

**MONITORING THE MINORITY PROTECTION IN
EUROPEAN UNION. MEMBER STATES UP TO ROMANIA'S
ACCESSION TO EU**

- *A retrospective analysis of practices regarding the situation of Muslims and Roma population*
- *An approach for a sequential research regarding the period of accession to the European Union*

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ABSTRACT: *More than ever, the European model is based on universal values: liberty, democracy, respect for the human rights and fundamental freedoms and for the rule of law. For the most part, these ideals have been broadly accomplished. However, the fight is still needed for their full completion, even in the framework of the old democracies (Michel, 2001).*

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In this context, the case of two of the ethnic and racial minorities should be noted, which through origin and culture do not have states in Europe to which they could belong or in other words “mother nations”, as stated by the representatives of the minority people with more demanding programs.

Volume II of the EUMAP reports focuses on the case of the vulnerable minority groups in each of the five European Union countries. These reports present some of the problems found in the candidate states; the Roma in Germany and Spain are confronted with prejudice, exclusion and discrimination in the same areas such as employment, education, housing, access to public goods and services and the criminal justice system, as well as barriers to the full enjoyment of the rights of minorities. Moreover, unlike the candidate countries, Germany did not adopt a special government program in order to solve these problems.

The EUMAP reports on Member States also note some particular problems. The emergence of some large Muslim communities in France, Italy and Great Britain, with different traditions and values – as well as a clear willingness to participate fully in the public life – puts to test the principles underlying the European protection system

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of the minorities, which tends to regard the minority communities in terms of race and ethnicity rather than in terms of religion. The relation to religion is therefore essential for the cultural homogeneity of the ethnic community, such as the situation of Muslims.

1. ATTITUDES OF THE PUBLIC OPINION

Although there is great diversity within the Sinti and Roma population in Germany and Roma/Gitanos in Spain¹, these populations are considered as a single group by the majority society. Similarly, although “the Muslim community” is actually made up of different national, ethnic and linguistic communities, the Muslims are often viewed as a monolithic group (EUMC, 2002). It is the reflex result of the religious affiliation.

In fact, the separate Muslim communities share certain values and interests and identify increasingly more like a group in order to oppose the discriminatory treatment and to claim certain rights pertaining to minorities. The same thing happens in the situation of Roma communities. The fact that these communities adopt such an attitude should not undermine the official efforts to encourage the understanding and appreciation of their internal diversity.

Both Roma and Muslims are often perceived as foreigners in the countries where they live² – even when the people have been living there for generations, or even centuries, as the situation of Roma in Germany and Spain. In the same terms, in Germany, we see the issue of the Turkish minority which progressively adapted after the Second World War.

As a result, the policies regarding minorities are sometimes combined with those of combating xenophobia, offering social assistance to immigrants or foreigners. In Germany, for example, the issues of discrimination or violence against minorities³ are solved by the “Commission for Foreigners”; there is no specialized body to be competent in solving the problems of discrimination or violence against citizens that belong to minorities or in promoting the minority identity at the federal level⁴. Although it is a federal state with a conglomerate of foreigners established, there is no executive body that has in its responsibility their exclusive social problems.

Although most Muslims living in France are French citizens, segments of public opinion continue to regard Muslims as Maghreb people – unlike the immigrants from other countries, such as Italy, Spain and Portugal – who are regarded as immigrants even after the elapse of four generations. Perhaps because of the fact that Muslims are very visible, Italians largely tend to associate immigration with Islam, even though in fact most immigrants are not Muslims. An overall assessment given to Muslims with reference to

¹ The terminology recommended by the Roma Union of Spain: “Roma” as a generic term, “Romani” for the feminine genitive form, meaning “of Roma” or “typical for Roma community” and “Roma/Gitanos” or “Roma” with reference to the Spanish Roma.

² EUMC noted that “the uncertainty about our identity, our affiliation and our traditions makes us be increasingly reluctant towards the “foreign” influences and increasingly reluctant to everything that seems to be “foreign” and “distinct”. The statement of Bob Purkiss, President of EUMC, and Beate Winkler, Director, on the occasion of the international day against racial discrimination, 21 March 2002, EUMC bulletin, 11 March 2002, found on website <<http://eumc.eu.int>>.

³ Reference is made to “visible” minorities such as Sinti and Roma minority.

⁴ In Italy the case of Sinti and Roma population – of which the majority (approx. 70 percent) is historical resident in Italy – received attention from the Commission for Immigrants’ Integration.

