**Political Participation in Western Europe**

**Compilation of jurisprudence and reports from European Mechanisms**

(most recent reports)

**Relevant provisions**

**Council of Europe**

**Convention for the Protection of Human Rights** **and Fundamental Freedoms**

Article 10. Freedom of expression.

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary

Article 11. Freedom of assembly and association.

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

**Protocol No. 1 to the European Convention for the Protection of Human Rights** and Fundamental Freedoms, Article 3. Right to free elections.

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

**European Social Charter**

Article E in conjunction with Article 30[[1]](#footnote-1)

Article E – Non-discrimination “The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

Article 30 – The right to protection against poverty and social exclusion Part I: "Everyone has the right to protection against poverty and social exclusion." Part II: "With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; b. to review these measures with a view to their adaptation if necessary."

**CoE Framework Convention for the Protection of National Minorities**

Article 15. The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

**CoE Convention on the Participation of Foreigners in Public Life at Local Level**

**CoE Committee of Ministers Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making**

**CoE Committee of Ministers Recommendation CM/Rec(2011)14 on the participation of persons with disabilities in political and public life**

**ACFC Thematic Commentary No. 2 on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs (February 2008)**

**European Union**

**Lisbon Treaty**

Article 10

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 11

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

1. **ANDORRA**
2. **AUSTRIA**

**European Court of Human Rights**

*Frodl v. Austria*, 8 April 2010 – Right to vote

Violation of Article 3 of Protocol No. 1 (right to free elections). A convicted prisoner should not have been disenfranchised without specific reasons.

22. The Court observes that, while this might not be obvious from its wording, Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective democracy and is accordingly of prime importance in the Convention system. Democracy constitutes a fundamental element of the “European public order”, and the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see, most recently and among many other authorities, *Yumak and Sadak v. Turkey* [GC], no. [10226/03](https://hudoc.echr.coe.int/eng#{"appno":["10226/03"]}), § 105, ECHR 2008-...).

23. Free elections and freedom of expression, and particularly the freedom of political debate, form the foundation of any democracy (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113, and *Lingens v. Austria*, 8 July 1986, §§ 41 and 42, Series A no. 103). The rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and Contracting States must be allowed a wide margin of appreciation in this sphere since there are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into their own democratic vision (see *Lykourezos v. Greece*, no. [33554/03](https://hudoc.echr.coe.int/eng#{"appno":["33554/03"]}), § 51, ECHR 2006‑VIII).

34. Nevertheless, the Court agrees with the applicant that section 22 of the National Assembly Election Act does not meet all the criteria established in *Hirst* (cited above, § 82). Under the *Hirst* test, besides ruling out automatic and blanket restrictions it is an essential element that the decision on disenfranchisement should be taken by a judge, taking into account the particular circumstances, and that there must be a link between the offence committed and issues relating to elections and democratic institutions (ibid., § 82).

35. The essential purpose of these criteria is to establish disenfranchisement as an exception even in the case of convicted prisoners, ensuring that such a measure is accompanied by specific reasoning given in an individual decision explaining why in the circumstances of the specific case disenfranchisement was necessary, taking the above elements into account. The principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned (ibid., § 71). However, no such link exists under the provisions of law which led to the applicant's disenfranchisement.

**CoE Commissioner for Human Rights, Report following his visit to Austria, 2012**

The Commissioner welcomes that a National Action Plan for Persons with Disabilities aiming at further implementing the respective UN Convention is currently being drafted in Austria. This is an invaluable opportunity for securing regular and systematic consultation with civil society and persons concerned to allow for their full participation in decision-making processes. (…) He notes with appreciation that the discussion has started on supported decision making [for persons with intellectual disabilities to exercise their right to vote]

and encourages the authorities to pursue their efforts vigorously in line with Article 12 of the UN Convention on the Rights of Persons with Disabilities.

(…) As regards participation in politics, in November 2011, women accounted for 28% of the members of the Federal Council and 30% of the National Council.

[Regarding human rights of persons with disabilities, S]ecuring thorough involvement of civil society groups and the communities concerned at all stages of the decision-making processes is particularly crucial. (…) The Commissioner strongly encourages the Austrian authorities to pursue their efforts towards establishing a system of supported decision-making for persons with psychosocial or intellectual disabilities, in accordance with Article 12 of the UN CRPD and the Council of Europe’s 2006-2015 Action Plan. The Commissioner’s Issue Paper published in April 2012 on legal capacity for persons with intellectual and psychosocial disabilities could provide the Austrian authorities with further assistance to support reform in this area. It is particularly important to ensure that persons are not automatically deprived of their rights because of an impairment or disability or due to being subjected to guardianship. Austria needs to develop supported **decision-making alternatives for those who want assistance in making decisions or communicating them to others**, which should be easily accessible for those in need and provided on a voluntary basis.

**CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), 4th Opinion on Austria, adopted on 14 October 2016, ACFC/OP/IV(2016)007**

74. The Advisory Committee calls on the authorities to establish appropriate mechanisms at local, regional and federal levels to promote institutionalised consultation and dialogue between representatives of national minorities and senior decision makers to ensure that their views and concerns are effectively taken into account.

76. The Advisory Committee notes with deep concern that the Councils, irrespective of their composition, have very limited competencies. Effectively, their only role is to meet once a year in order to approve the cultural projects that are supported by the limited funds of the Federal Chancellery. While highly appreciating the solidarity and co-operation among the various Councils, the Advisory Committee considers this process of limited relevance, as most allocations follow a certain pattern of support and merely need to be “rubber-stamped”. Highly important matters of relevance to all national minority communities, however, appear not to be discussed with the Advisory Councils.

77. The Advisory Committee is pleased to note a variety of other advisory mechanisms through which persons belonging to national minorities are consulted on issues of their concern. In early 2015, the Ministry of Education created its own advisory forum, where representatives of national minorities are invited at an expert level to discuss specific issues related to minority language education. The forum has met several times, including in Klagenfurt and Eisenstadt. Regrettably, however, it is only concerned with the implementation of the education rights of persons belonging to national minorities in Carinthia and Burgenland and not of those in Styria or Vienna (see also Article 14). One representative of the National Minority Advisory Councils has further been appointed as a member of the Audience Council of the public broadcaster. While this is welcome, the Advisory Committee considers that the participation of one person is insufficient to represent the diversity of views among and within the national minority communities and can therefore not replace additional consultations with the various communities to ensure that their views are adequately taken into account. It further notes that there has been some consultation with civil society and national minority representatives in the context of the update of the Roma Strategy, but the process is reported to have mainly allowed for submission of comments rather than constituting an occasion for a meaningful dialogue.

**Recommendation**

78. The Advisory Committee reiterates its urgent call on the authorities to take all necessary measures to **ensure that the National Minority Advisory Councils constitute a functional mechanism through which persons belonging to national minorities can participate effectively in all relevant decision-making processes, not limited to allocations for cultural purposes, and have access to senior policy makers, where necessary, in order to engage in a meaningful dialogue on issues of their concern**.

**Response from the Government** (GVT/COM/IV(2017)005, 5 May 2017): The National Minority Advisory Councils are not only involved in the decision on the funding recommendation. They also receive drafts of pertinent legal provisions for their comments in the consultation procedure, such as for example - most recently – the drafts on the education reform. Basically, the National Minority Advisory Councils can themselves require the convening of meetings and the consideration of specific items on the agenda. It is to be noted here that most recently a draft for amending the Carinthian State Constitution was introduced in April 2017 in the Carinthian Parliament, providing inter alia that the Slovene minority shall be mentioned by name and a state objective for the protection of the “developed linguistic and cultural variety” should be included in the Carinthian Constitution. Representatives of the Slovene minority were certainly involved in the formulation of these provisions.

**CoE ECRI Report on Austria, 2015**

71. ECRI, in its 4th report on Austria, recommended that the authorities pursue their efforts to combat racism and discrimination against Roma, especially in the field of education and that they involve civil society in the design and implementation of new measures.

72. Civil society deplores that the Dialogue Platform has no clear goals, lacks efficiency and is still in the phase of stock-taking and data collection.

74. ECRI recommends that the authorities step up the implementation of concrete programmes and projects to achieve the objectives set out in the Roma-Strategy. Special attention should be paid to the further empowerment of Roma and their organisations by positive measures.

**CoE Committee of Ministers**

Resolution of the Committee of Ministers on the implementation of the Framework Convention for the Protection of National Minorities by Austria, adopted on 13 June 2012 (CM/ResCMN (2012) 7)

The authorities are invited to “take resolute steps towards amending the national minority legislation with a view to ensuring consistent and inclusive protection of national minority rights throughout Austria; ensure comprehensive and effective consultation with national minority representatives before adopting any amendments to relevant legislation”. (…)

The CM also recommends to “design, implement and regularly monitor, in close consultation and cooperation with Roma representatives, comprehensive long-term programmes to promote the effective equality and participation of persons belonging to the Roma minority in all spheres of public life”.

1. [**BELGIUM**](http://cdiac.ess-dive.lbl.gov/trends/emis/blg.html)

**ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987**

52. **The rights in question are not absolute**. Since Article 3 (P1-3) recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations (see, mutatis mutandis, the Golder judgment of 21 February 1975, Series A no. 18, pp. 18-19, § 38). In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 (P1-3) (Collected Edition of the "Travaux Préparatoires", vol. III, p. 264, and vol. IV, p. 24). They have a **wide margin of appreciation** in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 (P1) have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see, amongst other authorities and mutatis mutandis, the Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 71, § 194). In particular, **such conditions must not thwart "the free expression of the opinion of the people in the choice of the legislature"**.

53. Article 3 (P1-3) applies only to the election of the "legislature", or at least of one of its chambers if it has two or more ("Travaux Préparatoires", vol. VIII, pp. 46, 50 and 52). The word "legislature" does not necessarily mean only the national parliament, however; it has to be interpreted in the light of the constitutional structure of the State in question.

54. As regards the method of appointing the "legislature", Article 3 (P1- 3) provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that, it does not create any "obligation to introduce a specific system" ("Travaux Préparatoires", vol. VII, pp. 130, 202 and 210, and vol. VIII, p. 14) such as proportional representation or majority voting with one or two ballots. Here too the Court recognises that the Contracting States have a wide margin of appreciation, given that their legislation on the matter varies from place to place and from time to time. Electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. In these circumstances the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies essentially - apart from **freedom of expression** (already protected under Article 10 of the Convention) (art. 10) - the **principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election**. It does not follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory. Thus no electoral system can eliminate "wasted votes". For the purposes of Article 3 of Protocol No. 1 (P1-3), **any electoral system must be assessed in the light of the political evolution of the country concerned**; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for **conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature**."

**CoE Commissioner for Human Rights, Report following his visit, 2016**

83. The Commissioner wishes to recall the importance of legal capacity for the enjoyment by persons with psychosocial and intellectual disabilities of key human rights, such as the rights to liberty and property, to access to justice, to get married or to vote. While considering that the 2014 law on legal capacity is not fully compliant with Article 12 of the UNCRPD, he underlines that proper implementation of this law could substantially improve possibilities for these persons to make their own choices in key areas of life.

85. The Commissioner also invites the Belgian authorities to take measures with a view to replacing substituted decision-making with supported decision-making.

94. Lastly, interlocutors of the Commissioner voiced concerns about the lack of consultation and involvement of representative organisations of persons with disabilities at various levels of decision-making, which often resulted in inadequate assessments of their needs.

99. The Commissioner calls on the authorities to enhance the involvement of persons with disabilities in decision-making on issues of concern to them, not least as a way of ensuring that the services provided adequately meet their needs.

139. The Commissioner invites the Belgian authorities to strengthen the implementation of the national Roma integration strategy and, as appropriate, to update it, in close co-operation with all the relevant stakeholders, and in particular with Roma representatives. A revised strategy should include clear targets, timeframes for implementation, the allocation of responsibilities, a credible system for monitoring progress and budgetary allocations.

**Response from the Government**

On para. 94. La Région wallonne assure, sur une base juridique, la participation directe des personnes en situation de handicap aux décisions publiques et politiques qui les concernent par le biais de l’exercice de mandats officiels au sein de de la Commission wallonne des Personnes Handicapées, au Comité de gestion de l’AWIPH et au sein des Commissions subrégionales de coordination, des Conseils Communaux consultatifs de la personne handicapée et des Conseils des usagers dans les services agréés et subventionnés.

En Communauté flamande, les représentants des utilisateurs participent à toutes les décisions qui les concernent quant à la politique menée par la VAPH (Agence flamande pour les personnes handicapées), par l’intermédiaire de leur représentation au Comité consultatif de cette administration publique.

On para. 139. En septembre dernier, la secrétaire d’État fédérale à la Lutte contre la pauvreté a introduit un projet auprès de la Commission européenne en vue de la création d’une plateforme de consultation nationale Roms.(…) La mise en place de cette plateforme a pour but d’enclencher un processus de consultation au niveau national et de garantir un dialogue actif entre les parties prenantes et les communautés roms. Les autorités belges aimeraient ainsi donner la parole aux Roms et favoriser leur inclusion sociale.

**CoE ECRI Report, 2013**

96. (…) Since 2006, non-citizens may vote but not stand as candidates in municipal elections. In order to vote they must sign a declaration to the effect that they undertake to uphold the Constitution, the laws of Belgium and the ECHR. ECRI’s fourth report on Belgium reported criticisms of the obligation to sign such a declaration, which has been described as hurtful and as a brake on the exercise of the right to vote.

97. In addition, integration requirements are now explicitly mentioned in the new law on nationality entered into force on 1 January 2013, which has considerably tightened the conditions for acquiring Belgian nationality as compared to the previous law. The new law makes therefore a link between acquiring citizenship and the integration programmes of the federated entities. However, these programmes do not apply the same standards, which may lead to differences in access to nationality incompatible with a federal state

110. ECRI recommends that the authorities make sure that the civic integration programme, in itself very interesting, is not discriminatory thus deviating from its essential integration aim. ECRI also recommends combining any obligation to participate in these integration programmes with incentives and rewards, limiting sanctions to circumstances where incentives have failed and integration without participation in these measures is not likely.

1. [**DENMARK**](http://cdiac.ess-dive.lbl.gov/trends/emis/den.html)

**CoE Commissioner for Human Rights Report following his visit, 2014**

Progress is required towards replacing substituted decision-making, including guardianship, with supported decision-making. As a first step to this end, full incapacitation and plenary guardianship should be abolished. Measures must be taken to ensure that persons with disabilities can enjoy their right to vote. (p. 3).

**Comments from the government**

Denmark has taken note of the UN Committee on the Rights of Persons with Disabilities views in communication No 4/2011*, Zsolt Budjosó and five others v. Hungary*, including that it – in the Committee’s view – constitutes a violation of Article 12 and 29 of the UN Convention on the Rights of Persons with Disabilities if a state deprives people with disabilities of the right to vote. However, Denmark does not share the views of the Committee in this respect. In accordance with the judgment of the European Court of Human Rights in *Alajos Kiss v. Denmark*, Denmark maintains that the right to vote is not absolute as it can be subjected to implied limitations. Furthermore, the contracting states must (…) be allowed a wide margin of appreciation in this respect. Denmark would also like to reiterate that it is a legitimate aim to ensure that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs. The Danish legislation also meets the requirement of proportionality as it is only persons under guardianship as defined in section 6 of the Act on Legal Incapacity and Guardianship who are deprived of the right to vote. Against this background, the Danish legislation must be considered consistent with Article 12 and 29 of the Convention on the Rights of Persons with Disabilities.

**ECRI report 2017**

95. (…) In 2016, ECRI received information indicating that previous positive efforts and initiatives to increase diversity in policing have continued since. Examples include the mentoring of persons from an ethnic minority background whose initial application to join the police training college was unsuccessful, but who show a general potential for becoming a qualified candidate in the future. The authorities also conducted an anonymous statistical survey to be able to review the retention rates and career progression of new police recruits from ethnic minority backgrounds.

