasing racism. *Situation of Roma. *Situation of Sami. *De facto segregation in housing. *Concerns over legislation against organizations inciting racial hatred. *Employment of ethnic minorities. *Discrimination in public places.	N/A	N/A	N/A

The United Kingdom	*Lack of comprehensive anti-racism legislation *Racial attack against minorities. *Behaviour of law enforcement officers. Lawrence Inquiry Report *Death of the minorities in police custody. *Racial harassment against asylum-seekers. *Situation of asylum-seekers. *Situation of Roma. *Discrimination against minorities in housing, employment, education, health.	N/A	N/A	N/A

EU 24

	2004	2005	2006
Austria	N/A	N/A	N/A
Belgium	N/A	N/A	N/A
Cyprus	N/A	N/A	N/A
The Czech Republic	N/A	N/A	N/A
Denmark	N/A	N/A	*Increase of hate speech *Insufficient information about Roma *Legislation and situation about asylum-seekers *Situation of foreign women *Unemployment of people from non-Danish background *Minority rights

Estonia	N/A	N/A	*Rights of stateless people *Lack of anti-discrimination legislation *Discrimination against Roma *Situation of Russian-speaking minorities *Citizenship law *Punishment of racial discrimination
Finland	N/A	N/A	N/A
France	N/A	*Inadequate statistical coverage on discrimination *Situation of immigrants and travellers in housing, education, employment *Situation of asylum-seekers *Increase in racist, anti-Semitic, xenophobic acts *Discrimination of police forces *Limited application of indirect discrimination *Religious and language rights	N/A
Germany	N/A	N/A	N/A
Greece	N/A	N/A	N/A
Hungary	N/A	N/A	N/A

Ireland	N/A	*Racist and discriminatory acts *Situation of asylum-seekers *Exploitation of foreign workers *Discrimination against foreigners at the airports *Discrimination of police *Religion in the schools *Situation of Travellers *Multiple discrimination against women	N/A
Italy	N/A	N/A	N/A
Latvia	N/A	N/A	N/A
Lithuania	N/A	N/A	*Lack of data *Legal structure *Racist and xenophobic acts *Lack of confidence to law enforcement for racial incidents *Asylum-seeker legislation *Situation of asylum-seekers *Discrimination against minorities especially Roma in education, housing, employment, healthcare and poor conditions *Women trafficking *Citizenship law
Luxembourg	N/A	*Incomplete statistical data *Racism and xenophobia against minorities, and non-nationals *Racism in internet *Legislation on racist organizations *Exploitation of non-nationals in labour market *Discrimination against non-nationals by authorities.	N/A

Malta	N/A	N/A	N/A
Netherlands	*Concerns over racist incidents. *De facto segregation in schools. *Concerns over the Employment of Minorities Act. *Concerns over the Aliens Act. *High percentage of resignations of the police officers from minority background.	N/A	N/A
Poland	N/A	N/A	N/A
Portugal	*Racist incidents. *Political party targeting immigrants. *Police abuse against non-Portuguese. *Housing conditions of immigrants and minorities. *Discrimination against Roma in employment, housing, education.	N/A	N/A
Slovenia	N/A	N/A	N/A
Slovakia	*Racially motived incidents. *Discrimination against Roma in schools, employment, housing. *Police ill-treatment against minorities and Roma. *Healthcare of Roma. *Forced sterilization of Roma women.	N/A	N/A
Spain	*Racist incidents. *Police abuse against minorities and non-Spanish *Concerns over Aliens Act. *Condition of the reception centers. *Situation of unaccompanied foreign children. *Discrimination against Roma in employment, housing, education.	N/A	N/A

Sweden	*Concerns over the implementation of hate crime legislation. *Implementation problem of law on the equal treatment of students in higher education. *Racist organizations. *Situation of Roma in employment, housing, education. *Situation of Sami population. *Concerns over Foreigners Act. *Discrimination against immigrants in labour market, housing and access to public services.	N/A	N/A
The United Kingdom	N/A	N/A	N/A

EU 26 between 2007 and 2009

	2007	2008	2009
Austria	N/A	*Situation of minorities *Anti-racism legislation *Hate speech of politicians targeting migrants, asylum-seekers, refugees, minorities *Ill-treatment of asylum-seekers, non-citizens and Roma *Racist and discriminatory acts in everyday life	N/A

Belgium	N/A	*Racist political parties *Investigation and persecution of racist acts *Uneven penalties for non-Belgian background people *Segregation and discrimination in housing *Ill-treatment against asylum-seekers *Human trafficking *Headscarf and education of girls *Rights of Roma and Travellers in education and employment	N/A
Bulgaria	N/A	N/A	*Discrimination and obstacles of Roma in employment, housing, healthcare, education *Ill-treatment against minorities especially Roma by the police *Neo-Nazi, racist groups *Implementation of anti-racism law
Cyprus	N/A	N/A	N/A
The Czech Republic	*Data collection especially about Roma *Lack of anti-discrimination law *Neo-Nazi concerts *Discrimination against Roma by police *Discrimination against Roma in healthcare, education, housing *Coerced sterilization of Roma women *Minority rights	N/A	N/A
Denmark	N/A	N/A	N/A
Estonia	N/A	N/A	N/A

Finland	N/A	N/A	*Lack of ethnic statistical data *Situation of Sami *Persistence of xenophobia and racism *Discrimination against immigrants and Roma in housing, education, employment, access to public spaces
France	N/A	N/A	N/A
Germany	N/A	*Lack of ethnic statistical data *Anti-racism legislation *Hate speech on internet and media *Discrimination in housing *Racist acts against Jews, Muslims, Roma, foreign background Germans, asylum-seekers *Citizenship law *Discrimination against Roma in education, employment, housing *Education for immigrant and asylum-seeker children *Implementation of anti-discrimination law	N/A

Greece	N/A	N/A	*Situation of Muslim minorities of Turkish, Pomak and Roma origin *Prosecution and punishment of racially motivated crimes *Hate speech of organizations and media *Ill-treatment of immigrants *Ill-treatment against vulnerable groups including Roma by the police *Freedom of association for Turkish and Macedonian groups *Obstacles for Roma in housing, education, healthcare and employment
Hungary	N/A	N/A	N/A
Ireland	N/A	N/A	N/A
Italy	N/A	*Lack of ethnic statistical data *No recognition of Roma as minority *Discrimination and ill-treatment against Roma *Hate speech by politicians and media *Ill-treatment against undocumented migrants *Conditions in Lampedusa	N/A
Latvia	N/A	N/A	N/A
Lithuania	N/A	N/A	N/A
Luxembourg	N/A	N/A	N/A
Malta	N/A	N/A	N/A
Netherlands	N/A	N/A	N/A

Poland	N/A	N/A	*Discrimination and obstacles of Roma in employment, housing, healthcare, education *Racially motivated crimes against Arab, Asian and African origin people *Anti-Semitism *Racism during sports *Racist organizations *Human trafficking
Portugal	N/A	N/A	N/A
Romania	N/A	N/A	N/A
Slovenia	N/A	N/A	N/A
Slovakia	N/A	N/A	N/A
Spain	N/A	N/A	N/A
Sweden	N/A	*Lack of ethnic statistical data *Hate speech *Implementation of anti-racism law *Discrimination against non-Swedes background people in judicial system, employment *Rights of Roma in education, employment, housing, access to public places *Situation of Sami	N/A
The United Kingdom	N/A	N/A	N/A

EU 26 between 2010 and 2012

	2010	2011	2012
Austria	N/A	N/A	N/A
Belgium	N/A	N/A	N/A
Bulgaria	N/A	N/A	N/A
Cyprus	N/A	N/A	N/A

The Czech Republic	N/A	*Lack of sufficient ethnic data *Insufficient legislation and institutions *Segregation of Roma in schools *Discrimination against Roma in housing, employment *Racism by the politicians and media *Ill treatment by police *Discrimination against minority women *Compensation for the sterilization of Romani women *Situation of the immigrants and asylum-seekers *Human trafficking	N/A
Denmark	*Legislation and implementation of legislation *Situation of Roma and Travellers *Unemployment among non-Danish background people *The situation of the domestic abuse victim foreign women *Use of mother tongue	N/A	N/A
Estonia	*Legislation and institutions *The situation of the minorities *Language regime *Minorities without citizenship *The situation of Roma	N/A	N/A
Finland	N/A	N/A	N/A

France	*Racist and discriminatory acts *Discrimination in housing and employment *Violence against Roma and expulsion of Roma *Situation of Roma and Travellers *Legislation and institutions	N/A	N/A
Germany	N/A	N/A	N/A
Greece	N/A	N/A	N/A
Hungary	N/A	N/A	N/A
Ireland	N/A	*Budget cuts on human rights organizations. *Refusal to recognize Travellers as an ethnic group *Situation of the Travellers *Insufficient legislation *Ethnic profiling by the police *Situation of the asylum-seekers *Lack of data about the racism against people from African origin *Dominance of denominational schools	N/A
Italy	N/A	N/A	*Lack of statistical data *Insufficient institutional structure *Roma evictions *Racism and discrimination against Roma, Muslims and non-citizens *Situation of immigrants *Lack of training for law enforcement officers
Latvia	N/A	N/A	N/A

Lithuania	N/A	*Insufficient institutional structure *Existence of racist and xenophobic incidents *Situation of Roma *High number of stateless persons	N/A
Luxembourg	N/A	N/A	N/A
Malta	N/A	*Lack of statistical data *Lack of information sharing about legislation and policies *Insufficient institutional structure *Discrimination and hate speech by politicians and in the media *Situation of immigrants	N/A
Netherlands	*Family unification legislation *Segregation in schools *Hate speech *Detention *Unemployment among people from non-Dutch background *Discrimination in the access to public places, employment, education, health, housing	N/A	N/A
Poland	N/A	N/A	N/A
Portugal	N/A	N/A	N/A
Romania	*Impact of austerity measures to vulnerable groups *Legislation and institutions *Discrimination against Roma in education, housing, health, employment, access to public places *Ill-treatment of law enforcement officers against minorities and racial profiling *Hate speech *Racism in sports *Use of mother tongue in justice system	N/A	N/A

	*Lack of training on human rights and diversity		
Slovenia	*Insufficient ethnic data *Discrimination against Roma in education, housing, health, employment *Segregation of Roma in education and housing *Hate speech *Political representation of minorities *Legal status of erased people	N/A	N/A
Slovakia	*Lack of reliable ethnic data *Implementation of legislation *Discrimination against Roma in education, housing, health, employment *Racially motivated attacks *Hate speech *Ill-treatment of law enforcement against minorities *Lack of human rights training *Asylum practices *Segregation of Roma in education, housing *Forced sterilizations of Roma women	N/A	N/A

Spain	N/A	*Lack of statistical data *Insufficient institutional structure *Ethnic profiling by the police *Situation of the immigrants *Racism in the media *Segregation of Roma in schools *Discrimination against Roma in employment, education, housing	N/A
Sweden	N/A	N/A	N/A
The United Kingdom	N/A	*Racism in the media *Budget cuts *Ethnic profiling by the police *Sectarianism and racism in Northern Ireland *Increasing Islamophobia *Low representation of Blacks and minorities in police forces and criminal justice system *Racist bullying in schools *Educational gap and under-achievement of Roma and Travellers and Afro-Caribbeans *Employment gap for minorities *Situation of Roma and Travellers	N/A

EU 27

	2013	2014
Austria	*Lack of statistical data *Insufficient legislation *Racist incidents *Racism by politicians and media *Situation of the non-citizens *Education problem of Roma and children with immigration background	N/A