**ECRI conclusions on implementation of previous recommendations, 2015**

ECRI has been informed that the Danish National Police intensified its efforts and took a number of initiatives to increase diversity in policing. In November 2013, the Danish National Police adopted a diversity strategy, which had been developed with the help of the Danish Institute of Human Rights (DIHR) to embrace and utilise a “broader variety of perspectives, competences and knowledge” brought into the policy force by employees with different social, cultural and ethnic backgrounds. The strategy involves local police districts. The DIHR also facilitated a process of “diversity dialogue” throughout the Danish National Police. The Danish police has also adopted a new “employer branding strategy” in order to attract a workforce that represents the diverse population in the country by branding the police force as a relevant and suitable workplace for all.

**ECRI report 2012**

11. ECRI encourages the Danish authorities to amend the Circular on Naturalisation’s provision concerning applicants’ obligation to be self-supporting in order to ensure that it does not disproportionately affect members of groups of concern to ECRI in contravention to Article 5 of the European Convention on Nationality.

12. ECRI encourages the Danish authorities to review the language examination and citizenship test required to acquire Danish citizenship in order to ensure that they do not become a disproportionate obstacle for applicants.

77. As for measures taken to encourage members of minority groups to apply for positions in all areas of the judicial system, the Danish authorities have indicated to ECRI that jobs advertisements from the Ministry of Justice state that all interested applicants are encouraged to apply regardless of gender, age, religion or ethnic background. However, ECRI considers that a more proactive policy needs to be implemented in order for Denmark to have a judiciary that better reflects the country’s diversity.

78. ECRI recommends that the Danish authorities continue and strengthen the training provided to the judiciary on issues pertaining to racial discrimination. ECRI also recommends that the Danish authorities carry out more proactive measures to recruit members of groups of concern to ECRI in all areas of the judicial system.

**Advisory Committee on the Framework Convention on Minorities – ACFC 4th Opinion on Denmark, 20 May 2014 ACFC/OP/IV(2014)001**

Note: the German minority is the only recognised one in Denmark and therefore the only one to which the Framework Convention is applied.

19. (…) The Advisory Committee considers further that extending the provisions of the Framework Convention to Roma in areas such as promotion of culture (Article 5), language teaching (Article 14), fostering knowledge of Roma culture and history among the majority population (Article 12), and effective participation in public life (Article 15) would contribute to the successful integration of persons belonging to the Roma 2 Act no. 473 of 12 June 2009 Act on Greenland Self-Government 3 See for example Second State Report submitted by the authorities of Denmark on 14 May 2004, pg. 11 (doc. ref. : ACFC/SR/II(2004)004) ACFC/OP/IV(2014)001 8 community into the majority Danish society. The Advisory Committee considers that it would also contribute to the better understanding of diversity in society and increase its cohesion. 20. A similar approach extended to the Faroese and Greenlanders living in mainland Denmark would also, in the opinion of the Advisory Committee, improve the integration of persons belonging to these groups. In particular, the vulnerability of Greenlanders requires taking specific measures.

90. The Advisory Committee notes with satisfaction that the well-established system of consultation between representative organisations of persons belonging to the German minority and the authorities has continued to function smoothly in the last years. In particular, the Liaison Committee concerning the German Minority and the Secretariat of the German Minority in Copenhagen serve as contact points to identify negotiated solutions to the problems concerning that minority, in the context of the climate of mutual trust which prevails between everyone involved. The Advisory Committee is concerned, however, that for groups that have not been formally recognised, there is no structured dialogue.

91. At the local level, persons belonging to the German minority are well represented in the municipal councils in Tønder, Aabenraa (Åbenrå), Sønderborg and Haderslev. According to the local representatives the Advisory Committee met during the visit, the electoral weight of the German minority in South Jutland is not of particular importance, as most issues are resolved through consensus or at least by seeking compromise solutions which would be acceptable to all.

92. The Advisory Committee notes that the Schleswig Party, representing interests of persons belonging to the German minority increased its electoral appeal in the 2013 municipal elections, after decades of decline.18 This allowed the Party to secure one mandate in Haderslev, two mandates in Aabenraa (Åbenrå), three in Sønderborg (up from one in 2009) and three in Tønder (up from two in 2009).

93. The Advisory Committee considers, however, that occasionally, reforms undertaken on a country-wide basis, such as introduction of e-administration can have a negative impact on the ability of persons belonging to national minorities, in particular those lacking computer skills, such as the elderly population, to participate fully in social and economic life and in public affairs.

Recommendation

94. The Advisory Committee again encourages the authorities to pursue their dialogue-based approach in order to maintain the effective participation of representatives of the German minority in decision-making as well as consider establishing effective consultative mechanisms with groups seeking protection under the Framework Convention.

**Government Comments**

As the German minority in South Jutland has been identified as the only existing national minority in Denmark, there are no grounds for reviewing the articles of the Convention in consultation with other groups as these groups do not constitute or represent a national minority within the meaning of the Framework Convention. Other minorities enjoy the same fundamental rights as all other Danish, including the rights contained in international human rights instruments which Denmark is party to.

**Committee of Ministers Resolution** [**CM/ResCMN(2015)7**](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResCMN(2015)7)**, 1 July 2015**

Recommends to intensify dialogue with the individuals and groups that express interest in or might benefit from the protection offered by the Framework Convention; consider applying provisions of the Framework Convention to interested groups, on an article-by-article basis, without necessarily formally recognising them as belonging to a national minority.

1. [**FINLAND**](http://cdiac.ess-dive.lbl.gov/trends/emis/fin.html)

**CoE Commissioner for Human Rights, Report following his visit, 2012**

Finland has made important progress in achieving gender equality, most notably in the field of political participation. While a National Policy on Roma is already being implemented, it would benefit from more inclusive involvement of Roma. Similarly, specific consultative mechanisms should be set up between the authorities and the Russian-speakers and Somalis so that problems can be identified and addressed. p. 2.

40. Progress in gender equality can be observed in political life in Finland. Nine members of the Cabinet are women and ten are men. There are 85 woman parliamentarians in the 200-seat Eduskunta. 36.7% of local councillors are women, although among mayors their proportion is only 16%.

55. The Government is implementing the first National Policy on Roma which was prepared in 2009. Among 147 specific measures, particular focus is given to equal treatment in education, employment and access to services and housing, promotion of the Romani language and culture, and the empowerment of Roma. Local authorities are key to the implementation of the policy. In 2011, the Ministry of the Interior coordinated a media campaign to combat negative stereotypes and prejudice against the Roma. The National Advisory Board on Romani Affairs and its regional boards function as cooperative fora for the authorities and Roma representatives.

70. (…) the Government has established a National Council on Disability, which is a consultative body for cooperation between the authorities and organisations representing people with disabilities and their carers.

**ECRI Report, 2013**

45. The [Advisory] Board [for Ethnic Relations] informed ECRI that the measures to be taken under its new mandate have not yet been determined in full, but that 2013 would be devoted to youth, while in 2012 the focus would be on immigrants’ participation in the municipal elections taking place that year.

171. The Advisory Board for Ethnic Relations indicated that immigrants from third countries must have had a residence permit for two years to be able to take part in municipal elections, whereas those from EU countries can do so after 52 days’ residence. The board indicated that the participation rate of third-country nationals in the last municipal elections had been very low (between 15% and 19%), which led it to co-operate with various political parties on the matter.

**Advisory Committee on Minorities Opinion** **ACFC/OP/IV(2016)002, 24 February 2016**

27. (…) The Advisory Committee welcomes the elaboration of the First National Action Plan on Fundamental and Human Rights which covered protection against discrimination, equality and promotion of participatory rights for persons belonging to minorities.

45. The Advisory Committee calls on the authorities to ensure the continued support for cultural activities of all minorities and the improvement of procedures so that representatives of the national minorities participate in the decision making on the allocation of grants.

93. National minorities continue to be represented and contribute to the political decision-making process through advisory boards and, as regards Sámi, also via the Sámi Parliament. The Advisory Board for Ethnic Relations (ETNO) was widely consulted by the various ministries on legislation and policy making relevant to minorities (e.g. integration, education, and language issues) both at national and at regional board level. This helped to increase its legitimacy. (…) The Advisory Committee notes that the Russian community is represented in ETNO75 but not in the Advisory Language Board, while the Karelian speakers are not present in any structure. Estonians are also represented in ETNO.76 The Advisory Board for Roma Affairs, half of which is composed of Roma representatives, as well as its regional offices, also reported to the Advisory Committee a good level of co-operation with central and local authorities.

94. At municipal level, consultative organs have been established on integration- and migration-related issues, on multiculturalism and on Roma affairs. A national languages network of Finnish municipalities has been established to foster inter-municipal co-operation with respect to the implementation of the language legislation.

95. The Advisory Committee strongly regrets that the Government Bill on the Sámi Parliament Act (HE 167/2014) which, inter alia, amended the notion of “negotiation obligation” of Article 9 in order to enhance the involvement of the Sámi Parliament into decision making beyond mere consultation, was dropped. While it acknowledges that, during the period under consideration, there was a good level of co-operation between the government and the Sámi representatives, it also reckons that political circumstances have prevented amendment of the legislation. This leads in practice to a situation where the Sámi Parliament is still not in the position of influencing effectively the outcome of the decision-making process when important issues of concern for the Sámi people are at stake.

96. Due to the fact that gathering data on ethnic affiliation is not allowed by law, there is no precise indication of national minorities’ presence in elected bodies and in public administration, either at central or local levels. The Advisory Committee reiterates its view that political participation of minority representatives in relevant decision-making processes is crucial for their interests to be heard. It also highlights that recruitment of persons belonging to minorities into public administration, law enforcement and the judiciary should be promoted as a means to better respond to their needs, such as with regard to the use of their language, and to attest to the government’s openness towards the diversity present in society. Enhanced presence in the police ranks may have a positive impact on the willingness of persons belonging to national minorities to address law enforcement when they require assistance.

97. The Advisory Committee reiterates its call on the authorities to ensure that the composition of the existing consultation mechanisms (ETNO, Advisory Language Board) is adjusted so as to include all minorities, in particular the Russian, Karelian, and Estonian communities, so as to guarantee an effective and inclusive channel of communication, consultation and influence on the decision-making process. It also encourages the resumption of dialogue with the Sámi minority for the purpose of strengthening their participation by amending accordingly the current legislation.

98. It also urges them to enhance opportunities for persons belonging to national minorities to participate in public affairs, including through measures that facilitate their engagement in broader political processes and mainstream political parties. Similarly, their recruitment into public service, in particular the police at central and local levels, should be promoted in order to send a clear message that diversity is valued in Finnish society.

**Committee of Ministers Resolution CM/ResCMN(2017)1, 15 March 2017**

(…) raise the level of recruitment of persons belonging to minorities in the police;

Provide for an effective and inclusive channel of communication, consultation and influence on the decision-making process by all minority groups, in particular Russian and Karelian speakers, within the existing consultation mechanisms; engage in dialogue with minority linguistic groups, including Estonian speakers to the extent to which they express an interest in being protected under the Framework Convention;

Enhance the opportunities for persons belonging to national minorities to participate in public affairs as well as for their recruitment into public service, in particular law enforcement and the judiciary at central and local levels, so as to send a clear message that diversity is valued in Finnish society.

1. [**FRANCE**](http://cdiac.ess-dive.lbl.gov/trends/emis/fra.html)

**CJEU Delvigne C-650/13**

Judgment [GC] 6 October 2015

**French restrictions on the eligibility of prisoners to vote are lawful under EU Charter of Fundamental Rights**.

45. It is clear that the deprivation of the right to vote to which Mr Delvigne is subject under the provisions of national legislation at issue in the main proceedings represents a limitation of the exercise of the right guaranteed in Article 39(2) of the Charter.

46. In that regard, it must be borne in mind that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights such as those set forth in Article 39(2) of the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

47. In the context of the main proceedings, since the deprivation of the right to vote at issue stems from the application of the combined provisions of the Electoral Code and the Criminal Code, it must be held that it is provided for by law.

48. Furthermore, that limitation respects the essence of the right to vote referred to in Article 39(2) of the Charter. The limitation does not call into question that right as such, since it has the effect of excluding certain persons, under specific conditions and on account of their conduct, from those entitled to vote in elections to the Parliament, as long as those conditions are fulfilled.

49. Lastly, a limitation such as that at issue in the main proceedings is **proportionate in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty**.

**ECtHR decision** *Dupré v. France* (application no. 77032/12), 26 May 2016

Application inadmissible

The Court noted that the decision to have the National Assembly select the two additional members of the European Parliament had been intended to address the potential problems inherent in the two other solutions proposed under the protocol, namely the risk of a low turn-out and high organisational costs, for only two seats, under the first option, and the problems of compatibility with the Constitution and organisational complexity under the second. It accepted that those considerations could correspond to a legitimate aim in the context of Article 3 of Protocol No. 1.

The Court also noted that the measure complained of by Mr Dupré had been transitional in nature, had lasted only two and a half years and had concerned only two out of seventy-four seats. In addition, the applicant had stood for office in the same legislature in the 2009 elections. The Court could not therefore accept that this measure had reduced the right to stand as a candidate to such an extent as to impair its very essence and deprive it of its effectiveness. Nor could it consider the measure as disproportionate in relation to the legitimate aim pursued.

**ECtHR Judgment** (Merits) *Py v. France* (application No. 66289/01), 11 January 2005

No violation

44. The Court must next **determine whether it is compatible with that Article to restrict the right to vote in elections to the New Caledonian Congress to persons who have been resident for at least ten years** in the territory.

45. The Court reiterates that the rights set out in Article 3 of Protocol No. 1 are not absolute, but may be subject to limitations.

46. Contracting States have a wide margin of appreciation, given that their legislation on elections varies from place to place and from time to time. The rules on granting the right to vote, reflecting the need to ensure both citizen participation and knowledge of the particular situation of the region in question, vary according to the historical and political factors peculiar to each State. The number of situations provided for in the legislation on elections in many member States of the Council of Europe shows the diversity of possible choice on the subject. However, none of these criteria should in principle be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another.

47. The State's margin of appreciation, however, is not unlimited. It is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with. It has to satisfy itself that any such conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate.

64. The Court therefore considers that the history and status of New Caledonia are such that they may be said to constitute “local requirements” warranting the restrictions imposed on the applicant's right to vote.

**European Committee of Social Rights decision**

*European Roma and Travellers Forum (ERTF) v. France* (Complaint No. 64/2011), 10 May 2011

71. The Committee recalls that it already examined the obstacles to the exercise of the voting rights of Travellers of French nationality in the context of its decision on the merits of 19 October 2009 in Complaint No. 51/2008, *European Roma Rights Centre (ERRC) v. France*. It then held that the reference to social rights in Article 30 should not be understood too narrowly and that the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on special importance and, in this regard, **the right to vote, like other rights relating to civic and citizens' participation, constitutes a necessary dimension in achieving social integration and inclusion and is thus covered by Article 30** (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 99). The Committee further highlights that the exercise of voting rights without discrimination also applies to all European Union nationals with regard to local and European elections.

72. In the above-mentioned decision on the merits the Committee found that there was a violation by France of Article E of the Charter taken in conjunction with Article 30, after noting that the rules applicable to citizens identified in terms of their association with the Traveller community were different from those applied to homeless citizens and that the difference in treatment between Travellers and homeless people with regard to their right to vote had no objective and reasonable justification (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 102).

73. The Committee observes that the law applicable to Travellers with regard to voting rights has not changed since that decision.