Belgium	N/A	*Insufficient institutional structure *No affirmative action *Racist, Islamophobic and Anti-Semitist incidents *Banning of wearing religious symbols in schools *Racially motivated violence by the police *Overrepresentation of the people of foreign origin in the criminal justice system *Structural discrimination against the people of foreign origin in relation to economic, social and cultural rights *Situation of the immigrants *Discrimination against Roma and Travellers *Human trafficking
Bulgaria	N/A	N/A
Croatia	N/A	N/A
Cyprus	N/A	*Insufficient legislation *Discriminatory legislation *Racist incidents *Racism and hate speech by politicians and media *Situation of Roma *Asylum and naturalization procedures *Lack of statistical data *Discrimination against immigrants *Insufficient institutional structure
The Czech Republic	N/A	N/A
Denmark	N/A	N/A
Estonia	N/A	N/A
Finland	*Lack of statistical data *Insufficient institutions *Hate speech *Situation of Sami, Roma, immigrants *Education problem of Roma and children with immigration background	N/A
France	N/A	N/A
Germany	N/A	N/A
Greece	N/A	N/A
Hungary	N/A	N/A
Ireland	N/A	N/A
Italy	N/A	N/A
Latvia	N/A	N/A
Lithuania	N/A	N/A

Luxembourg	N/A	*Lack of ethnic data *Definition of racial discrimination *Insufficient institutional structure *Insufficient legislation *Discrimination in the employment *Discrimination by the media
Malta	N/A	N/A
Netherlands	N/A	N/A
Poland	N/A	*Lack of ethnic data *Insufficient legislation *Insufficient institutional structure *Racism and discrimination in sports *Racial discrimination in criminal justice *Racism and discrimination against Roma, Jews, people of African and Asian descent, non-citizens *Situation of Roma and Jewish communities
Portugal	N/A	N/A
Romania	N/A	N/A
Slovenia	N/A	N/A
Slovakia	*Resurgence of racism *Insufficient legislation *Racism in the media *Insufficient institutional structure *Discrimination against Roma *Lack of effective investigation on sterilization of Roma women *Insufficient awareness-raising activities	N/A
Spain	N/A	N/A
Sweden	N/A	*Insufficient ethnic data *Definition of special measures *Insufficient institutional structure *Racist hate crimes *Racism and hate speech by politicians and media *Racist and extremist organizations *Economic segregation of people of foreign background *Racial profiling *Situation of Sami *Discrimination against Roma
The United Kingdom	N/A	N/A

Appendix 4 Submission of the CERD Country Reports by the Member States

	1970	**1971**	**1972**	**1973**	**1974**	**1975**	**1976**	**1977**	**1978**	**1979**
Due	1	0	2	2	3	3	3	3	4	4
Submitted in Time	0	0	0	1	0	1	0	0	1	0
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Due	3	5	3	3	4	5	3	4	3	3
Submitted in Time	2	0	0	0	0	0	0	0	0	0
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Due	2	4	2	1	4	4	3	4	1	5
Submitted in Time	0	0	0	0	0	0	0	0	0	1
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Due	3	5	1	3	4	2	3	5	6	1
Submitted in Time	0	0	0	0	0	0	0	1	0	0
	2010	2011	2012	2013	2014	2015	2016			
Due	1	5	6	6	6	4	2			
Submitted in Time	0	0	1	1	0	0	1			

Appendix 5 Ratification of the CERD Individual Complaint Mechanism of the CERD

Austria	20.02.2002
Belgium	10.10.2000
Bulgaria	12.06.1993
Croatia	N/A
Cyprus	30.12.1993
The Czech Republic	11.10.2000
Denmark	11.10.1985
Estonia	21.07.2010
Finland	16.10.1994
France	16.08.1982
Germany	30.08.2001
Greece	N/A
Hungary	13.09.1989
Ireland	29.12.2000
Italy	05.05.1978
Latvia	N/A
Lithuania	N/A
Luxembourg	22.07.1996
Malta	16.12.1998
Netherlands	10.12.1971
Poland	01.12.1998
Portugal	02.03.2000
Romania	21.03.2003
Slovakia	17.03.1995
Slovenia	10.11.2001
Spain	13.01.1998
Sweden	06.12.1971
The United Kingdom of Great Britain and Northern Ireland	N/A

Appendix 6 Individual Complaint Cases of the CERD

Case Name	Country	Submission Date	Decision Date	Violated Articles	Country of Origin
Saada Mohamad Adan	Denmark	15-Jul-08	13-Aug-10	*14- 7 *2-1-d *4 *6	Somalia
Hermansen, Edrich and Vilstrup	Denmark	25-Feb-09	13-Aug-10	Inadmissibility	
Dawas and Shava	Denmark	16-Jun-09	6-Mar-12	*14-7-a *2-1-d *6	Iraq
TBB-Turkish Union in Berlin/Brandenburg	Germany	12-Jul-10	26-Feb-13	*2-1-d *4 *6	
Jama	Denmark	14-Jan-08	21-Aug-09	*14-1 *14-7-a *2-1-d *4-a *6	Somalia
Zentralrat Deutscher Sinti und Roma et al.	Germany	29-Aug-06	22-Feb-08	*14-1 *14-7-a *4-a *4-c *6	Roma
P. S. N.	Denmark	10-Feb-06	8-Aug-07	Inadmissibility decision	
Er	Denmark	20-Dec-06	8-Aug-07	*14-1 *2-1-d *5-e-v *6	Turkey
A.W.R.A.P.	Denmark	6-Jul-06	8-Aug-07	*1-1 *14-1	Muslim
Gelle	Denmark	17-May-04	6-Mar-06	*14-7-a *2-1-d *4 *6	Somalia
Sefic	Denmark	4-Aug-03	7-Mar-05	*14-7-a *2-1-d *6	B&H

Quereshi	Denmark	11-Dec-03	9-Mar-05	*14-7-a *2-1-d *4-a *6	Muslim
Documentation and Advisory Centre on Racial Discrimination	Denmark	3-Dec-02	22-Aug-03	*14-1	Non-Danish
Sadic	Denmark	21-Mar-02	25-May-02	Inadmissibility decision	Iraq
E.I.F.	Netherlands	4-May-98	21-Mar-01	*1-1	Surinam
D.S.	Sweden	24-Dec-98	10-Aug-01	Inadmissibility decision	Czechslovakia
Mostafa	Denmark	12-Apr-00	10-Aug-01	Inadmissibility decision	Iraq
Ahmad	Denmark	28-Sep-99	13-Mar-00	*6	Pakistan
B.J.	Denmark	13-Jul-99	17-Mar-00	*6	Iran
M.B.	Denmark	4-Aug-00	13-Mar-02	*5-f *6	Brazil
K.R.C.	Denmark	2-Jan-02	13-Aug-02	Inadmissibility decision	
Regerat et al.	France	3-Aug-01	21-Mar-03	Inadmissibility decision	
POEM and FASM	Denmark	8-Aug-01	19-Mar-03	Inadmissibility decision	
Habassi	Denmark	21-Mar-97	17-Aug-98	*14-7-a *2-1-d *6	Tunusia
D.S.	Sweden	15-Feb-97	17-Aug-98	Inadmissibility decision	Czechslovakia
L.K.	Netherlands	6-Dec-91	16-Mar-93	*4-a *6	
C.P.	Denmark	13-Jan-94	15-Mar-95	*14-1 *14-7-a *6	African-American

Diop	France	15-Mar-89	18-Mar-91	*1-2 *14-1 *14-7-a *5-e-i	
Yilmaz-Dogan	Netherlands	28-May-84	10-Aug-88	*4-a *5-e-i *6	Turkey
V.S.	Slovakia	30-Apr-14	4-Dec-15	*2-1-a *2-1-c *2-1-d *2-1-E *2-2 *5-e-i *6	

Appendix 7 Ratification of the European Convention on Human Rights Protocol 12

Country	Signature	Ratification	Entry into Force
Austria	04.11.2000		
Belgium	04.11.2000		
Bulgaria			
Croatia	06.03.2002	03.02.2003	01.04.2005
Cyprus	04.11.2000	30.04.2002	01.04.2005
The Czech Republic	04.11.2000		
Denmark			
Estonia	04.11.2000		
Finland	04.11.2000	17.12.2004	01.04.2005
France	-	-	-
Germany	04.11.2000		-
Greece	04.11.2000		-
Hungary	04.11.2000		-
Ireland	04.11.2000		-
Italy	04.11.2000		-
Latvia	04.11.2000		-
Lithuania	-	-	-
Luxembourg	04.11.2000	21.03.2006	01.07.2006
Malta	08.12.2015	08.12.2015	01.04.2016
Netherlands	04.11.2000	28.07.2004	01.04.2005
Poland	-	-	-
Portugal	04.11.2000	-	-
Romania	04.11.2000	17.07.2006	01.11.2006
Slovakia	04.11.2000	-	-
Slovenia	07.03.2001	07.07.2010	01.11.2010
Spain	04.10.2005	13.02.2008	01.06.2008
Sweden	-	-	-
The United Kingdom	-	-	-

Appendix 8 Individual Cases of the ECtHR

Case	Submission Date	Judgment Date	Judgment	Monetary Award	Reports	Target
CASE OF BEKOS AND KOUTROPOULOS v. GREECE	2002	13/12/2005	*Violations of Art. 3 *No separate issue under Art. 13 *No violation of Art. 14+3 (alleged racist treatment) *Violation of Art. 14+3 (failure to investigate possible racist motives) *Pecuniary damage - claim dismissed *Non-pecuniary damage - financial award	10,000	ECRI NGOs	Roma
CASE OF CELNIKU v. GREECE	2004	5/7/07	*Violations of Art. 2 (as regards (1) the organisation of the police inquiries and (2) the investigation into the death) *No separate issue under Art. 13 *Remainder inadmissible *Pecuniary damage - financial award *Non-pecuniary damage - financial award *Costs and expenses partial award	4,010 20,000		Albanian
CASE OF TURAN CAKIR v. BELGIUM	2006	10/3/09	*Violation of Art. 3 (substantive aspect) *Violation of Art. 3 (procedural aspect) *Violation of Art. 14+3 *Non-pecuniary damage - award	i. 15 000 ii. 6 681,10		Turkish

CASE OF STEFANOU v. GREECE	2007	22/04/2010	*Violation of Art. 3 (substantive aspect) *Violation of Art. 6-1 *Remainder inadmissible *Non-pecuniary damage - award	20 000		Roma
CASE OF MUÑOZ DÍAZ v. SPAIN	2007	8/12/09	*Remainder inadmissible *Violation of Art. 14+P1-1 *Pecuniary and non-pecuniary damage - award	70,000 5,412.56	CoE	Roma
CASE OF ABDU v. BULGARIA	2008	11/3/14	*Preliminary objection joined to merits (Article 35-1 - Exhaustion of domestic remedies) *Preliminary objection dismissed (Article 35-1 - Exhaustion of domestic remedies) *Remainder inadmissible *Violation of Article 3 - Prohibition of torture (Article 3 - Effective investigation) (Procedural aspect) *Violation of Article 14+3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 - Prohibition of torture Effective investigation) *Non-pecuniary damage - award	4000	CERD ECRI	Sudanese

CASE OF B.S. v. SPAIN	2008	24/07/2012	*Violation of Article 3 - Prohibition of torture (Article 3 - Effective investigation) (Procedural aspect) *Violation of Article 3 - Prohibition of torture (Article 3 - Degrading treatment Inhuman treatment) (Substantive aspect) *Violation of Article 14+3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 - Prohibition of torture Degrading treatment Inhuman treatment) *Non-pecuniary damage - award	(i) 30,000 (ii) 1,840.50		Nigerian
CASE OF SAMPANI AND OTHERS v. GREECE	2009	11/12/12	*Remainder inadmissible *Violation of Article 14+P1-2 - Prohibition of discrimination (Article 14 - Discrimination) (Article 2 of Protocol No. 1 - Right to education Right to education- {general}) *Respondent State to take individual measures (Article 46-2 - Individual measures) *Non-pecuniary damage - award	i. 1 000 ii. 2 000	CoE ECRI	Roma