74. In this connection, the Committee notes that the report “Travellers – working towards ordinary law status” (known as the Hérisson report), presented to the Prime Minister in July 2011 by the Chair of the National Advisory Commission for Travellers, proposed on the subject of Travellers' voting rights to "repeal section 10 of the Act of 3 January 1969 and permit Travellers to benefit from the rules of ordinary law, setting a six month period of attachment to a municipality in order to register on electoral rolls" and that this proposal has so far not resulted in an amendment of positive law.

75. The Government indeed states that, by virtue of the Act of 2007, like homeless people, Travellers too can attach themselves to the municipality where the welfare centre or certified body with which they are registered is located and wait only six months, rather than the three year period provided for by the Act of 1969, before registering to vote.

76. Assuming this were the case and Travellers could lawfully request to be registered on the electoral roll after having their official residence at a welfare centre or a certified body for six months, it is not proven that in practice they are able, firstly, to avail themselves of this possibility and, secondly, to have their request accepted by the relevant authorities. This explains the Hérisson report's proposal in the light of the widely known difficulties observed in this matter as to legal certainty.

77. **The Committee therefore holds that the situation of Travellers with regard to the right to vote constitutes a violation** of Article E of the Charter taken in conjunction with Article 30.

*European Roma Rights Centre (ERCC) v. France* (Complaint No. 51/2008), 19 October 2009

100. In the present case, the Committee is required to examine two complaints, namely the matter of the qualification period of three years’ attachment to a municipality to be entitled to vote and the consequences of the 3% quota on their voting rights.

101. With regard to the three-year period, the Committee notes that Act No. 69-3 requires Travellers moving around France without a fixed domicile or residence to be administratively attached to a municipality. The municipality of attachment is chosen for a period of at least two years. The persons concerned may only be added to the electoral roll after three years of uninterrupted attachment to the same municipality. At the same time, according to article L 15- 1 of the electoral code, citizens who cannot furnish proof of an abode or a residence, and who have not been assigned a home municipality by law, shall be included, at their own request, in the electoral roll of the municipality where the welfare provider with whom they have been enrolled for at least 6 months is located.

102. The Committee notes that the rules that apply to citizens who are identified in terms of their association with the Traveller community are different

from those applied to homeless citizens. The difference in treatment between Travellers and homeless people with regard to their right to vote has no objective and reasonable justification and therefore constitutes discrimination in breach of Article E read in conjunction with Article 30. In this connection, the Committee notes that, in the absence of any positive reaction to its recommendations on the situation and status of Travellers, the anti-discrimination and equality commission (HALDE) subsequently adopted a special report, published in the official gazette of the French Republic, in which it held that section 10 of Act No. 69-3 discriminated against Travellers with regard to their right to vote and recommended that this section should be amended.

103. As to the quota limit, the Committee notes that under section 8 of Act No. 69-3, the number of holders of circulation documents without a fixed domicile or residence, attached to a given municipality, must not be greater than 3% of the municipal population. When the 3% quota is reached, Travellers cannot attach themselves to a municipality and do not therefore have the right to vote.

104. **The Committee considers that limiting the number of persons with the right to vote to 3% has the effect of excluding some potential voters. In practice this restriction affects Travellers. The Committee considers that setting this limit at such a low level leads to discriminatory treatment with regards to access to the right to vote for Travellers** and, thus, is a possible cause of marginalisation and social exclusion. 105. The Committee finds that the situation constitutes a violation of Article E taken in conjunction with Article 30 for the two complaints.

**Commissioner for Human Rights Report following his visit, 2015**

143. The 1969 law also requires Travellers to be administratively attached to a municipality. While Travellers may choose the municipality to which they wish to be administratively attached, that attachment has to be for a minimum period of two years, and it is granted by prefects’ offices only after a reasoned opinion has been given by the mayor, who is also consulted in the event of an application for a change of municipality of attachment.

145. The Commissioner notes that in practice, the administrative attachment requirement also affects the exercise by Travellers of their political rights, including the right to vote and to stand for election. The 1969 law provided for Travellers to have to wait for three years for inclusion on the electoral rolls in their municipality of attachment. While that provision, also widely condemned, was invalidated by the Constitutional Council on 5 October 2012 on the grounds that it unjustifiably restricted the exercise of political rights, the Commissioner considers that **the maintenance of the aforementioned 3% limit remains a serious impediment to the exercise of political rights by persons who wish to be attached to, vote or stand as candidates in municipalities which have exceeded this quota**, as they are thereby denied attachment.

146. In this context, the Commissioner recalls that, in 2009, in the case of the European *Roma Rights Centre (ERRC) v. France*, the European Committee of Social Rights took the view that limiting the number of persons with the right to vote to 3% has the effect of excluding some potential voters, and that setting this limit at such a low level “leads to discriminatory treatment with regards to Travellers’ access to their right to vote and, thus, is a possible cause of marginalisation and social exclusion.

147. The flagrant inequalities to which these exceptional legal arrangements give rise were, in fact, slightly attenuated by the aforementioned decision of the Constitutional Council. The Commissioner notes that the successive reports of Senator Hérisson101 and Prefect Derache102 have led the French government to reform Travellers’ status in order to bring it closer to ordinary law. He was informed that a law proposal tabled by an MP, Dominique Raimbourg, with a view to the repeal of the law of 3 January 1969 had been tabled in the National Assembly in 2013103. However, the Commissioner regrets that neither that law proposal nor any other text pursuing the same aim had been adopted at the time of his visit. Consequently, this regime of inequality persists, and his predecessor’s appeal to the French authorities in 2008 to put an end to this discriminatory treatment, by drafting a strategy and policies against discrimination as recommended by the Council of Europe104, is still valid.

**Response from the Government (in French)**

Dans sa décision du 5 octobre 2012, le Conseil constitutionnel n'a pas déclaré le rattachement à une commune contraire à la Constitution. Le rattachement à une commune apporte une solution satisfaisante aux problèmes nés de l’absence de domicile fixe des populations itinérantes, notamment en ce qui concerne l’inscription sur les listes électorales ou la fiscalité. Dans sa décision du 5 octobre 2012, le Conseil constitutionnel a, par contre, déclaré contraires à la Constitution les dispositions qui imposaient trois ans de rattachement ininterrompu dans la même commune pour être inscrites sur les listes électorales. Désormais, la demande d’inscription s’effectue sans condition de délai. Le Gouvernement poursuit sa réflexion, en concertation avec les associations représentatives des gens du voyage, pour faire évoluer le cadre légal et réglementaire qui est applicable à ces derniers. Le Parlement sera évidemment associé à cette modification importante de la législation. Ainsi, une proposition de loi n°1610 relative au statut, à l’accueil et à l’habitat des gens du voyage, enregistrée à la Présidence de l’Assemblée nationale le 5 décembre 2013 est actuellement à l’étude de la Commission des lois constitutionnelles, de la législation et de l’administration générale de la République. Cette proposition de loi prévoit précisément l’abrogation de la loi n°69-3 du 3 janvier 1969.

**ECRI Report 2015**

81. (…) ECRI notes that a National Consultative Commission for Travellers (CNCGDV) was set up in response to a report by the Court of Auditors in 2012 that drew attention to inadequacies in the reception of and assistance provided to Travellers and to a report produced at the Prime Minister’s request by the Préfet Hubert Derache in 2013. Decree No. 2015-563 of 20 May 2015 sets out the new composition and operation of this Commission and confirms its involvement in the framing of public policies, in particular by assigning it a consultative role in draft legislation and regulations relating to Travellers.

1. **Germany**

**ECtHR**

**Pending case** *Marx v. Germany*, application No. 52095/13

Complaint brought by a well-known right-wing politician that the domestic authorities refused to register him as a candidate for the 2008 elections of mayor of Schwerin (capital of the Land Mecklenburg-Western Pomerania) because of his membership of the NPD (Nationaldemokratische Partei Deutschlands). Mayors in Germany are employed as temporary civil servants and one of the requirements of employment under civil-service law is to have loyalty to the German Basic Law, which Mr Marx was found to be lacking due to his membership of the NPD. Mr Marx complains under Articles 10 (freedom of expression) and 11 (freedom of association) of the Convention.

*Partei Die Friesen v. Germany*, application No. 65480/10, 28 January 2016

Application of 5% threshold in parliamentary elections in Lower Saxony: *no violation*

Article 14 in conjunction with Article 3 of Protocol No. 1.

In the 2008 parliamentary elections the applicant party did not receive sufficient votes to obtain a parliamentary mandate irrespective of the 5% threshold. However, the threshold could nonetheless have had a chilling effect on potential voters not wishing to “waste” their votes on a political party that was unable to achieve that score. The application of the 5% threshold had thus interfered with the applicant party’s right to stand for election and the case fell within the scope of Article 3 of Protocol No. 1. Article 14 was therefore applicable (para. 34).

Although the threshold as such did not raise an issue under Article 14 read in conjunction with Article 3 of Protocol No. 1, the Court had to assess whether its application to the applicant party had violated those provisions. In this regard, it was undisputed that the applicant party had not been treated differently to any other small political parties standing for election in Lower Saxony.

As to whether the applicant party’s situation was, as it alleged, analogous to that of the parties of the Danes and the Sorbs who were standing for election in two other *Länder*, both of which privileged minority parties, the Court observed that under federal election law all national minority parties enjoyed the same privileges in federal elections. However, as regards participation in elections of the *Länder*, the Lower Saxony Constitutional Court found that there was no obligation under constitutional law applicable in Lower Saxony to exempt parties of national minorities from electoral thresholds regarding elections in the *Land*. In the light of the sovereignty accorded to *Länder* in the German legal system, the decision of *Länder* legislatures to include exemptions for national minority parties in their electoral law therefore did not have any implications for national minority parties outside their jurisdiction. It followed that the applicant party’s situation was not analogous to that of the parties of the Danes and the Sorbs because they were not standing for election in Lower Saxony (para. 39).

As to whether the situation of the applicant party was significantly different from that of other political parties in Lower Saxony, the Court accepted that the number of Frisians in that *Land* was not high enough to reach the electoral threshold even if all Frisian voters were to cast their vote for the applicant party. However, the situation of the applicant party in this respect was similar to the situation of those parties which concentrated on the representation of numerical small interest groups defined by criteria such as age, religious belief and profession. The disadvantages in the electoral process were therefore based on the chosen concept of only representing the interests of a small part of the population, for which a Contracting State could not be held responsible (para. 40).

The Court lastly examined whether the applicant party had been discriminated against in its capacity as a party representing a national minority. Since forming an association to express and promote its identity could be instrumental in helping a minority preserve and uphold its rights, this issue was linked to the question whether, under the Convention, national minority parties should be treated differently to other special interest parties. In its decision in *Magnago and Südtiroler Volkspartei v. Italy* ([25035/94](http://hudoc.echr.coe.int/eng?i=001-2841), 15 April 1996) the European Commission of Human Rights had found that the Convention did “not compel the Contracting Parties to provide for positive discrimination in favour of minorities”. The subsequent 1998 Framework Convention for the Protection of National Minorities put an emphasis on the participation of national minorities in public affairs. **Although the possibility of exemption from the minimum threshold was merely presented as one of many options, the interpretation provided by the Advisory Committee on the Framework Convention and the Venice Commission was that the electoral thresholds requirements should be designed so as not to affect national minorities**. **However**, **no clear and binding obligation derived from the Framework Convention to exempt national minority parties from electoral thresholds. Consequently, even interpreted in the light of the Framework Convention, the Convention did not call for different treatment in favour of minority parties** (para. 43).

**Commissioner for Human Rights 2015 Report CommDH(2015)20**

Nothing relevant to the study

**ECRI Report 2013**

Access to nationality

72. In its fourth report, ECRI recommended that Germany do its utmost to ensure that the obligation for specific groups of immigrants to attend language and orientation courses and language, integration and naturalisation tests do not have a counterproductive effect on integration.

74. ECRI considers that the integration process should be based on a two-way approach promoting mutual recognition between the majority population and the minority groups. This is why ECRI recommends motivating members of these groups to participate in the measures designed to facilitate their integration by providing incentives and rewards. It welcomes, for instance, the reduction of the requisite period of residence for naturalisation laid down in Article 10 (3) of the Law on citizenship in cases where the applicant has attended the integration courses and has scored well in the language tests. On the other hand, imposing sanctions is difficult to reconcile with this approach and may seriously reduce the motivation of the persons concerned. For this reason, ECRI advocates imposing sanctions only as a last resort.

75. ECRI recommends that Germany accompany any obligation to participate in language and orientation courses or language and orientation tests first and foremost with incentives and rewards and confine sanctions to cases where such motivating measures have failed and integration is unlikely without participation in these measures.

**Advisory Committee on the Protection of Minorities Fourth Opinion on Germany, 2015** ACFC/OP/IV(2015)003

There have been some welcome steps forward in recent years to strengthen the participation of Sinti and Roma in decision-making on issues of concern to them, notably through the establishment of consultative mechanisms at federal and Land level,

12. The institutional arrangements at federal level to promote the participation of minorities in public life have been strengthened through the establishment of a Consultative Committee on Issues concerning German Sinti and Roma, similar to those already in place for the three other national minorities recognised in Germany and involving both of the national umbrella organisations of Sinti and Roma in Germany. Several Länder have also strengthened the legal frameworks and mechanisms in place to promote the participation of Sinti and Roma in decision-making on issues of concern to them. Welcome steps have been taken in Brandenburg to strengthen the participation of Sorbs in decision-making processes in this Land.

140. The Advisory Committee calls on the authorities to take more resolute steps to promote effective participation of Roma and Sinti in public life, in particular at political level. In the Länder where this has not yet been done, the Advisory Committee also recommends that the authorities establish, in close co-operation with Sinti and Roma representatives, mechanisms allowing for the effective participation of Sinti and Roma in decision-making on issues of concern to them.

141. The Advisory Committee recommends that, following the next elections to this body, the authorities review, together with representatives of the Sorbian minority, the impact of the new procedures governing the election of the Council for Sorbian/Wendish Affairs in Brandenburg, with a view to assessing the extent to which the new rules have facilitated the participation of Sorbs in this process and remedying any problems identified. It recommends that the authorities, in close co-operation with representatives of the Sorbian minority, find means to allow Sorbian representatives to participate more effectively in decision-making processes concerning the allocation of funds to the preservation and promotion of their culture.

**Committee of Ministers Resolution**CM/ResCMN(2016)4, 3 February 2016

The Committee recommends to “actively promote the effective participation of Sinti and Roma in public life, in particular at the political level; establish, in the Länder where this has not yet been done and in close co-operation with Sinti and Roma representatives, mechanisms allowing for the effective participation of Sinti and Roma in decision making on issues of concern to them.”

1. [**GREECE**](http://cdiac.ess-dive.lbl.gov/trends/emis/gre.html)

**ECtHR**

*Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, 15 March 2012

Lack of legislation covering procedure for Greek nationals resident overseas to vote in parliamentary elections: no violation

75. In short, none of the legal instruments examined above forms a basis for concluding that, as the law currently stands, States are under an obligation to enable citizens living abroad to exercise the right to vote. As to the arrangements for exercising that right put in place by those Council of Europe member States that allow voting from abroad, there is currently a wide variety of approaches.

79. Lastly, as regards the specific situation of the applicants, the Court has no reason to doubt their assertion that they maintain close and continuing links with Greece and follow political, economic and social developments in the country closely, with the aim of playing an active part in the country’s affairs. The presumption that non-resident citizens are less directly or less continually concerned with the country’s day-to-day problems and have less knowledge of them (see paragraph 69 above) does not therefore apply in the instant case. Nevertheless, in the Court’s view, this is not sufficient to call into question the legal situation in Greece. In any event, the competent authorities cannot take account of every individual case in regulating the exercise of voting rights, but must lay down a general rule (see Hilbe, cited above).