CASE OF DANIS AND THE ASSOCIATION OF ETHNIC TURKS v. ROMANIA	2009	21/04/2015	*Remainder inadmissible *Violation of Article 14+P1-3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 of Protocol No. 1 - Right to free elections- {general} Stand for election) *Pecuniary damage - claim dismissed (Article 41 - Pecuniary damage) *Non-pecuniary damage - finding of violation sufficient (Article 41 - Non-pecuniary damage Just satisfaction)			Turkish
CASE OF CIORCAN AND OTHERS v. ROMANIA	2009	27/01/2015	*Violation of Article 2 - Right to life (Article 2-1 - Life) (Substantive aspect) *Violation of Article 2 - Right to life (Article 2-1 - Effective investigation) (Procedural aspect) *No violation of Article 3 - Prohibition of torture (Article 3 - Degrading treatment Inhuman treatment) (Substantive aspect) *Violation of Article 3 - Prohibition of torture (Article 3 - Effective investigation) (Procedural aspect) *Violation of	(i) 42,000 (ii) 7,500	CERD CoE AI	Roma

			Article 14+2 - Prohibition of discrimination (Article 14 - Discrimination) (Article 2 - Right to life Article 2-1 - Effective investigation)			
CASE OF BIAO v. DENMARK	2010	25/03/2014	*No violation of Article 8 - Right to respect for private and family life (Article 8 - Positive obligations Article 8-1 - Respect for family life) *No violation of Article 14+8 - Prohibition of discrimination (Article 14 - Discrimination) (Article 8 - Right to respect for private and family life Article 8-1 - Respect for family life)	No	CoE	

CASE OF MONTOYA v. FRANCE	2010	23/01/2014	*No violation of Article 14+P1-1 - Prohibition of discrimination (Article 14 - Discrimination) (Article 1 of Protocol No. 1 - Protection of property Article 1 para. 1 of Protocol No. 1 - Peaceful enjoyment of possessions)	No		
CASE OF LAVIDA AND OTHERS v. GREECE	2010	30/05/2013	*Violation of Article 14+P1-2 - Prohibition of discrimination (Article 14 - Discrimination) (Article 2 of Protocol No. 1 - Right to education Right to education- {general})	i. 1 000 ii. 2 000	CoE ECRI CERD UNESCO	Roma
CASE OF ION BĂLĂŞOIU v. ROMANIA	2010	17/02/2015	*No violation of Article 2 - Right to life (Article 2-1 - Life) (Substantive aspect) *Violation of Article 3 - Prohibition of torture (Article 3 - Effective investigation) (Procedural aspect) *No violation of Article 3 - Prohibition of torture (Article 3 - Degrading treatment Inhuman treatment) (Substantive aspect) *No violation of Article 14+3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 -	7 500	CoE	

			Prohibition of torture Effective investigation)			
CASE OF BOACĂ AND OTHERS v. ROMANIA	2011	12/1/16	*Violation of Article 3 Violation of Article 3 - Prohibition of torture (Article 3 - Effective investigation) (Procedural aspect) *No violation of Article 14+3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 - Prohibition of torture Degrading treatment Inhuman treatment) *Violation of Article 14+3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 - Prohibition of torture	11,700	CERD CoE	Roma

			Effective investigation)			
CASE OF HORVÁTH AND KISS v. HUNGARY	2011	29/01/2013	*Remainder inadmissible *Violation of Article 14+P1-2 - Prohibition of discrimination (Article 14 - Discrimination) (Article 2 of Protocol No. 1 - Right to education- {general})	4,500	CoE	Roma
CASE OF BALÁZS v. HUNGARY	2012	20/10/2015	*Preliminary objection joined to merits and dismissed (Article 35-3 - Ratione materiae) *Violation of Article 14+3 - Prohibition of discrimination (Article 14 - Discrimination) (Article 3 - Prohibition of torture Effective investigation) *Non-pecuniary damage - award (Article 41 - Non-	10,000	ECRI OSCE CoE FRA	Roma

			pecuniary damage Just satisfaction)			

Appendix 9 Infringement Cases by the European Commission on the Basis of Race Directive

Decision date	Member state	Title	Decision type	Active cases
2/1/06	Ireland	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	The Czech Republic	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
10/28/10	Germany	NON-CONFORMITE DE LA LOI NATIONALE AVEC LA DIRECTIVE 2000/43/CE	Closing of the case	No
6/27/07	Greece	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
5/5/10	Poland	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Referral to Court Art. 258 TFEU	No
10/29/09	Finland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/43/CE (ÉGALITÉ DE TRAITEMENT ENTRE LES PERSONNES SANS DISTINCTION DE RACE OU D'ORIGINE ETHNIQUE).	Closing of the case	No
11/24/10	Sweden	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
10/29/09	Germany	NON-CONFORMITE DE LA LOI NATIONALE AVEC LA DIRECTIVE 2000/43/CE	Reasoned opinion Art. 258 TFEU	No
10/29/09	Estonia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
6/28/06	Cyprus	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/28/06	Poland	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No

2/1/06	Sweden	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
3/22/12	Portugal	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
10/17/07	Austria	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
4/6/11	The United Kingdom	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
9/25/14	Belgium	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
1/29/09	Denmark	Non-conformity with Directive 2000/43/EC - equal treatment irrespective of racial or ethnic origin	Closing of the case	No
11/24/10	Latvia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
5/26/16	Hungary	Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education	Formal notice Art. 258 TFEU	Yes
2/1/06	France	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
7/18/07	Denmark	Non-conformity with Directive 2000/43/EC - equal treatment irrespective of racial or ethnic origin	Reasoned opinion Art. 258 TFEU	No
10/17/07	Germany	NON-CONFORMITE DE LA LOI NATIONALE AVEC LA DIRECTIVE 2000/43/CE	Formal notice Art. 258 TFEU	No
9/18/08	Greece	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
6/28/06	Lithuania	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
2/1/06	The United Kingdom	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
4/29/15	Slovakia	Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education	Formal notice Art. 258 TFEU	Yes

12/15/04	The Czech Republic	DIRECTIVE 2000/43/CE DU CONSEIL DU 29 JUIN 2000 RELATIVE À LA MISE EN OEUVRE DU PRINCIPE DE L'ÉGALITÉ DE TRAITEMENT ENTRE LE PERSONNE SANS DISTINCTION DE RACE OU D'ORIGINE ETHNIQUE	Formal notice Art. 258 TFEU	No
3/22/12	Netherlands	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
7/10/14	Finland	Non-conformity of Finnish legislation with Directive 2000/43/EC as regards the competences of the national equality body	Referral to Court Art. 258 TFEU	No
3/14/11	Poland	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Withdrawal	No
6/27/07	The United Kingdom	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
2/1/06	Spain	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	Portugal	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
6/28/06	Slovenia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
2/1/06	Netherlands	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
4/6/11	Ireland	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
11/20/09	Slovakia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
3/21/07	Cyprus	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
11/20/13	Finland	Non-conformity of Finnish legislation with Directive 2000/43/EC as regards the competences of the national equality body	Reasoned opinion Art. 258 TFEU	No

7/10/14	Slovenia	Non-conformity of Slovenian legislation with Directives 2000/43/EC, 2004/113/EC and 2006/54/EC as regards the national equality body	Formal notice Art. 258 TFEU	No
10/8/09	Austria	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
6/28/06	Estonia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	Latvia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
6/27/07	Poland	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
4/6/11	Lithuania	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
2/1/06	Belgium	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
2/1/06	Greece	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
7/22/16	Slovenia	Non-conformity of Slovenian legislation with Directives 2000/43/EC, 2004/113/EC and 2006/54/EC as regards the national equality body	Closing of the case	No
10/8/09	Italy	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
2/1/06	Italy	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	Hungary	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
6/27/07	Malta	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Additional formal notice Art. 258 TFEU	No
6/28/06	Slovakia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No

6/28/06	The Czech Republic	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	Slovakia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
6/21/12	Romania	Transposition of the Racial Equality Directive 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	Spain	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
4/29/15	Finland	Non-conformity of Finnish legislation with Directive 2000/43/EC as regards the competences of the national equality body	Withdrawal	No
6/27/07	Ireland	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
2/1/06	Portugal	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/28/06	Hungary	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
1/28/10	Slovenia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
6/27/07	France	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
12/20/06	Finland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/43/CE (ÉGALITÉ DE TRAITEMENT ENTRE LES PERSONNES SANS DISTINCTION DE RACE OU D'ORIGINE ETHNIQUE).	Formal notice Art. 258 TFEU	No
6/20/13	Finland	Non-conformity of Finnish legislation with Directive 2000/43/EC as regards the competences of the national equality body	Formal notice Art. 258 TFEU	No

10/12/05	The Czech Republic	DIRECTIVE 2000/43/CE DU CONSEIL DU 29 JUIN 2000 RELATIVE À LA MISE EN OEUVRE DU PRINCIPE DE L'ÉGALITÉ DE TRAITEMENT ENTRE LE PERSONNE SANS DISTINCTION DE RACE OU D'ORIGINE ETHNIQUE	Closing of the case	No
6/27/07	Estonia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
5/5/10	The Czech Republic	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
9/25/14	The Czech Republic	Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education	Formal notice Art. 258 TFEU	Yes
11/20/09	Malta	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Closing of the case	No
11/20/09	Spain	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
6/25/09	France	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Closing of the case	No
7/10/07	Netherlands	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Additional formal notice Art. 258 TFEU	No
6/28/06	Malta	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Formal notice Art. 258 TFEU	No
6/27/07	Sweden	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
7/20/05	The Czech Republic	DIRECTIVE 2000/43/CE DU CONSEIL DU 29 JUIN 2000 RELATIVE À LA MISE EN OEUVRE DU PRINCIPE DE L'ÉGALITÉ DE TRAITEMENT ENTRE LE PERSONNE SANS DISTINCTION DE RACE OU D'ORIGINE ETHNIQUE	Reasoned opinion Art. 258 TFEU	No
6/28/06	Latvia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH	Formal notice Art. 258 TFEU	No

		DIRECTIVE 2000/43/EC		
6/20/13	Romania	Transposition of the Racial Equality Directive 2000/43/EC	Closing of the case	No
6/27/07	Slovenia	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
10/29/09	Netherlands	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No
2/1/06	Denmark	Non-conformity with Directive 2000/43/EC - equal treatment irrespective of racial or ethnic origin	Formal notice Art. 258 TFEU	No
6/27/07	Italy	NON-CONFORMITY OF MNE WITH DIRECTIVE 2000/43/EC	Reasoned opinion Art. 258 TFEU	No

Appendix 10 Infringement Cases by the European Commission on the Basis of Employment Equality Directive

Decision date	Member state	Title	Decision type	Active cases
12/20/06	Denmark	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
9/18/08	Spain	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
1/28/10	Hungary	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
1/29/09	Denmark	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
1/31/08	Sweden	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Reasoned opinion Art. 258 TFEU	No
6/21/12	The United Kingdom	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
12/12/06	Italy	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE	Formal notice Art. 258 TFEU	No

		TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)		
5/19/11	Poland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
9/30/10	Latvia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
12/12/06	Cyprus	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
10/17/07	Austria	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/78/EC	Formal notice Art. 258 TFEU	No
10/28/10	Germany	LA NON-CONFORMITÉ DE LA DIRECTIVE 2000/78	Closing of the case	No
3/18/10	Ireland	DIRECTIVE 2000/78/EC - MANDATORY RETIREMENT AGE OF 60 IMPOSED ON CHIEF SUPERINTENDENTS OF THE GARDA SIOCHANA (IRISH POLICE FORCE)	Formal notice Art. 258 TFEU	No
1/31/08	Estonia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
3/18/10	Portugal	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
6/27/07	Sweden	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION	Additional formal notice Art. 258 TFEU	No