**Commissioner for Human Rights Report following his visit, 2013**

32. Several representatives of civil society organisations and migrant communities that met with the Commissioner deplored the lack of channels of dialogue with the authorities and urged the need for more interaction at all levels. Integration measures are instrumental in preventing further tensions and in strengthening social cohesion, especially in the current context of economic crisis. Measures should target long-term migrants residing in Greece, especially children born and/or educated in Greece. The Athens City Council for the Integration of Migrants with whom the Commissioner met during his visit is **a very useful integration tool as it provides a platform for dialogue between migrant communities and the authorities and fosters the participation of migrants’ representatives in public affairs**. The Commissioner welcomes Minister Dendias’ willingness to meet with this Council and initiate an open dialogue with its migrant members.

34. The Commissioner also wishes to underline that naturalisation is a major means of migrant integration, especially of migrant children who are born, raised and/or educated in Greece. He therefore **deplores the announced amendments to Law 3838/2010 concerning migrant children’s naturalisation and the participation of long-term resident migrants in local elections**.

35. Law 3838/2010 has been a step forward for the integration of migrants since it provided for access to Greek nationality for migrant children who are born in Greece of migrant parents, both of whom have been regular residents in the country for at least five consecutive years, and for migrant children who have successfully attended at least six classes of a Greek school and reside permanently and legally in Greece. This law was also very positive in that it provided regular, long-term resident migrants with the right to vote and stand for election in local elections, in line with the standards contained in the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (1992) to which Greece has not as yet acceded.

42. The Commissioner urges the authorities to develop structures for regular and open dialogue with representatives of migrants residing in Greece, drawing on the model of the Athens City Council for Migrants’ Integration, in order to discuss issues pertaining to their social integration and political participation.

44. Lastly, the Commissioner calls on the Greek authorities to reflect seriously on the consequences that any restrictive legislative amendment concerning the naturalisation of children of long-term migrants may have on the lives of these children and their families, especially when these children have been born and/or educated in Greece and for whom this is the only country they are familiar with and attached to. Full integration through naturalisation must remain a real possibility for these children in law and practice. In this context, Greece is also called on to ratify the 1997 European Convention on Nationality (signed in 1997). The participation of regular, long-term migrants in local elections is also a major means of migrant integration and is in line with the standards of the 1992 European Convention on the Participation of Foreigners in Public Life at Local Level, a treaty upon which Greece may draw and which it would be useful to accede to.

**ECRI Report 2015**

89. Article 78 of Law 3852/2010 establishes the framework for local integration councils. There are 219 such councils registered country-wide, but only about 100 are reported to be operating. ECRI’s delegation met with members of the Athens City Council for the Integration of Migrants, which has been described as **a very useful integration tool because it provides a platform for dialogue between the different migrant communities and the municipal authorities**. In the absence of voting rights in local elections for non-EU citizens, this body can also promote engagement and representation in public affairs. However, the scope is limited as the Council is **merely a consultative body and has no decision-making powers**.

90. ECRI recommends carrying out an assessment as to why more than half of the existing local councils for the integration of migrants do not operate.

91. In 2013, a chamber of the Council of State, Greece’s Supreme Administrative Court, questioned the constitutionality of Law 3838/2010 on citizenship to the extent that it would have granted citizenship to foreign children that have been born in Greece and whose parents have been permanently and legally residing in the country for at least five consecutive years or citizenship to foreign children born in Greece or abroad under the condition that they have successfully completed at least six grades of schooling in Greece (Art.1A); and voting rights in local elections to second-generation immigrants (Art.14). The chamber criticised Article 1A of the law for not providing for a procedure to demonstrate the relationship of the person who would have become a Greek citizen with the Greek nation. The chamber also found the criteria set by the law for deciding on a person's citizenship unsuitable and demanded stronger ties with Greece. Furthermore, the chamber referred to the Constitution which gave the right to participate in local elections only to Greek and EU citizens. ECRI recalls that, although not necessarily a requirement, citizenship can be a major tool for the integration of migrants. It is, therefore, **regrettable that a progressive political initiative seems to have been stopped**.

100. The National Strategy for Social Integration of Roma 2012-2020 has the objective of ending the social exclusion of Roma and creating conditions for their integration. The previous Integrated Action Plan, with broadly similar objectives, has largely failed. There was also **insufficient participation of Roma representatives** in its evaluation. The new strategy prioritises housing, education, employment and health.

101. ECRI recommends that Roma communities are involved in the systematic follow-up of programme interventions in to ensure sustainability and greater involvement of community members.

102. ECRI recommends that an ongoing monitoring and accountability mechanism for the new Roma Integration strategy 2012-2020 is created, in which Roma communities are represented. ECRI also recommends an independent midterm evaluation to be carried out in due course.

1. [**ICELAND**](http://cdiac.ess-dive.lbl.gov/trends/emis/ice.html)

**Commissioner for Human Rights visit, 2016**

No report available.

Press release, 13 June 2016: “**Abolishing full deprivation of legal capacity and plenary guardianship** **of persons with disabilities**, including persons with psycho-social and intellectual disabilities, should be a priority,” said Nils Muižnieks, the Council of Europe Commissioner for Human Rights, concluding a visit to Iceland from 8 to 10 June 2016. There are some positive signs that a ‘paradigm shift’ in disability policy will also be accepted in Iceland. The Action Plan on the Rights of Persons with Disabilities adopted by the government for 2012–2014 and extended until 2016 reflects the notion that disability amounts to a failure of the environment to accommodate the needs of the individual, and aims to promote independent living, combat prejudice and social exclusion, and **involve persons with disabilities in decision-making processes**. “This progressive understanding of disability and the current preparation of a follow-up action plan are encouraging steps.”

**ECRI 2017 Report**

N/A

1. **IRELAND**

**Commissioner for Human Rights Report following his visit, 2017**

6. (…) In 2015, the Department of Justice and Equality established a National Traveller and Roma Inclusion Strategy Steering Group consisting of representatives of Traveller and Roma organisations and ministerial representatives. The steering group is entrusted with drafting the second National Traveller and Roma Inclusion Strategy once the three-phased consultation is over. There are also a number of **Traveller and Roma consultative bodies** in the fields of accommodation and education.

15. The Irish Government formally recognised Travellers as an ethnic group by way of a statement by the Prime Minister to the Dáil Éireann (Lower House) on 1 March 2017, in a move that was welcomed as historic by the Irish representatives and human rights stakeholders. **Comments from the Government**: “The Taoiseach expressed the hope that his statement, which enjoyed cross-party support, will create a new platform for positive engagement by the Traveller community and Government together in seeking sustainable solutions which are based on respect and on honest dialogue.”

53. According to a 2015 European Parliament report, inequalities continue to be a persistent feature of women’s position in Irish society, given their disadvantage on the labour market and their serious underrepresentation in the political and economic systems. A new **positive development relates to the Electoral (Amendment) (Political Funding) Act 2012, which introduces a gender quota system for the first time into the Irish system of representation**. Political parties are now compelled to ensure that a certain minimum percentage of all parliamentary candidates selected (30% for the general elections of 2016, and 40% for subsequent elections) are women. State funding of parties will be cut by 50% if they fail to meet the required quota. **The quotas produced an increase in the number of female candidates and an increase in the number of female parliamentarians** elected from 15% in 2011 to 22% in the Dáil Éireann (the Lower House) in 2016. As of today, women constitute 30% of the Seanad (the Upper House).

**ECRI Report 2012**

7. All resident Irish citizens have the right to vote at all elections and referenda. In addition, it has to be noted that British citizens are entitled to vote at the Dáil (Lower House of Parliament) elections, European elections and local government elections; other EU citizens may vote at European and local government elections; and non-EU citizens may vote at local government elections. Against this positive background, ECRI regrets to note that the authorities do not envisage at present to ratify the European Convention for the Participation of Foreigners in Public Life at Local Level. ECRI considers that by ratifying this Convention, Ireland would significantly strengthen the legal guarantees extended to foreign nationals as regards their participation in public life and would send a strong signal of commitment to diversity and tolerance.

**Advisory Committee on Minorities Third Opinion 2012** ACFC/OP/III(2012)006

64. The Advisory Committee calls on the authorities to pursue developing, resourcing and implementing programmes, **in co-operation with the representatives of the Traveller and Roma women**, in particular with the view to establishing effective strategies for women’s empowerment and equality.

122. The Advisory Committee encourages the authorities to enable the Traveller community to be represented at the Constitutional Convention.

123. The Advisory Committee further invites the authorities to consider, in consultation with the representatives of the Travellers, legislative and practical measures which would **create the necessary conditions for their political participation, including representation** in particular at the local, but also at the national level to reflect more adequately the composition of Irish society.

130. The Advisory Committee repeats its call on the authorities to continue to involve Travellers and Roma in the formulation and/or prioritization of policies and to **promote relevant participation in decision making** at local and national levels by members of various minority groups, including Travellers and Roma.

**Committee of Ministers Resolution CM/ResCMN(2014)2, 12 February 2014**

The CM recommends to “continue to involve Travellers in the work of all relevant consultative mechanisms and promote relevant participation in decision making at local and national levels by members of various minority groups; involve relevant stakeholders, as appropriate, in the implementation of the National Traveller/Roma Integration Strategy”.

1. **ISRAEL**

N/A

1. [**ITALY**](http://cdiac.ess-dive.lbl.gov/trends/emis/ita.html)

**ECtHR**

***Scoppola v. Italy (no. 3) [GC]***

Judgment 22.5.2012 [GC]

Ban on prisoner voting imposed automatically as a result of sentence: no violation*.* The Court found that the disenfranchisement of convicted prisoners provided for under Italian law was not like the general, automatic, indiscriminate measure that led it to find a violation of Article 3 of Protocol No. 1 in the *Hirst (no. 2) v. the United Kingdom* case. Italian law took care to adapt the measure to the particular circumstances of a case, particularly the length of the sentence.

108. In the circumstances the Court cannot conclude that the Italian system has the general, automatic and indiscriminate character that led it, in the *Hirst (no. 2)* case, to find a violation of Article 3 of Protocol No. 1. In Italy there is no disenfranchisement in connection with minor offences or those which, although more serious in principle, do not attract sentences of three years’ imprisonment or more, regard being had to the circumstances in which they were committed and to the offender’s personal situation. The Court of Cassation rightly pointed this out (see paragraph 28 above). As a result, a large number of convicted prisoners are not deprived of the right to vote in parliamentary elections.

109. Furthermore, the Court cannot underestimate the fact that under Italian law it is possible for a convicted person who has been permanently deprived of the right to vote to recover that right. Three years after having finished serving his sentence, he can apply for rehabilitation, which is conditional on a consistent and genuine display of good conduct and extinguishes any outstanding ancillary penalty (Articles 178 and 179 of the Criminal Code – see paragraph 38 above). In addition, the length of the sentence actually served may be reduced in accordance with the early release mechanism provided for in section 54 (1) of Law no. 354 of 1975, under the terms of which a reduction of forty-five days for every six months served is granted if the detainee takes part in the re-education scheme (see paragraph 39 above). This means that he can apply for rehabilitation and, where applicable, recover the right to vote at an earlier date. In the Court’s opinion this possibility shows that the Italian system is not excessively rigid.

110. Taking the above considerations into account, the Court finds that, in the circumstances of the present case, the restrictions imposed on the applicant’s right to vote did not “thwart the free expression of the people in the choice of the legislature”, and maintained “the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage” (see *Hirst (no. 2)* [GC], cited above, § 62). The margin of appreciation afforded to the respondent Government in this sphere has therefore not been overstepped.

Accordingly, there has been no violation of Article 3 of Protocol No. 1.

**CoE Commissioner for Human Rights Report following his visit, 2012**

65. The Commissioner therefore warmly welcomes the adoption of a National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities (hereafter: “National Roma Inclusion Strategy”) in February 2012, a step undertaken by Italy in the framework of its EU obligations.33 The Office against Racial Discrimination (hereafter, “UNAR”) which has been designated as the relevant National Focal Point for the Strategy, also ensured the consultation process leading up to the adoption. The Commissioner notes with satisfaction that representatives of Roma and Sinti that he met during his visit were particularly appreciative of this consultation process, which they considered to be a first in Italy. He commends the Italian authorities for these consultations and the commitment expressed in the Strategy to further pursue the involvement of the Roma, Sinti and Caminanti communities, relevant NGOs, as well as regional and local authorities in the implementation process.

66. As regards policy development, the Minister for International Co-operation and Integration has been entrusted with the task of establishing a “political control room” of the policies for the coming years, which will guide the integration process over time, together with other relevant Ministers and through the involvement of representatives of regional and local authorities, as well as of the Roma, Sinti and Caminanti themselves.

75. The evolution of national, regional and local consultation mechanisms, as well as of an efficient monitoring framework, are also issues that will have to be followed very closely. For this purpose, the Commissioner calls on the Italian authorities to build on the successful consultation practice during the period leading up to the adoption of the national strategy.

93. The genuine involvement of Roma and Sinti communities in the decision-making process is an essential precondition for the success of future policies. The authorities are strongly encouraged to capitalise on existing examples of promising consultation mechanisms at local and regional levels and to ensure that the relevant communities have a real say in the choices that will affect their housing situation.

155. While the authorities have granted international protection to a relatively high percentage of persons applying for it in Italy, severe shortcomings have been highlighted in the assistance provided to these persons after they have obtained their status. The aforementioned 2011 report points notably to the lack of a reliable system to support the integration of refugees and other beneficiaries of international protection in Italian society.

156. The Commissioner has been informed, for instance, that in order to exercise certain rights to which they are entitled many refugees and other beneficiaries of international protection are requested by administrative authorities to produce certain documents or certificates which they may not be in a position to obtain from their countries of origin.79 Such requirements may, for example, hamper the persons’ right to have their educational and professional qualifications recognised, to reunite with their family, to marry or to obtain Italian citizenship.

**ECRI Report, 2016**

65. In Italy the main beneficiaries of integration policies are non-nationals recently arrived and regularly present in the country, and the Roma population, which includes “Roma”, “Sinti” and “Camminanti” (Travellers). ECRI regrets the lack of specific integration policies for refugees and people who qualify for international protection. It considers that the phase following the granting of this status should be accompanied by the implementation of a system of positive measures to facilitate their integration.

69. In addition, ECRI notes progress on the question of access to Italian citizenship for long-term migrants, even if the access rate remains one of the lowest in the OECD zone because the legislation is based on the principle of “jus sanguinis” and is not fully compliant with the European Convention on Nationality. The progress in question has been achieved thanks, inter alia, to the legislative reforms to modernise and simplify administrative procedures; online tools have been developed to enable candidates for Italian citizenship to follow the processing of their application on line and contact the official handling their file.

**Advisory Committee on the protection of minorities Fourth Opinion**, 19 November 2015

ACFC/OP/IV(2015)006

25. (…) The Advisory Committee wishes to stress in this context that the application of the Framework Convention with respect to a group of persons does not necessarily require the latter’s formal recognition as a national minority. It notes, however, that such recognition would greatly facilitate the enjoyment of rights protected by the Framework Convention.

26. The Advisory Committee reiterates its call on the authorities to take urgent steps to **elaborate and adopt without delay a specific legislative framework, at national level, for the recognition and protection of Roma, Sinti and Caminanti with due consultation of representatives of these communities at all stages of the process**.

37. The Advisory Committee notes that following the designation in 2011 of UNAR as the National Contact Point for Roma Integration Strategies, the National Strategy for the Inclusion of the Roma, Sinti and Caminanti 2012-2020 was finally adopted in February 2012. It is welcomed that when elaborating the Strategy, UNAR carried out extensive consultations with the key representative Roma organisations such as the Federazione Romanì (a national association of about 30 Roma associations established in 2009 to promote the self-determination of Roma people and inter-cultural cohesion), Federazione Rom e Sinti Insieme (about 30 regional and local organisations principally of Sinti from northern and central Italy, lobbying for recognition of Roma, Sinti and Caminanti as minorities and in fostering active citizenship) and Associazione UNIRSI (International and National Union of Roma and Sinti in Italy, - the oldest Roma federation created in 1999 promoting Roma culture and dialogue within Italian society). It has to be noted however that **some representatives of Roma considered that the invitation extended to them to take part in consultations was rather formalistic, extended out of politeness and political correctness rather than out of genuine interest to hear their views**.