		D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL		
1/31/08	Lithuania	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Additional formal notice Art. 258 TFEU	No
12/20/06	Finland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
11/24/11	Ireland	DIRECTIVE 2000/78/EC - MANDATORY RETIREMENT AGE OF 60 IMPOSED ON CHIEF SUPERINTENDENTS OF THE GARDA SIOCHANA (IRISH POLICE FORCE)	Closing of the case	No
5/6/08	Ireland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Additional reasoned opinion Art. 258 TFEU	No
6/27/07	The United Kingdom	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Additional formal notice Art. 258 TFEU	No
12/20/06	Ireland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
11/24/11	Portugal	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No

1/31/08	France	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Reasoned opinion Art. 258 TFEU	No
2/16/11	Greece	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
5/28/15	Greece	Failure to comply with DIRECTIVE 2000/78; discrimination on ground of age	2nd additional formal notice Art. 258 TFEU	Yes
3/19/09	Austria	THE PROVISIONS OF THE TYROLEAN CONTRACT WORKERS ACT IS INCOMPATIBLE WITH DIRECTIVES 97/81/EC (PART-TIME WORK), 1999/70/EC (FIXED-TERM WORK) AND 2000/78/EC	Formal notice Art. 258 TFEU	No
4/16/14	Greece	DIR 2000/78/CE CREATION D'UN CADRE GENERAL EN FAVEUR DE L'EGALITE DE TRAITEMENT EN MATIERE D'EMPLOI ET DE TRAVAIL	Additional formal notice Art. 258 TFEU	Yes
12/12/06	Poland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
11/20/09	Slovakia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
5/6/08	Poland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN	Additional formal notice Art. 258 TFEU	No

		MATIÈRE D'EMPLOI ET DE TRAVAIL)		
3/21/07	The United Kingdom	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
12/20/06	Slovakia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
9/29/11	Greece	DIR 2000/78/CE CREATION D'UN CADRE GENERAL EN FAVEUR DE L'EGALITE DE TRAITEMENT EN MATIERE D'EMPLOI ET DE TRAVAIL	Reasoned opinion Art. 258 TFEU	Yes
2/19/09	Greece	DIR 2000/78/CE CREATION D'UN CADRE GENERAL EN FAVEUR DE L'EGALITE DE TRAITEMENT EN MATIERE D'EMPLOI ET DE TRAVAIL	Formal notice Art. 258 TFEU	Yes
1/31/08	Germany	LA NON-CONFORMITÉ DE LA DIRECTIVE 2000/78	Formal notice Art. 258 TFEU	No
1/31/08	Hungary	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
10/29/09	Germany	LA NON-CONFORMITÉ DE LA DIRECTIVE 2000/78	Reasoned opinion Art. 258 TFEU	No
7/10/14	Italy	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
1/31/08	Ireland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN	Reasoned opinion Art. 258 TFEU	No

		MATIÈRE D'EMPLOI ET DE TRAVAIL)		
11/20/09	The United Kingdom	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
6/16/11	Belgium	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Reasoned opinion Art. 258 TFEU	No
12/12/06	Lithuania	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
4/16/14	Greece	Failure to comply with DIRECTIVE 2000/78; discrimination on ground of age	Reasoned opinion Art. 258 TFEU	Yes
12/15/04	The Czech Republic	DIRECTIVE 2000/78/CE DU CONSEIL DU 27 NOVEMBRE 2000 PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Formal notice Art. 258 TFEU	No
5/5/10	The Czech Republic	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
12/12/06	Portugal	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No

1/28/10	Poland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
1/31/08	The	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
6/25/09	France	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Closing of the case	No
12/11/07	Slovenia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
12/20/06	Greece	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
10/8/09	Austria	NON-CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 2000/78/EC	Closing of the case	No
3/21/07	France	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Formal notice Art. 258 TFEU	No
1/31/08	Greece	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE	Reasoned opinion Art. 258 TFEU	No

		TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)		
9/25/14	Belgium	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Closing of the case	No
4/6/11	Ireland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
2/26/15	The Czech Republic	Non-conformity of transposition of Directive 2000/78/EC in the Czech Republic as regards the protection from discrimination for disabled persons in employment	Closing of the case	No
10/22/15	Greece	DIR 2000/78/CE CREATION D'UN CADRE GENERAL EN FAVEUR DE L'EGALITE DE TRAITEMENT EN MATIERE D'EMPLOI ET DE TRAVAIL	Additional reasoned opinion Art. 258 TFEU	Yes
12/13/05	The Czech Republic	DIRECTIVE 2000/78/CE DU CONSEIL DU 27 NOVEMBRE 2000 PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Closing of the case	No
11/20/13	The Czech Republic	Non-conformity of transposition of Directive 2000/78/EC in the Czech Republic as regards the protection from discrimination for disabled persons in employment	Formal notice Art. 258 TFEU	No
1/27/11	Austria	THE PROVISIONS OF THE TYROLEAN CONTRACT WORKERS ACT IS INCOMPATIBLE WITH DIRECTIVES	Reasoned opinion Art. 258 TFEU	No

		97/81/EC (PART-TIME WORK), 1999/70/EC (FIXED-TERM WORK) AND 2000/78/EC		
9/29/11	Austria	THE PROVISIONS OF THE TYROLEAN CONTRACT WORKERS ACT IS INCOMPATIBLE WITH DIRECTIVES 97/81/EC (PART-TIME WORK), 1999/70/EC (FIXED-TERM WORK) AND 2000/78/EC	Closing of the case	No
1/31/08	Malta	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
3/21/07	Belgium	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Formal notice Art. 258 TFEU	No
12/20/06	Slovenia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
12/12/06	Spain	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
3/18/10	Lithuania	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
12/12/06	Latvia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN	Formal notice Art. 258 TFEU	No

		MATIÈRE D'EMPLOI ET DE TRAVAIL)		
12/12/06	Hungary	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
9/30/10	Sweden	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Closing of the case	No
12/12/06	Netherlands	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
12/12/06	The Czech Republic	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
10/29/09	Italy	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
12/20/06	Estonia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
1/31/08	Latvia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Additional formal notice Art. 258 TFEU	No