44. In general, Roma, Sinti and Caminanti **representatives should be more closely and effectively involved in all projects and activities concerning them**, such as those implemented in the framework of the National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities 2012-2020 at national, regional and local levels.

**Committee of Ministers Resolution CM/ResCMN(2017)4,** 5 July 2017

Recommendations for immediate action:

- take urgent steps to elaborate and adopt without delay a specific legislative framework, at national level, for the protection of the Roma, Sinti and Caminanti communities with due consultation of representatives of these communities at all stages of the process;

- consult representatives of the Roma, Sinti and Caminanti communities, including women, in all projects and activities concerning them, in particular those implemented in the framework of the National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities 2012-2020, at national, regional and local levels.

**Venice Commission Opinion** on a Citizens' Bill on Public Participation, Citizens' Bills, Referendums and Popular Initiatives and Amendments to the Provincial Electoral Law, CDL-AD(2015)009, 18 June 2015

80. The Bill extends the institutions both of direct democracy and of participatory democracy in the province of Trento. 81. **There is no international (or European) standard on the extent which should be given (or not) to instruments of direct democracy at national, regional or under-regional level**. Nor is there a standard imposing their mere existence. What can be said is that **there is a trend to extend them**, especially at the infra-national level, which has always been a laboratory for innovations in the field of democracy. **The same is true for the instruments of participatory democracy**. For example, Article 11 of the Treaty on European Union provides i.a. for the European citizens’ initiative, enabling one million citizens to invite the European Commission, within the framework of its powers, to make a proposal of legislative revision. **These instruments of direct and participatory democracy should be seen as complementing representative democracy**. “Parliamentary democracy, supported by free and fair elections ensuring representativeness, (political) pluralism, and the equality of citizens”, is the core, but not the only aspect, of the democratic process.

84. More generally, it would appear advisable to carefully consider the impact that the Bill could have on the smooth functioning and on the form of government of the Province. It extends the cases in which the political responsibility of the elected bodies can be put at stake and, at the same time, greatly develops the instruments of direct democracy, which exist in entities where the government is not responsible to Parliament like Swiss cantons or states of the United States. This should be considered in order to avoid any negative impact on the coherence and the functioning of the political system.

1. **LIECHTENSTEIN**

**Commissioner for Human Rights press release** following his visit, 2012

**Persons with disabilities** lack sufficient employment possibilities, in spite of several constructive measures, such as subsidies for making adjustments to the workplace to improve accessibility and for paying a part of the salary of disabled employees. Further measures should be explored to promote integration of people with disabilities into the job market in both the public and private sector.

The authorities in Liechtenstein have taken steps to facilitate the integration of immigrants. However, the Commissioner considers that the **requirements for obtaining citizenship are excessively restrictive** and recommends a review of these in line with the principles of the European Convention on Nationality.

**ECRI Report, 2013**

10. (…) As already described in ECRI’s second and third report (respectively paragraphs 9 and 10), the “facilitated” procedure for **naturalisation** maintains a 30-year residence requirement with the years spent in Liechtenstein before the age of 20 counting double - a very long period compared to the 10-year requirement provided for under the European Convention on Nationality of the Council of Europe. The other possibility in order to obtain citizenship is the system of voting by local residents, which is subject to: a 10-year residence requirement, a favourable vote by the residents of the municipality in which the applicant resides and the consent of the Parliament and the Prince. While ECRI acknowledges that this procedure is seen by the population as an instrument of direct democracy, it stresses that other considerations, such as international obligations to fight discrimination, must be born in mind. This procedure in fact is not based on objective and measurable criteria and leaves the door open to arbitrariness and discrimination. ECRI notes that this can explain the negligible number of persons who have opted for and have acquired citizenship via this procedure.

11. ECRI recommends that the authorities reduce the residence requirements provided for under the “facilitated” procedure to 20 years with a view to progressively bringing the law on citizenship in line with the standards set by the Convention on Nationality and ratifying this instrument.

12. ECRI recommends that the authorities abolish the system of voting by local residents as a procedure for obtaining naturalisation.

99. In its third report, ECRI urged the authorities to confer eligibility and voting rights to long-term resident non-nationals in local elections. It also recommended that adequate mechanisms be set up allowing non-nationals to be consulted and participate actively in the political decision making process at national and local levels. ECRI has been informed by the authorities that no measures have been taken in this respect. Although in May 2011, a parliamentary question was submitted to the Parliament on the issue of non-nationals’ right to vote in local elections, the Parliament has refused to take this issue any further.

100. ECRI reiterates its recommendation to the authorities of Liechtenstein to **confer eligibility and voting rights to long-term resident non-citizens in local elections** and to **set up adequate mechanisms allowing non-nationals to be consulted and to participate actively in the political decision making process at national and local levels**.

**Advisory Committee on the protection of minorities Fourth Opinion, 2014**

N/A

1. [**LUXEMBOURG**](http://cdiac.ess-dive.lbl.gov/trends/emis/lux.html)

**Commissioner for Human Rights press release following his visit, 2017**

By reducing the length of residency required for acquiring nationality, recent legislative amendments will further facilitate the integration of many people in Luxembourg.

**ECRI Report 2016**

60. With regard to the political involvement of persons with migration backgrounds, the proposal in the June 2015 referendum to give all residents voting rights was rejected (…). Subsequently, a new draft Nationality Act was tabled in March 2016. Its aim is to facilitate foreign residents’ access to Luxembourg nationality and it provides in particular for (i) making it easier for persons born in Luxembourg to take the country’s nationality, (ii) easing the conditions governing naturalisation – especially with regard to speaking Luxembourgish – and (iii) reintroducing for several groups of foreigners the right to opt for Luxembourg nationality.

1. [**MALTA**](http://cdiac.ess-dive.lbl.gov/trends/emis/mlt.html)

**Commissioner for Human Rights press release following his visit,** 10 November 2017

Concerned by the low participation of women in public life and their under-representation in decision-making positions in economic life, Commissioner Muižnieks encouraged the Maltese authorities to adopt a holistic approach based on gender equality.

**ECRI Report 2013**

8. ECRI further notes that, under Article 14(2)(a) and 14(2)(c) of the Citizenship Act, a Maltese citizen who has acquired citizenship by registration or naturalisation may be deprived of the same by order of the competent minister if, inter alia: the citizen has by his/her conduct or by speech demonstrated disloyalty or disaffection towards the Maltese President or the Government; or in the seven years following the acquisition of citizenship, the citizen has been sentenced in any country to a punishment depriving personal liberty for a term of no less than twelve months8 . ECRI notes that the above provisions may amount to **discrimination on grounds of citizenship**. Not only do they apply, as far as loss of citizenship is concerned, distinct and less favourable treatment to persons who have been naturalised Maltese or have been registered as Maltese citizens; they may also restrict the fundamental right of freedom of speech of this category of citizens (Article 10 of the ECHR), who may be disinclined to express their political views out of fear of the legal consequences.

9. ECRI recommends that the Maltese authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review ; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration – particularly where fundamental rights are concerned.

**Advisory Committee for the protection of minorities fourth opinion 2016**

N/A

1. **MONACO**

**Commissioner for Human Rights press release following his visit**, 20 January 2017

N/A

**Report 2009**

48. When giving thought to this, the Monegasque authorities might also consider including foreign residents in the life of the community through participation in local elections as well as ratifying the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level. At the very least, setting up a council of foreigners duly elected by the resident foreign population would enable foreigners to contribute to public debate on local issues. It would also provide local and national authorities with a representative and democratically appointed interlocutor for consultation on all appropriate issues. Advisory councils of foreigners exist in various European countries, regions and municipalities without calling into question the system of checks and balances. The Commissioner is convinced that such a structure would not in any way weaken the authority of the City of Monaco municipal council, let alone that of the National Council, which would remain, at local and national levels, the fully representative sovereign authorities of Monegasque citizens.

**ECRI Report 2016**

N/A

**CoE Parliamentary Assembly Opinion 250 (2004)**, **The Principality of Monaco’s application for membership of the Council of Europe**

7. With regard to the Franco-Monégasque Convention of 1930, the Assembly is obliged to note that certain provisions in the said convention stipulate that senior Monégasque government and civil service posts are reserved for French public servants on secondment, thereby depriving Monégasque nationals from gaining access to these posts. This runs **counter to the principle of non-discrimination** and it would seem necessary that the situation be brought into line with European standards.

15. (…) the Assembly recommends that the Committee of Ministers:

15.1. invite Monaco to become a member of the Council of Europe as soon as the Assembly and the Committee of Ministers have noted in their Joint Committee that the consultations between Monaco and France on the revision of the 1930 convention have opened the possibility for implementing, in the near future, the **principle of non-discrimination**, by allowing Monégasque citizens to be appointed to the senior Monégasque governmental and public posts that are currently reserved for French nationals”.

1. [**NETHERLANDS**](http://cdiac.ess-dive.lbl.gov/trends/emis/nth.html)

**ECtHR *Staatkundig Gereformeerde Partij v. the Netherlands*** 10 July 2012

Application inadmissible. The Supreme Court ruled against the applicant, a political party, for not allowing women members to run for elections.

76. **The issue in the present case is the applicant party’s position (…) that women should not be allowed to stand for elected office** in general representative bodies of the State on its own lists of candidates. It makes little difference whether or not the denial of a fundamental political right based solely on gender is stated explicitly in the applicant party’s bye-laws or in any other of the applicant party’s internal documents, given that it is publicly espoused and followed in practice.

77. The Supreme Court, in paragraphs 4.5.1 to 4.5.5 of its judgment, concluded from Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women and from Articles 2 and 25 of the International Covenant on Civil and Political Rights taken together that the SGP’s **position is unacceptable regardless of the deeply-held religious conviction on which it is based** (see paragraph 49 above). For its part, and having regard to the Preamble to the Convention and the case-law cited in paragraphs 70, 71 and 72 above, **the Court takes the view that in terms of the Convention the same conclusion flows naturally from Article 3 of Protocol No. 1 taken together with Article 14**.

**Commissioner for Human Rights Report following his visit, 2014**

N/A.

**ECRI Report 2013**

56. ECRI strongly recommends that the authorities in charge of fighting racism and racial discrimination maintain, strengthen and modernise the mandate of the National Consultation Platform on Minorities. ECRI further recommends that the authorities consult the National Consultation Platform on Minorities on cultural issues, policies and legislative acts which may affect groups of concern to ECRI.

196. ECRI strongly recommends that the authorities repeal the provisions of the Civic Examination Abroad Act introducing a reading examination and increasing the pass rate (…). It further recommends that the authorities ensure that both the fees and the material available to prepare for the examination are appropriate and do not hamper persons who are economically or socially disadvantaged.

197. ECRI further recommends that the Dutch authorities review the Civic Integration Abroad Act from the point of view of its conformity with the prohibition of discrimination on grounds of nationality, notably as concerns the system of exemptions.

200. ECRI recommends that the Dutch authorities abrogate the provisions in the Civic Integration Act according to which failure to pass the civic integration examination shall be a ground to impose a fine, or withdraw a temporary permit to stay.

202. ECRI recommends that the Dutch authorities supervise the organisation of integration courses in order to ensure that they cater for the needs of all persons who are required to pass the examination. It also recommends that the authorities ensure that the prices of the civic integration examination be maintained at reasonable levels.

**Advisory Committee on the protection of minorities Second Opinion 2013**

19. Despite efforts made on local level to improve the integration of Roma and Sinti communities, persons belonging to these communities continue to face discrimination in various fields. The lack of a specific national Roma policy, as well as the absence of an adequate consultative mechanism to promote their effective participation in decision making on issues of concern to them, reinforce their difficulties.

56. The Advisory Committee notes the concerns expressed by the representatives of the National Consultation Platform on Minorities13(Landelijk Overleg Minderheden, LOM) regarding the lack of appropriate dialogue with the government. It would appear that regular meetings are not organised although joint meetings should be organised three times a year. (…)The Advisory Committee refers to its established opinion that integration is a two-way process that also requires efforts from the majority population and that participatory structures need to be of a long term and institutionalised character in order to ensure continuity and to allow for the broader discussion of minority issues among all those concerned.

64. The Advisory Committee calls on the authorities to support the participatory structures facilitating dialogue with the representatives of ethnic minority groups and to ensure the sustainability and institutionalisation of such dialogue.

111. (…) The Advisory Committee recalls the importance of ensuring the effective participation of persons belonging to national minorities in decisions affecting them and consequently expects that the authorities will give this new body the necessary resources to fulfil its mission.

**Committee of Ministers resolution** CM/ResCMN(2014)5, 28 May 2014

The authorities are invite to (…)

- review integration policies so as to strengthen intercultural dialogue and mutual understanding among all persons living in the country; support the participatory structures facilitating dialogue with the representatives of ethnic minority groups;(…)

- improve dialogue at national and local levels with representatives of Roma and Sinti communities.(…)

- enhance efforts to facilitate the effective and timely participation of persons belonging to the Frisian minority in all decision-making, including in administrative reform in the province of Fryslân.

1. **NORWAY**

**Commissioner for Human Rights Report following his visit, 2015**

15. Article 12 of the CRPD guarantees the right to equal recognition before the law for persons with disabilities and, in particular, the right to enjoy legal capacity on an equal basis with others in all aspects of life. In this respect, an issue of concern for the Commissioner is the **limited development of supported decision-making alternatives** in Norway to help - based on individual consent - people with psycho-social and intellectual disabilities to exercise their legal capacity, in line with the aforementioned provision of the CRPD. While it is true that the new Guardianship Act was prepared with this aim in mind, it falls short of qualifying as a supported decision-making regime which gives primacy to a person’s will, as opposed to substitute decision-making. Under the new system, guardians continue to make decisions on behalf of people with disabilities even though they have a duty to listen to the views of the persons concerned, and a guardian can decide against the will of persons who have not even been deprived of their legal capacity if they are deemed not to understand the issues at hand (Article 33). It should also be noted that guardians do not have a specific duty to promote over time the decision-making capacity of the people put under their guardianship. Although there is a new emphasis on the respect for decision-making capacity in the training materials for guardians available on the guardianship portal, civil society representatives informed the Commissioner that this approach was not yet visible in practice.

16. The CRPD Committee has reaffirmed “that a person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in article 12.” It has called on States parties to “review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.”6 17. The UN treaty body has made it clear that obligations under Article 12 of the CRPD require the development of supported decision-making alternatives and - ultimately - the abolition of substitute decision-making regimes. In order for Norway to comply with those obligations, changes to the Guardianship Act alone will not be sufficient. It is nevertheless positive that the Guardianship Act has provisions on advance directives for representational agreements (Chapter 10) which would be particularly useful within a broader framework of supported decision-making based on full respect for legal capacity.

36. While the Commissioner commends Norway for ratifying the CRPD, he points out that the **implementation of the Convention in Norway falls short of some of its key objectives in promoting the self-determination, autonomy, legal capacity and effective equality of people with psycho-social and intellectual disabilities**. The best interest considerations and substituted decision-making continue to prevail over the CRPD approach highlighting the person’s autonomy, will and preferences. The Commissioner urges the government to adopt a more pro-active stance in implementing its obligations under the CRPD in close cooperation with people with disabilities and organisations representing them.

38. The Commissioner acknowledges that the Norwegian authorities have attempted to develop some elements of supported decision-making in the context of the new Guardianship Act and that the number of people put under guardianship with a loss of legal capacity is relatively small. However, he points out that **the new guardianship system continues to enable substituted decision-making and plenary guardianship and hinders the full development of supported decision-making alternatives** for those who simply want assistance in making decisions or communicating them to others. 39. In order to fully comply with the requirements of Article 12 of the CRPD, the Commissioner urges the Norwegian authorities to develop new systems for supported decision-making alternatives, based on individual consent.

75. The Commissioner **commends the inclusive approach** adopted by the government-appointed commission of independent experts examining the past assimilation policies and treatment of Romani people/Taters. The active participation of Romani people/Taters is essential for the success of the Commission’s work.

76. The Commissioner has serious concerns about the situation of the Roma community in Oslo, and stresses that the human rights of Roma should be fully respected without discrimination. It is necessary to develop new mechanisms for continuous contacts and cooperation between the Roma and the authorities to **ensure that any specific measures relating to Roma are planned and implemented with their active participation** from the start.

**ECRI Report 2014**

73. ECRI encourages the authorities to continue promoting equality for and combat discrimination against “national minorities” and indigenous people. Moreover, the LDO [Equality Ombudsman] should actively involve these groups’ representatives in the efforts s/he in making to achieve these goals.

**Advisory Committee on the protection of minorities Fourth Opinion** 13 October 2016

28. It also encourages central and local authorities to ensure that knowledge about national minorities and competences to deal with cultural diversity are improved in the public sector, for instance through training. Care should be taken during this process to ensure effective participation of persons belonging to national minorities.

90. The Advisory Committee notes that the 2009 Action Plan for Equality and Prevention of Ethnic Discrimination contained measures addressing the limited participation of persons belonging to ethnic minorities in public life, in central and local elected bodies, as well as in public administration and the police. Persons belonging to national minorities, including women, were not specifically targeted although potentially covered on ethnic grounds. With the exception of the Sami who are politically organised, the level of participation of minorities in public life still seems to remain low. However, no precise data is available.

91. The Advisory Committee reiterates its view, as expressed in its second Thematic Commentary in 200879 that **political participation of minority representatives in relevant decision-making processes is crucial for their interests to be heard**. It also highlights that **recruitment of persons belonging to national and ethnic minorities into public administration, law enforcement bodies, and the judiciary should be promoted** as a means to respond more effectively to their needs, and to attest to the government openness towards diversity in society. An increased presence of persons belonging to national minorities in police ranks may have a positive impact on the willingness of persons belonging to national minorities to address law enforcement officers when they require assistance (see also Article 6).

92. The Advisory Committee reiterates its call on the authorities to **increase opportunities and enhance mechanisms for persons belonging to national minorities to participate in decision-making processes, in particular when measures targeting them are planned and implemented**. Similarly, **their recruitment to the administration and the police should be promoted** in order to send a clear message that diversity as an integral part of the society is valued across Norway.

1. [**Portugal**](http://cdiac.ess-dive.lbl.gov/trends/emis/por.html)

**Commissioner for Human Rights press release following his visit,** 8 March 2017

“It is heartening to see the positive changes brought about by the **participation of Roma mediators in local government and the involvement of community groups in decision making** to tackle issues such as discrimination, educational attainment and job opportunities. This pragmatic and participatory approach shows that cooperation between Roma and the majority population at the local level, fostered by strong political leadership, is a worthwhile investment that needs to be supported and sustained” said the Commissioner, after visiting Torres Vedras. This municipality is one of seven in Portugal implementing a **mediator programme aimed at developing better relations between Roma, local authorities and the majority population and at supporting the empowerment of Roma**. “The programme is a key tool to help overcome entrenched prejudices and stereotypes and foster better community relations. It should be continued and extended to other municipalities.” The Commissioner welcomes the **efforts made to collect data on the situation of Roma**. “Better data will inform the upcoming review of the National Strategy for the Inclusion of Roma Communities and allow better targeted and more effective actions.” The improved information base, combined with the government’s plans to strengthen the legislative and institutional framework for combatting discrimination, represent a good foundation for further steps towards Roma equality.

**ECRI Report 2013**

6. ECRI recalls its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. This states that the law should provide for the possibility of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons on grounds such as “race”, colour, language, religion, nationality or national or ethnic origin, or to facilitate their full participation in all fields of life.

7. Consequently, ECRI considers that the authorities should review their interpretation of the concept of positive measures and adopt a more consistent approach, particularly since there is a relatively large population of Roma in Portugal who are extremely disadvantaged (…) **In some cases, the application of positive measures might be the only way to improve the situation of some vulnerable groups**. In ECRI’s view such measures should not be too onerous as they should be discontinued once the intended objectives have been achieved.

8. ECRI strongly recommends that the authorities **adopt, where necessary, special measures** **to prevent or compensate for disadvantages suffered by persons on grounds such as “race”, colour, language, religion, nationality or national or ethnic origin, or** **to facilitate their full participation in all fields of life**.

83. ECRI notes that a National Strategy for the Integration of Roma Communities has been drafted but not yet formally approved. It aims to run until 2020 and consists of 39 priority actions with stated objectives and deadlines. ECRI is **pleased to note that the Strategy is based on the principle that integration is a two-way process and that it involves the participation of local authorities, civil society and Roma people in all stages of design, monitoring and evaluation**.

85. The Strategy recognises that **the lack of data results in ignorance** as to the actual number, geographical location and lifestyles of Portuguese Roma communities, data which are **fundamental in devising appropriate measures for intervention** in areas such as housing, education, health and employment. Therefore, a national survey of the socio-economic circumstances of Roma communities is the second priority, which cuts across the entire Strategy and which should be completed by 2014. ECRI welcomes the acknowledgement by the authorities of the need to gather information in order to design and implement policies adapted to the real circumstances of Roma communities. It hopes that Portugal’s strong position against the collection of equality data, as mentioned in several parts of this report, will not hamper these efforts.

117. (…) the **Municipal Mediators Pilot Project** was launched in April 2009. This involved the appointment of Roma socio-cultural mediators, on a full-time professional basis, in 10 Portuguese town halls with the aim, inter alia, of improving Roma communities’ access to services such as town hall facilities and hospitals and to promote integration and communication between the Roma community and others.

119. (…) ECRI is concerned to learn that a number of municipalities are not renewing the contracts of Roma socio-cultural mediators after the initial three-year period, due to financial constraints. In view of the **universally acclaimed good work that is done by Roma mediators** in bridging the communication gap between Roma communities and local and other authorities, ECRI deeply regrets this situation and is concerned that it will inevitably lead to a deterioration in these relations.

120. ECRI urges the authorities to place a high priority on continuing and reinforcing the employment of Roma socio-cultural mediators and ensure that there are sufficient numbers of such mediators in all municipalities where there is a high concentration of Roma.

147. Regarding **electoral rights**, based on reciprocity, nationals of the following States have voting rights at local level: the EU, Brazil, Cape Verde, Norway, Uruguay, Venezuela, Chile, Argentina and Iceland. Nationals of EU countries, Brazil and Cape Verde can also stand as candidates in local elections. ECRI notes, therefore, that **many immigrants - nationals of countries having no reciprocal agreement with Portugal - still cannot vote or stand for election at local leve**l. According to the authorities, since, as stated above, most immigrants eventually obtain Portuguese nationality, they also gain full electoral rights.

148. In ECRI’s view, a country which has large numbers of foreign residents who participate actively in the life and prosperity of the local community should allow them to contribute to the local decision-making process on matters which affect them. It invites the authorities to consider a more flexible approach in this matter to improve the political integration of non-citizens at local level. The European Convention on the Participation of Foreigners in Public Life at Local Level provides, in Article 6, for electoral rights to be granted to foreigners after lawful and habitual residence for five years preceding the elections. ECRI has recommended that Portugal ratify this instrument.

149. ECRI **recommends that the authorities amend the law to allow foreigners who have been lawful and habitual residents in Portugal for five years to vote and stand as candidates in local authorities elections**.

**ECRI Conclusions on the implementation of the report 2016**

ECRI welcomes the steps taken to enable the collection of data by the Observatory of Roma Communities and the Migration Observatory as well as the studies which have been carried out by these institutions on the situation of Roma and immigrants. However, ECRI considers that a monitoring system enabling the collection of data which may indicate whether particular groups are disadvantaged or discriminated against on the grounds of concern to ECRI has not been set up. Moreover, the Roma study mentioned does not give a complete picture of the situation of the Roma population in the country since only half the municipalities were involved. Therefore, ECRI considers that its recommendation has been partially implemented.

**Advisory Committee on the protection of minorities Third Opinion 2014**

82. The Advisory Committee notes that Advisory Group for the Integration of Roma Communities (CONCIG), set up in June 2014, includes four representatives of the Roma community. One Roma representative is also a member of the Commission for Equality and against Racial Discrimination. 83. The Advisory Committee is pleased to note that the Portuguese authorities have increased the number of Roma representatives in CONCIG from the planned number of two to four. However, according to the interlocutors of the Advisory Committee, it seems that **the effective participation of these representatives in the work of the Advisory Group is hampered by practical shortcomings**. The Advisory Committee was informed, for example, that representatives have difficulties travelling to Lisbon to the meetings, due to financial constraints.

84. At present these is no person belonging to the Roma community in the office of the High Commissioner for Immigration and Intercultural Dialogue (ACIDI), including in the team dealing with issues related to this community. The Advisory Committee was moreover informed that Roma representatives were not adequately consulted in the drafting process of the National Roma Communities Integration Strategy.

Recommendation

85. The authorities should **further strengthen the existing consultative mechanisms between the authorities and the Roma in order to ensure effective participation of the latter in decision-making on issues of concern to them**.

**Committee of Ministers Resolution CM/ResCMN(2016)7**, 11 May 2016

The consultation mechanisms available to Roma representatives have unclear competencies and powers. The National Roma Communities Integration Strategy was drafted without the appropriate participation of Roma representatives.

(…) Other recommendations: (…) continue to strengthen the mechanism of consultation of persons belonging to the Roma community, in particular in areas affecting them.

1. **SAN MARINO**

**Commissioner for Human Rights Report following his visit, 2015**

38. The Commissioner observes that the **representation of women in politics remains very weak**, despite some legislative measures to bolster it (for example a law from 2007 which requires that parties cannot present lists with more than two thirds of the candidates of the same gender): at the time of his visit only eleven out of the sixty Members of the Grand and General Council and one of the nine Secretaries of State were women.

43. The Commissioner (…) considers that San Marino should take resolute measures to (…) **guarantee a much better participation of women in political life**, taking account of the relevant Council of Europe standards.

47. In March 2015, San Marino adopted a Framework Law for assistance to, social inclusion and rights of persons with disabilities, setting as an explicit goal their full inclusion in education, the labour market and society. This law contains many provisions pertaining, inter alia, to autonomy and inclusion, accessibility, awareness-raising, as well as participation in political, public and cultural life.

58. While the adoption of the legislation on support administrators constitutes a more flexible alternative to incapacitation procedures, the Commissioner is of the opinion that Sammarinese legislation does not yet fully reflect the paradigm shift operated by the CRPD with respect to legal capacity. He **calls on the authorities to abolish full incapacitation and plenary guardianship as a priority, and gradually develop a flexible system of genuine supported decision-making based on individual consent**. Such a system should rest on safeguards to ensure that the support provided respects the preferences and will of the persons receiving it, is free of conflict of interest and is subject to judicial review. The aim should be the eventual phasing out of substitute decision-making. However, while substitution remains, the Sammarinese authorities are urged to ensure that persons placed under guardianship/trusteeship have effective access to judicial review proceedings to challenge such placement or the way in which guardianship/trusteeship is administered, and that they enjoy equal standing in courts to effectively challenge any interference with their right to legal capacity.

59. As regards the right to vote, the Commissioner recalls the relevant Recommendation of the Council of Europe Committee of Ministers and urges the Sammarinese authorities to **take all the necessary legislative measures to ensure that persons with disabilities, including with intellectual or psychosocial disabilities, are not deprived of their right to vote and to be elected** owing to their impairment under any circumstances.

**ECRI Report 2013**

11. In relation to the Convention on the Participation of Foreigners in Public Life at Local Level, the authorities have stated that the domestic law is not in conformity with some of the treaty’s core provisions related to the creation of consultative bodies to represent foreign residents at local level and the right of foreign residents to vote in local authority elections. **The right of long-term residents to take part in local elections** was discussed in connection with the law amending the legislation on town councils. ECRI (…) feels that the principle enshrined in the Convention could usefully strengthen relations between the authorities and the foreign population residing in San Marino, which represents 18% of the total population.

30. ECRI reiterates its recommendation that the San Marinese authorities review the provisions that regulate the **acquisition of citizenship through naturalisation**. In particular, it recommends that they ensure that its acquisition is regulated by ordinary law, which should provide that applications can be lodged at any point in time. In addition, it recommends that they further **reduce the length of residence necessary** for residents to apply for naturalisation, in line with the standards of the European Convention on Nationality.

106. ECRI reiterates its recommendation that the San Marinese authorities grant eligibility and voting rights in local elections to non-nationals who reside in San Marino, in accordance with the principles enshrined in the Convention on the Participation of Foreigners in Public Life at Local Level.

**Advisory Committee on the protection of minorities Fourth Opinion 2015**

N/A

1. [**SPAIN**](http://cdiac.ess-dive.lbl.gov/trends/emis/spa.html)

**ECtHR Judgments** *Herri Batasuna and Batasuna v. Spain*, *Etxeberría and Others v. Spain* and *Herritarren Zerrenda v. Spain*, *Herri Batasuna and Batasuna v. Spain*, 30 June 2009; *Eusko Abertzale Ekintza – Acción Nacionalista Vasca (EAE-ANV) v. Spain*, 7 December 2010

**Cases concerning the dissolution of political parties and electoral groupings barred from standing in elections**. No violations of Article 3 of Protocol No. 1 (right to free elections)

Suspension of the activities of the parties in question declared illegal and dissolved under Law no. 6/2002. *Etxeberría and Others v. Spain*: electoral groupings having pursued the activities of political parties that had been declared illegal and dissolved debarred from standing in municipal, regional or autonomous community elections. *Herritarren Zerrenda v. Spain*: Herritarren Zerrenda barred from standing in European parliamentary elections of June 2004 on grounds that his aim was to pursue the activities of three parties that had been declared illegal and dissolved.

*Eusko Abertzale Ekintza – Acción Nacionalista Vasca (EAE-ANV) v.* Spain: After Batasuna and Herri Batasuna (among others) were declared illegal in 2003, certain candidatures in municipal elections and elections to the provincial councils in the Basque country and to the Navarra parliament were revoked.

**Commissioner for Human Rights Report**

84. The Commissioner learned during discussions with persons with disabilities that courts often automatically deprive persons with disabilities placed under guardianship of their right to vote, instead of applying a case-by-case approach. He was informed that, as a consequence, an estimated 80 000 persons with disabilities in Spain cannot vote. In this regard, the Commissioner draws the authorities’ attention to the Council of Europe Committee of Ministers Recommendation CM/Rec(2011)14 on the participation of persons with disabilities in political and public life, according to which all persons with disabilities have the right to vote and stand for election at all levels on the same basis as other citizens, and should not be deprived of this right by any measure based on their disability, cognitive functioning or perceived capacity.

88. According to information provided to the Commissioner by the authorities, the **new bill** **replaces the current regime of substituted decision-making with supported decision-making**. The Commissioner considers such a change of approach as pivotal for enhancing the human rights of persons with intellectual and psycho-social disabilities. The use of guardianship will reportedly be limited to exceptional cases. Reportedly the bill will also introduce new tools for persons with intellectual and psycho-social disabilities to express their will (…).

99. (…) the Commissioner stresses the **need to end the automatic deprivation of persons with disabilities placed under guardianship of their right to vote and to stand for election**. The Commissioner recalls the Council of Europe Committee of Ministers Recommendation CM/Rec(2011)14 on the participation of persons with disabilities in political and public life, according to which no one can be deprived of his or her right to vote and stand for election at all levels on the ground of any form of disability.