4/6/11	Italy	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Referral to Court Art. 258 TFEU	No
3/21/07	Sweden	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Formal notice Art. 258 TFEU	No
12/11/07	Cyprus	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
7/20/05	The Czech Republic	DIRECTIVE 2000/78/CE DU CONSEIL DU 27 NOVEMBRE 2000 PORTANT CRÉATION D'UN CADRE GÉNÉRAL EN FAVEUR DE L'ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL	Reasoned opinion Art. 258 TFEU	No
1/31/08	Finland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
1/31/08	Netherlands	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Reasoned opinion Art. 258 TFEU	No
11/20/09	Malta	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No

10/29/09	Estonia	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
10/8/09	Finland	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
12/12/06	Malta	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Formal notice Art. 258 TFEU	No
5/30/13	Netherlands	TRANSPOSITION INCORRECTE DE LA DIRECTIVE 2000/78/CE (ÉGALITÉ DE TRAITEMENT EN MATIÈRE D'EMPLOI ET DE TRAVAIL)	Closing of the case	No
2/25/16	Greece	Failure to comply with DIRECTIVE 2000/78; discrimination on ground of age	Additional reasoned opinion Art. 258 TFEU	Yes
9/26/13	Greece	Failure to comply with DIRECTIVE 2000/78; discrimination on ground of age	Additional formal notice Art. 258 TFEU	Yes
9/29/11	Greece	Failure to comply with DIRECTIVE 2000/78; discrimination on ground of age	Formal notice Art. 258 TFEU	Yes

Appendix 11 Referral to the European Court of Justice by the European Commission on the Basis of Race Directive

Referral Date	Ruling Date	Member State	Reason	Ruling
26.11.2014	02.02.2015	Finland	Failure to fulfill obligations	Pay the costs
07.10.2010	25.09.2010	Poland	Failure to fulfill obligations	Pay the costs
30.07.2004	04.05.2005	Austria	Failure to transpose	Pay the costs
28.04.2005	11.06.2005	Germany	Failure to transpose	Pay the costs
27.07.2004	24.02.2005	Finland	Failure to fulfill obligations	Pay the costs
27.07.2004	25.09.2004	Greece	Failure to transpose	Pay the costs
27.07.2004	24.02.2005	Luxembourg	Failure to transpose	Pay the costs

Appendix 12 Referral to the European Court of Justice by the European Commission on the Basis of Employment Equality Directive

Ruling Date	Member State	Reason	Ruling
06.11.2012	Hungary	Failure to fulfill obligations	Pay the costs
04.07.2013	Italy	Failure to fulfill obligations	Pay the costs
23.02.2006	Austria	Failure to transpose	Pay the costs
16.04.2005	Finland	Failure to transpose	Pay the costs
20.10.2005	Luxembourg	Failure to transpose	Pay the costs
23.02.2006	Germany	Failure to transpose	Pay the costs

Appendix 13 EU Member States' Notifications to the European Commission for the Temporary Reintroduction of Border Controls in the Schengen Area

Member State	Duration	Reason	Location
Germany	13.09.2015-22.09.2015 23.09.2015-12.10.2015 13.10.2015-01.11.2015 02.11.2015-13.11.2015	Big influx of persons seeking international protection	All borders with focus on Austrian land borders.
Austria	16.09.2015-25.09.2015 26.09.2015-15.10.2015 16.10.2015-04.11.2015 05.11.2015-15.11.2015	Big influx of persons seeking international protection	All borders, focus on land borders with Italy, Hungary, Slovenia and Slovakia
Slovenia	17.09.2015-26.09.2015 27.09.2015-16.10.2015	Big influx of persons seeking international protection	Land borders with Hungary.
Hungary	17.10.2015-26.10.2015	Big influx of persons seeking international protection	Land borders with Slovenia
Malta	09.11.2015-31.12.2015	Terrorist threat and smuggling of illegal migrants	Air and sea passenger terminal
Sweden	12.11.2016-09.01.2016	Unprecedented influx of persons	All borders, with special focus on harbours in Police Region South and Police Region West as well as on the Öresund Bridge between Denmark and Sweden
Germany	14.11.2015-13.05.2016	Continuous big influx of persons seeking international protection	All borders, with focus on the German-Austrian land border
Austria	16.11.2015-16.05.2016	Continuous big influx of persons seeking international protection	All borders, with special focus on the land border with Slovenia, Hungary and Italy
Norway	26.11.2015-15.01.2016	Unexpected migratory flow	All borders with focus on ports with ferry connections to Norway via internal borders
France	14.12.2015-26.05.2016	In relation to the emergency state as introduced further to Paris attacks	All internal borders
Denmark	04.01.2016-03.03.2016	Unexpected migratory flow	All internal borders, with focus on ferries from Germany and land border with Germany

Sweden	10.01.2016-07.06.2016	Continuous big influx of persons seeking international protection	All borders, with special focus on harbours in Police Region South and Police Region West as well as on the Öresund Bridge between Denmark and Sweden
Norway	15.01.2016-11.06.2016	Continuous threat of big influx of persons seeking international protection	All borders with focus on ports with ferry connections to Norway via internal borders
Denmark	04.03.2016-02.06.2016	Big influx of persons seeking international protection	All internal borders, with focus on ferries from Germany and land border with Germany
Germany	12.05.2016-12.11.2016	In line with Recommendation of the Council of 12 May 2016 under Art. 29 of the SBC	Land border with Austria
Austria	16.05.2016-12.11.2016	In line with Recommendation of the Council of 12 May 2016 under Art. 29 of the SBC	Land border with Slovenia and with Hungary
Denmark	01.06.2016-12.11.2016		Danish ports with ferry connections to Germany and at the Danish-German land border
Sweden	08.06.2016-12.11.2016		Swedish harbours in the Police Region South and West and at the Öresund bridge
Norway	10.06.2016-12.11.2016	In line with Recommendation of the Council of 12 May 2016 under Art. 29 of the SBC	Norwegian ports with ferry connections to Denmark, Germany and Sweden
France	26.07.2015-26.01.2017	In relation to the emergency state as introduced further to the Nice attack	All internal borders

Source: (European Commission, 2010c)