**ECRI Report 2011**

125. (…) ECRI notes with satisfaction the establishment in July 2005 of the **National Roma Council**. The Council (…) is made up of 40 members: half are Government representatives from different ministries, and the other half represent Roma NGOs. Its aim to consult and advise the Government on general policies that affect Roma and on specific policies aimed at promoting effective equality and non-discrimination of Roma. (…) The Roma have reported that the Council is politically important for them as it represents an opportunity for communication between Roma, Roma organisations and the public authorities and it **guarantees the involvement of Roma in the preparation of policies that will affect them**.

126. (…) There has been criticism, for example, that **Roma participation in the National Roma Council is only of an advisory nature, without official decision-making power or control over budgets**.

127. ECRI encourages the authorities to continue improving the Plan for Roma Development and the National Roma Council, **giving Roma the opportunity to hold leading positions with decision-making powers**.

158. ECRI recalls that **granting citizenship is a way of furthering the integration of non-citizens**. Reducing the number of years of legal residence required to acquire Spanish nationality **would permit more immigrants to participate in the political life of the community** (…). It **would also indirectly stimulate a better representation of members of ethnic minority groups in the public sector, notably the police, since public service employment requires Spanish nationality**. ECRI, therefore, invites the Spanish authorities to consider revising the current nationality rules.

159. ECRI notes that “Measure 44” of the Human Rights Plan, stating that “the Elections Act will give non-European Community alien residents the right to vote in municipal elections”, has not yet been implemented. Currently, other than through reciprocity agreements with some countries (Chile, Colombia, Ecuador, Norway, New Zealand, Paraguay and Peru), non-citizens cannot vote. These agreements do not confer the right to stand for election.

160. ECRI invites the Spanish authorities to be mindful that many Spanish towns have high proportions of foreign residents who participate actively in the life and prosperity of the local community and **should be able to contribute to the local decision-making process on matters which affect them**. Civil society organisations have called for greater flexibility in his area to **improve the political integration of non-citizens at local level**. As observed already, the European Convention on the Participation of Foreigners in Public Life at Local Level provides guidance on this matter.

161. **ECRI recommends that the authorities pursue their stated goal of enabling non-citizens to vote in local elections, and consider also extending this to standing for local elections**.

**Advisory Committee on the protection of minorities Fourth Opinion, 3 December 2014**

9. **The State Council for the Roma People continues to operate as a consultative body to foster the participation of Roma civil society in policy development. However, weaknesses previously identified have not been resolved, limiting its effectiveness and its capacity to influence policy-making**.

93. (…) Roma are **largely under-represented in political life**. According to the information available to the Advisory Committee, there are no Roma members of the national parliament or of the parliaments of the various Autonomous Communities. Furthermore, despite the inclusion of Roma candidates on some electoral tickets, very few Roma are elected at local level, even in regions where Roma reside in substantial numbers such as Andalusia.

95. The Advisory Committee notes with interest that the State Council for the Roma People continues to function as an advisory body composed of equal numbers of Roma representatives and of representatives of the State administration, having as its main purpose to foster the participation of Roma civil society in policy development and in the promotion of equal opportunities for and equal treatment of Roma. (…) However, it regrets that the Council and its working groups rarely meet,56 making opportunities for meaningful dialogue scarce, and that consultations on key policy documents such as the Operational Plan for the Social Inclusion of Roma People 2014-2016 were conducted essentially in writing, on the basis of proposals drawn up by the government. The Advisory Committee notes that these weaknesses in the functioning of the Council and its working groups limit their effectiveness as consultation mechanisms and in particular limit their capacity to influence policy-making.

98. In addition to promoting the participation of Roma in appointed bodies, the Advisory Committee again calls on the authorities **actively to promote the effective participation of Roma in elected bodies at all levels**, for example by promoting the reflection of the diversity of society in the lists of candidates of political parties.

99. The Advisory Committee invites the authorities to continue supporting the work of the State Council for the Roma People and to strengthen this support as necessary in order to increase the effectiveness of this body. In particular, the authorities should ensure that the Council and its working groups meet regularly and that they are regularly and effectively consulted on all matters of concern to the Roma. At the same time, the authorities should ensure that the diversity of the Roma movement in Spain is fully reflected in the Council and that communication is maintained with organisations that are not part of the Council.

100. The Advisory Committee recommends that the authorities promote wherever appropriate the establishment of **effective consultative bodies between the authorities at local and regional levels and the Roma, in order to ensure that Roma are able to participate meaningfully in decision-making on issues of concern to them at all relevant levels**.

**Committee of Ministers Resolution CM/ResCMN(2016)10, 6 July 2016**

Recommendation: continue supporting and take measures to increase the effectiveness of the State Council for the Roma People, engage in meaningful dialogue and promote wherever appropriate the establishment of effective consultative bodies between the authorities at local and regional levels and the Roma.

1. [**SWEDEN**](http://cdiac.ess-dive.lbl.gov/trends/emis/swe.html)

**Commissioner for Human Rights press release following visit**, 6 October 2017

N/A

**ECRI Report 2012**

13. (…) ECRI regrets that the **idea of positive action** (by which it means temporary measures to prevent or compensate for disadvantages suffered by certain groups or ensure that they participate fully in the various fields of life) is not widely accepted in Sweden, which slows down improvement in the situation of vulnerable groups.

14. ECRI recommends that the Swedish authorities amend the Instrument of Government to enshrine the possibility of taking temporary special measures with respect to certain groups to guarantee them enjoyment and exercise of their human rights and fundamental freedoms in conditions of equality.

110. In its third report, ECRI recommended that the Swedish authorities pursue and intensify steps to improve the situation of Roma in Sweden and combat and prevent racism and racial discrimination against them. It emphasised the **need to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms**, based on the idea of partnership on an equal footing.

117. In its third report, ECRI recommended that the Swedish authorities continue to work to solve the issues around Sami land rights and that they **enhance the participation and influence of the Sami in decision-making in matters concerning them** (…).

**Advisory Committee for the protection of minorities Fourth Opinion 22 June 2017**

9. The possibilities for the Sami, and in particular the Sami Parliament, to participate effectively in decision-making processes, including on spatial planning, have not improved significantly during the reporting period. The government maintains an open approach, has held several ad-hoc consultations at ministerial level and plans to formalise these in the future. (…). **The competences of the Sami Parliament, however, remain as limited as before**.

35. The Advisory Committee is pleased to note that in a number of municipalities, representatives of national minorities have the possibility to participate in decision making on the allocation of grants, e.g. the Finnish minority in Stockholm. This is a **good practice** worthy of being applied on a larger scale.

36. The Advisory Committee encourages the authorities to continue investing in the protection and promotion of minority culture and to **strengthen possibilities for minorities to participate in decision making about the allocation of funds**.

101. The Advisory Committee notes that in the state report and during the visit, reference was made to a multitude of consultative councils, reference groups, hearings and other events aimed at involving persons belonging to national minorities in decision making. All municipalities whose representatives the Advisory Committee met during the visit have one or several consultation groups with minority representatives which meet up to four times a year. It also welcomes the government’s intention to establish a more institutionalised dialogue with the Sami. However, it observes that **national minority representatives are; to a large extent; dissatisfied with the extent of influence they have on matters that concern them**. While representatives of some national minorities, in particular the Roma, are mostly concerned about the inclusiveness of consultative structures, others feel left out of important decisions (…).

105. The Advisory Committee reiterates its call to the authorities to **clarify and provide more explicit opportunities and mechanisms for persons belonging to the Sami minority, to participate in a meaningful and effective way in decision-making processes at municipal, county and national levels** concerning land use and other matters of importance to them.

1. **SWITZERLAND**

**Commissioner for Human Rights Report following his visit, 2017** (in French)

67. **L’initiative populaire fédérale** est un droit civique garanti par la Constitution fédérale, qui ouvre la possibilité de proposer et de soumettre au scrutin du peuple et des cantons une modification de la Constitution fédérale à la condition d’obtenir sous 18 mois 100 000 signatures de soutien de citoyens suisses.

68. Le prédécesseur du Commissaire a souligné en 2012 que certaines initiatives populaires, comme celle interdisant la construction de minarets ou celle relative à l'expulsion automatique des non-ressortissants déclarés coupables de certaines infractions pénales, suscitaient de sérieux problèmes d'incompatibilité avec les normes relatives aux droits de l'homme, en particulier la CEDH.

69. Lors de sa visite, le Commissaire a pris connaissance d’initiatives populaires votées depuis 2012 ou en cours d’examen ayant un lien avec les droits de l’homme. Il a notamment été informé du fait que l’initiative populaire « Pour le renvoi effectif des étrangers criminels (initiative de mise en œuvre) », problématique du point de vue du respect de l’article 8 de la CEDH (droit à la vie privée et familiale), a été rejetée, ce dont il se réjouit.

70. En revanche, le Commissaire s’inquiète de l’initiative populaire "Le droit suisse au lieu de juges étrangers (initiative pour l’autodétermination)", lancée par le parti politique UDC, car elle présente à ses yeux de sérieux problèmes en matière de droits de l’homme. Cette initiative ayant obtenu plus des 100 000 signatures requises a été déposée en août 2016. Elle vise à insérer dans la Constitution fédérale une disposition en vertu de laquelle la Constitution fédérale, y compris les dispositions adoptées par voie d’initiative populaire, prime sur le droit international. Dès qu'une contradiction apparaîtrait entre une disposition constitutionnelle et un traité international, la Suisse serait obligée de renégocier le traité et, au besoin, de le dénoncer.

73. Par ailleurs, le Commissaire rappelle que **le** **contexte dans lequel certaines campagnes électorales autour d’une initiative populaire se sont passées a posé problème d’un point de vue du respect des droits de l’homme**. Ainsi, l’ECRI a souligné dans son dernier rapport « les effets extrêmement néfastes des campagnes précédant certaines des votations », en raison notamment d’utilisation d’images et de propos hautement intolérants.

74. Comme souligné par plusieurs organes internationaux de droits de l’homme, il convient donc de **trouver un système de contrôle et d’équilibre garantissant la prééminence de l’état de droit et la protection des droits de l’homme dans le cadre des initiatives populaires fédérales**. A l’heure actuelle, seules les initiatives contraires au droit impératif international peuvent être déclarées invalides par le parlement suisse. Cela fait plusieurs années que les autorités suisses se penchent sur cette question, conscientes des problèmes soulevés en cas d’initiative populaire contraire aux droits de l’homme qui n’entre pas dans la catégorie très limitée du droit impératif international. Cependant, à ce jour toutes les propositions consistant à mettre en place un mécanisme de contrôle de la compatibilité des initiatives populaires avec les droits de l’homme ont été rejetées ou abandonnées.

75. Le Commissaire considère que **l’initiative populaire fédérale permettant de modifier la Constitution suisse par voie de démocratie directe est un outil de grande valeur qui témoigne de la longue et solide tradition démocratique du pays. Il souligne toutefois que les autorités suisses ont l’obligation de garantir la compatibilité des dispositions constitutionnelles introduites par initiative populaire avec les normes européennes et internationales relatives aux droits de l'homme qui engagent la Suisse**.

76. Le Commissaire regrette que la réforme du régime des initiatives populaires visant à introduire un mécanisme permettant d’éviter les conflits avec le droit international des droits de l’homme a été abandonnée en cours de route. Il exhorte les autorités suisses à se remettre à l’ouvrage pour **trouver une solution qui soit à la fois conforme au droit international des droits de l’homme et compatible avec le système de démocratie directe suisse**. Le Commissaire recommande donc vivement aux autorités suisses de **mettre en place un mécanisme permettant de vérifier la compatibilité d’initiatives populaires avec les traités internationaux des droits de l’homme**, y compris la CEDH.

77. Concernant l’initiative populaire "Le droit suisse au lieu de juges étrangers (initiative pour l’autodétermination)", le Commissaire espère vivement que sera pleinement prise en considération, lors de la votation, l’importance pour la protection des droits de l’homme en Suisse de respecter et de maintenir les obligations internationales et européennes de la Suisse en la matière.

**Reply from the Government**

Le droit de l‘initiative populaire est l‘un des piliers de notre démocratie et, dans la forme prévue par notre Constitution, une particularité suisse. II permet au peuple suisse de participer activement au débat public et de le faire avancer. La Suisse respecte, et respectera également à l‘avenir, ses obligations internationales relatives aux droits de l‘homme. Comme par le passé, elle abordera les éventuels conflits entre une norme constitutionnelle et ses obligations internationales de manière pragmatique dans le respect de sa volonté populaire et de ses obligations internationales.

**ECRI Report 2014**

42. For the first time, the 2008 Federal Law on Foreign Nationals laid down the broad outlines of an integration policy. In order to achieve the objectives of integrating foreigners and protecting them against discrimination, **the authorities must create conditions conducive to equality of opportunity and to foreigners’ participation in public life** (Article 53.1 and 2). The law covers all foreigners lawfully resident long-term (Article 4.2), including refugees and those admitted on a temporary basis. It does not cover asylum-seekers, naturalised persons and cross-border workers.

45. In March 2013, the government put forward a draft amendment to the Federal Law on Foreigners and Integration. It is based on the principle of “encouragement and obligation”, i.e. encouraging integration and placing an obligation on foreigners to integrate. Only “integrated” foreigners will be entitled to a permanent residence permit (Article 34.2). (…) The draft revision of the Federal Law on Nationality provides that a permanent residence permit and successful integration will also be imperative for **obtaining Swiss nationality**, which the authorities regard as the final stage in the integration process.

**Advisory Committee for the protection of minorities Third Opinion, 5 March 2013**

21. Even if the Law on Languages (LLC) provides for the representation threshold of the linguistic communities in the federal administration, it appears that persons belonging to the Romansh speaking minority are still under-represented in managerial posts.

22. There is no effective consultative mechanism to ensure that the concerns of the Travellers at the inter-cantonal level are brought to the attention of the various local authorities that deal with issues of concern to this minority.

65. Even though Switzerland is characterized by a system of direct democracy which the government considers as essential for open public debates on issues of public concern, the Advisory Committee considers that **the popular initiative practice might in certain circumstances be problematic with regard to its compatibility with human rights**. The Advisory Committee welcomes the fact that the authorities demonstrated a clear determination to tackle these challenges of **balancing the freedom of expression and effective citizen participation in public affairs with the protection of fundamental rights of everyone in the territory of Switzerland**. The Advisory Committee acknowledges the importance of open political debate on questions of public interest, but recalls the responsibility incumbent on the authorities, at all levels, to react promptly to any manifestation of intolerance and to condemn it publicly without delay.

124. The Advisory Committee welcomes the authorities’ recognition of the Travellers’ umbrella organisation Radgenossenschaft der Landstrasse and the Foundation as mechanism for consulting the Travellers and the effective co-operation among the various stakeholders. It also notes with satisfaction that since its previous Opinion several cantons have set up joint working groups of civil servants and Travellers mandated to discuss the problems of stopping places and education for their children. Furthermore, it welcomes the facilities provided under the Federal Law on the Promotion of Culture (LEC) for reinforcing the Foundation’s powers, and hopes that the authorities will quickly take the necessary decisions for putting these new powers into practice, so that sustainable responses can finally be found to meeting the Traveller’s needs, notably in terms of stopping places, (cf. also the comments on Article 5 above).

125. However, the Advisory Committee regrets that ten years after the publication of the Foundation’s first report on the situation of Travellers, **no consultation mechanism exists at the inter-cantonal level and only few of them have been put in place at cantonal level**. It notes with concern that this persistent lack of political will at the inter-cantonal level prevents any appropriate consideration of the specific needs of this community, and has undoubtedly delayed the search for solutions to the serious problem of insufficient numbers of transit or stopping sites.

126. The Advisory Committee invites the authorities to consider all the possibilities offered by the Federal Law on the Promotion of Culture (LEC) in order to broaden the competences and consolidate the financial structure of the Foundation. Moreover, **more specific measures are needed to establish consultation mechanisms for Travellers at the inter-cantonal level and in all cantons**.

**Committee of Ministers Resolution** [CM/ResCMN(2014)6](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResCMN(2014)6) 28 May 2014

There is no effective consultative mechanism at inter-cantonal level and only limited consultation of Travellers exists at cantonal level to ensure that the concerns of the Travellers are brought to the attention of the various local administrations that deal with issues of concern to them. (…) Mechanisms for effective consultations at inter-cantonal level and in all cantons should be created and implemented.

1. **TURKEY**

**ECtHR**

***Party for a Democratic Society (DTP) and Others v. Turkey*** applications Nos 3840/10, 3870/10, 3878/10

Judgment 12 January 2016 [Section II]

Violation of Article 3 of Protocol No. 1: Even supposing that the measure in question pursued one or more legitimate aims, namely the protection of public order and the rights and freedoms of others, the Court considered that it had not been proportionate. Under Article 84 § 5 of the Constitution, only the seat of a member of parliament whose words and deeds had led to the dissolution of his or her party was to be forfeited. Yet the forfeiture of the applicants’ parliamentary seats had been the consequence of the dissolution of the political party of which they were members and occurred regardless of their personal political activities.

The applicants’ speeches had not been such as to justify the dissolution measure. Their right to freedom of expression was protected in so far as their statements could not be interpreted as expressing any form of direct or indirect support for the acts committed by Abdullah Öcalan or by the PKK, or any form of approval for them. In their capacity as elected representatives of the people, the two applicants represented their electorates, drew attention to the latter’s preoccupations and defended their interests.

The Court was struck by the extreme harshness of the measure in question: **the DTP had been immediately and permanently dissolved, and the applicants, who were members of parliament, had been prohibited from engaging in their political activities and the functions related to their mandates**.

In view of all the above considerations, the penalty imposed on the applicants by the Constitutional Court could not be regarded as proportionate to any legitimate aim. It followed that **the measure in question was incompatible with the very substance of the applicants’ right under Article 3 of Protocol No. 1 to be elected and to sit in parliament, and infringed the sovereign power of the electorate who had elected them as members of parliament**.

***Dicle and Sadak v. Turkey*** application No. 48621/07

Judgment 16 June 2015 [Section II]

Refusal of candidatures for parliamentary election on grounds of the candidates’ criminal record, after their trial had been reopened: *violation.* the manner in which the impugned national legislation in force at the material time had been applied in the present case had restricted the applicants’ rights to stand for election under Article 3 of Protocol No. 1 to the point of impairing those rights in their very substance.

**Oran v. Turkey** applications Nos. 28881/07 and 37920/07

Judgment 15 April 2014 [Section II]

**No violation of Article 3 of Protocol No. 1** (right to free elections) taken alone and in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights (by a majority)

The Court therefore took the view that **the restrictions imposed on citizens living abroad had been designed to ensure the political stability** of the country and of the government that would be in charge following the elections. Taking into consideration the **wide margin of appreciation left to the State**, the Court considered that there had been no infringement of the very essence of the right to the free expression of the opinion of the people or of the applicant’s right to stand for election, for the purposes of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14.

***Söyler v. Turkey***application No. 29411/07

Judgment 17.9.2013 [Section II]

In so far as the restrictions placed on voting rights in Turkey were applicable to convicted persons who did not even serve a prison term, they were harsher and more far-reaching than those applicable in the United Kingdom, Austria and Italy, which had been the subject matter of examination by the Court in its judgments in the cases of *Hirst (no. 2)*, *Frodl* and *Scoppola (no. 3)*. **The automatic and indiscriminate application of this harsh measure on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation**.

**Yumak and Sadak v. Turakey** application No. 10226/03

Judgment 8 July 2008 [GC]

The Court reiterates the five principles underlying Europe’s electoral heritage: universal, equal, free, secret and direct suffrage.

**Commissioner for Human Rights third party intervention before the ECtHR in cases concerning the freedom of expression and right to liberty and security of parliamentarians**, 10 November 2017

10. In addition, the Commissioner notes the elevated level of protection of speech the Court grants to elected representatives due to the important role they play in contributing to public debate on the most controversial issues of a political nature and representing the people who vote for them. In its relevant judgments the Court accordingly concluded that interferences with the freedom of expression of an opposition member of parliament call for the closest scrutiny, which also protects them from politically motivated criminal proceedings and from pressure or abuse on the part of the majority.

12. The Commissioner observes that the lifting of the immunities which resulted in the prosecution and detention of opposition MPs had a **serious negative impact not only on their freedom of expression and political activities, but also on public debate in general**. Most notably, as observed by the Venice Commission, the parliamentary debate and procedure which led to the adoption in April 2017 of constitutional amendments introducing profound changes in Turkey's political system took place in a context where several MPs from the second largest opposition party were in jail and did not provide a genuine opportunity for open discussions with all the political forces present in parliament.

22. It is against this background that the Commissioner observes the Constitutional Court’s delay -- of almost one year at the time of this writing -- in examining the individual applications lodged by the MPs in the cases at stake. This delay sits ill with the urgency of the rights at stake, the gravity of the allegations, and the Constitutional Court’s own previous decision holding that the lengthy pre-trial detention of an opposition MP constituted a **violation of his right to liberty as well as the voters’ will under the right to free elections**.

23. (…) **As a result of their detention and prosecution, the opposition MPs were prevented from carrying out their parliamentary mandate and from effectively representing those who voted for them**.

**Commissioner for Human Rights Memorandum on freedom of expression and media freedom in Turkey,** 15 February 2017

61. In the current climate, the Commissioner considers that the lifting of the immunities of MPs and their subsequent arrest and detention not only **disenfranchised millions of voters**, but sent an extremely dangerous and chilling message to the entire Turkish population, and significantly **reduced the scope of democratic debate**.

**Commissioner for Human Rights Report following his visit, 2013**

199. In the Commissioner’s view, an overarching problem for the development of the national human rights framework is the insufficient involvement of Turkish civil society organisations, and in particular of human rights NGOs, which appears to be connected with an administrative culture which does not give sufficient attention to consultation of and partnership with civil society. The Commissioner considers that the Turkish civil society is very vibrant and able, and that the Turkish domestic human rights framework would benefit greatly if the authorities were to tap this potential more consistently. The drawing up of a new constitution, a process which the Commissioner finds very positive and encourages all actors to pursue, set a good example by foreseeing the consultation of civil society from the outset. This involvement needs to be maintained. (…).

200. Similarly, the Commissioner welcomes the initiative of the Turkish government to appoint Wise Persons to explain the ongoing solution process to civil society and relay the latter’s feedback to the government. He considers that it would be important for the government to show how these consultations affect its policy concerning human rights.

**ECRI Report 2016**

76. (…) Roma should also participate in all stages of implementation and monitoring to ensure that the actions taken are tailor-made to their real needs. Roma mediators could also help with implementing the strategy and facilitating Roma access to services.

77. ECRI recommends that the authorities swiftly implement the National Strategy Document for Social Integration of Roma Citizens (2016-2021). Particular focus should be put on the proper budgeting, target setting and monitoring of all the activities of the action plans forming part of the strategy’s implementation. **Roma representatives should participate in all stages of implementation**.

## **Venice Commission Opinion on** the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern **the exercise of Local Democracy,** 6-7 October 2017

97. It is particularly worrying that, through emergency legislation, the central authorities are enabled, in the framework of the fight against terrorism, to appoint unelected mayors, vice-mayors and members of local councils, and exercise, without judicial control, discretionary control over the functioning of the concerned municipalities.

98. This is all the more problematic as the new rules, whose necessity appears doubtful even in the framework of the emergency regime, are introducing changes of structural nature, which are not limited in time, to the system of local government in place in Turkey, based on the election of local authorities by the local population.

99. The Venice Commission recalls that **local authorities are one of the main foundations of a democratic society and their election by the local population is key to ensuring the people’s participation in the political process**. Furthermore, **the adequate implementation of the principles of local self-government is instrumental to ensuring a democratic, effective and responsible management of public affairs at the local level**.

**Venice Commission Opinion on the suspension of parliamentary inviolability,** 14 October 2016

77. The Venice Commission welcomes that the Amendment does not touch parliamentary non-liability, which is an essential element of parliamentary immunity.

78. Nevertheless, the inviolability of these Members of Parliament should be restored. The Venice Commission is of the opinion that, in the current situation in Turkey, parliamentary inviolability is an essential guarantee for the functioning of parliament. The Turkish Grand National Assembly, acting as the constituent power, confirmed this by maintaining inviolability for future cases. The current situation in the Turkish Judiciary makes this the worst possible moment to abolish inviolability.

79. Moreover, most of the files concerned by this abrogation relate to freedom of expression of Members of Parliament. Freedom of expression of Members of Parliament is an essential part of democracy.

1. [**UNITED KINGDOM**](http://cdiac.ess-dive.lbl.gov/trends/emis/uki.html)

**ECtHR**

***Moohan and Gillon v. the United Kingdom*** (dec.), Nos. 22962/15 and 23345/15

13 June 2017.

**Article 3 Protocol 1 does not apply to referendums**: See also *X v. the United Kingdom* (dec.), no. [7096/75](https://hudoc.echr.coe.int/eng#{"appno":["7096/75"]}), 3 October 1975; McLean and Cole v. the United Kingdom (dec.), nos. [12626/13](https://hudoc.echr.coe.int/eng#{"appno":["12626/13"]}) and [2522/12](https://hudoc.echr.coe.int/eng#{"appno":["2522/12"]}), 11 June 2013.

**Prisoners’ right to vote**

***Millbank and Others v. the United Kingdom***

Judgment 30 June 2016

Same ruling as below.

***McHugh and Others v. the United Kingdom***

Judgment 10 February 2015

The case concerned 1,015 prisoners who, as an automatic consequence of their convictions and detention pursuant to sentences of imprisonment, were unable to vote in elections. The Court concluded that there had been a violation of Article 3 of Protocol No. 1 (right to free elections) **because the case was identical to other prisoner voting cases in which a breach of the right to vote had been found and the relevant legislation had not yet been amended**.

***Firth and Others v. the United Kingdom*** application No. 47784/09

Judgment 12 August 2014

Violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights. The case concerned ten prisoners who, as an automatic consequence of their convictions and detention pursuant to sentences of imprisonment, were unable to vote in elections to the European Parliament on 4 June 2009. The Court concluded that there had been a violation of Article 3 of Protocol No. 1 because the case was identical to another prisoner voting case (*Greens and M.T. v. the United Kingdom*, application Nos. 60041/08 and 60054/08) in which a breach of the right to vote had been found and the relevant legislation had not yet been amended.

***Greens and M.T. v. the United Kingdom***, application Nos. 60041/08 and 60054/08

Judgment 23 November 2010

Concerned the continued failure to amend the legislation imposing a blanket ban on voting in national and European elections for convicted prisoners in detention in the UK.

**Non-resident voting rights**

***Shindler v. the United Kingdom* application No. 19840/09**

Judgment 7 May 2013 [Section IV]

No violation

The restriction on non-resident voting pursued the legitimate aim of confining the parliamentary franchise to those citizens with a close connection to the United Kingdom and who would therefore be most directly affected by its laws. **The restriction did not impair the very essence of the right to vote** as non-residents were permitted to vote in national elections for fifteen years following their emigration and the right was in any event restored if the person concerned returned to live in the United Kingdom.

In sum, regard being had to the margin of appreciation available to the domestic legislature, the restriction imposed by the respondent State on the applicant’s right to vote could be considered proportionate to the legitimate aim pursued.

118. In conclusion, having regard to the margin of appreciation available to the domestic legislature in regulating parliamentary elections, the restriction imposed by the respondent State on the applicant’s right to vote may be regarded as proportionate to the legitimate aim pursued. **The Court is thus satisfied that the impugned legislation struck a fair balance between the conflicting interests at stake, namely the genuine interest of the applicant, as a British citizen, to participate in parliamentary elections in his country of origin and the chosen legislative policy of respondent State to confine the parliamentary franchise to those citizens with a close connection with the United Kingdom and who would therefore be most directly affected by its laws**. There has accordingly been no violation of Article 3 of Protocol No. 1 to the Convention in the present case.

**Commissioner for Human Rights Memorandum on the Draft Voting Eligibility Right** (prisoners),10 October 2013

The stance of the European Court of Human Rights (the Court) is clear – an automatic and indiscriminate ban on voting rights for prisoners contradicts the European Convention on Human Rights (the Convention). The Court recently reiterated this stance in judgments against Russia (Anchugov and Gladkov v. Russia) and Turkey (*Söyler v. Turkey*). This means that these countries, as well as the United Kingdom and all other Council of Europe member **states with blanket bans on voting rights for prisoners are all at risk of generating many applications before the Court and should change their legislation**.

**ECRI Report 2016**

79. (…) ECRI remains concerned about the continued under-representation of Black and minority ethnic teachers in the workforce and the difficult situation they face in the profession.

80. ECRI reiterates its recommendation to intensify the recruitment of Black and minority ethnic teachers, in order for teaching staff to reflect better the communities they serve, and retain them in the teaching profession.

127. In its third interim recommendation, ECRI encouraged the authorities to continue their efforts to address the under-representation of ethnic minorities in the police and to monitor progress in recruitment, retention and career advancement.

130. ECRI notes, therefore, that there is still a long way to go in addressing underrepresentation. It recalls that the new policy 2020 Vision provides for a 20% increase in Black and minority ethnic people in the police. It strongly encourages the authorities to intensify their efforts to achieve this goal.

**Advisory Committee on the protection of minorities Fourth Opinion 2016**

129. The Advisory Committee notes that **representation of national and ethnic minorities in public life has improved, but continues to be low** at both UK and local levels.[[2]](#footnote-2)(…)

130. Participation in the decision-making process through consultative bodies varies among the nations, but overall appears to remain rather unstructured. (…)

131. The Advisory Committee notes that **Gypsy, Traveller and Roma participation in public life is almost non-existent**. (…)

132. The Advisory Committee observes that **sustained efforts have been deployed across the UK to increase national and ethnic minorities’ presence in the police**, which has currently improved to 5.5%. Further positive action consists in targeting these groups to participate in general or dedicated programmes to integrate the police ranks, including at leadership level; this has begun to achieve outcomes. Interlocutors of the Advisory Committee also indicated **good practice examples**, such as the association of officers belonging to minorities in London’s Metropolitan Police or the Gypsy Roma Traveller Police Association.

133. The Advisory Committee reiterates its view, (…) that **political participation of minority representatives in relevant decision-making processes is crucial for their interests to be heard**; permanent consultative and advisory mechanisms can promote this aim. It also highlights the point that recruitment of persons belonging to national and ethnic minorities into public administration, law enforcement and the judiciary should be promoted as a means to better respond to their needs and to attest to the government’s openness to diversity in society. An enhanced presence in police ranks may have a positive impact on the willingness of persons belonging to national minorities to address law enforcement when they require assistance.

1. According to the CoE European Committee on Social Rights, the reference to social rights in Article 30 should not be understood too narrowly and that the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on special importance and, in this regard, **the right to vote, like other rights relating to civic and citizens' participation**, constitutes a necessary dimension in achieving social integration and inclusion and **is thus covered by Article 30** (*European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 99). [↑](#footnote-ref-1)
2. Minorities’ presence in the UK Parliament increased in 2015, although it still represents a small part of the overall body (41). In Scotland, in 2015 only one non-white ethnic minority MP was elected; in 2012 only 1.4% of elected councillors were from an ethnic minority background and only seven of the 32 local councils have at least one minority ethnic councillor. In Northern Ireland, participation of minorities in public life is much more limited, with one elected person in the Assembly. [↑](#footnote-ref-2)