Arab nations is often seen as a confusion in France and Italy as it should not be forgotten the reality that a large number of Muslims originate from Indochina and other Asian countries.

Great Britain officially acknowledged the existence of discrimination manifestations against Muslim communities after the publication in 1997 of a report of the Commission for British Muslims' problems and Islamophobia (Anon., 1997). However, the Muslim community states that the government has been very slow in moving from acknowledging the existing problem to taking policy initiatives and legislative measures, claiming that the Government is "fiercely with words, but slow with the facts"⁵.

Roma as well as Muslims face the prejudice of the majority society. The common perception about the Roma community in Germany and Spain is negative and widely widespread. A survey in 1992 found that 64 percent of Germans have an unfavorable opinion about Roma, a higher percentage than for any other racial, ethnic or religious group⁶, and a study in 2002 shows the persistence of prejudice also in Spain, where Roma/Gitanos are considered recalcitrant to integration and their relations with the rest of the Spanish population are marked by segregation in all areas of life – a "coexistence lacking communion". It is overlooked the fact that in their communities the Roma, the Gypsies, the Zigeiner, the Gitanos – as the European nations call them – practice ancient traditions, crafts and customs (marriage, trial in *stabor* (a kind of Roma tribunal), nomadism, primary occupations) which in their migration have ancestral values and stagnated as manifestations since immemorial times therefore they can not be abandoned. However, the pressure of Western "civilizing factors" threatens their extinction.

An EUMC report from the previous decade shows that the media displays of Islam are often "based on stereotypical simplifications" portraying it as religion and ideology "completely foreign and an alternative to the enlightened secularity of the West" (EUMC, February 2002). The Muslim leaders in France, Italy and the United Kingdom state that the wide media audience tends to rely on the same sources of information (it is argued that these sources are often radical or extremist and are not considered representative *within* the Muslim communities) and does not show a wide range of opinions, thus contributing to public stereotyping of Muslims as a threat to the values and culture of the societies in which they live (E. Poole, K. Hafez, 2000). According to a French Muslim organization "Media used any incident... to feed Islamophobia and demonstrate that Islam is incompatible with the republic"⁷ meaning that compatibilities must be searched and found.

Such practices contribute to the growth of Islamophobia and may call forth unfortunate and unwanted results such as that of strengthening the Muslim identity around a shared feeling of vulnerability and exclusion from the majority society. Public officials bear a special responsibility in condemning and combating discriminatory attitudes and prejudice. However, although many of them have lived up to these responsibilities, others

⁵ Interview in the G Organization, London, 6 June 2002.

⁶ 17 percent have an unfavorable opinions on Muslims, on Indians – 14 percent; foreign workers – 12 percent; dark skin people – 8 percent and Jewish people - 7 percent. Quoted in G. Margalit, "Antigypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Antisemitism" See <<http://sicsa.huji.ac.il/9gilad.htm>>

⁷ Interview with the manager of the *Institut Formation Avenir*, 17 May 2002.

made statements themselves, statements that fuel intolerance and undermine the fundamental values of the EU subliminal inferences.

The monitoring bodies of the human rights of the European Union must assume the role of a "watchdog" by monitoring the news reports and official press releases in terms of encouraging the responsible speech by public officials, unequivocal condemnation of racist statements and expression of official disapproval where appropriate. In present, negative attitudes and negative perceptions towards Muslims and Roma are constantly expressed influencing the law enforcement and the operation of the institutions. Mass media interested in generic by the events generated by particular spectacular situations, form in the public opinion a negative current overlapped with another reality.

2. PROTECTION AGAINST DISCRIMINATION

The European Union Member States have a different cadence, as just some of them but not equally, aligned their laws on legislative standards regarding non-discrimination, as it is defined in the Directive on the implementation principle of equal treatment between persons irrespective of the racial or ethnic origin and the Directive on employment. Moreover, acknowledging the situation of Muslims living in Europe proves that even these standards are insufficient comprehensive; discrimination on grounds of religion is covered only by the Directive on employment. Neither Germany nor Spain has adopted comprehensive anti-discrimination legislation⁸. Both countries are currently making efforts to align the domestic legislation to the Directive on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, however slow movement is seen. Even those countries that have already adopted anti-discrimination legislation present serious gaps. For example, the French anti-discrimination law recognizes and penalizes discrimination based on religion but does not give a clear definition of indirect discrimination. Quoting an expert, if they acted this way it would mean that "we should refer to [special] categories of population (which is prohibited by the French Constitution)" (Borillo, n.d.). The case of Muslims shows that not even the EU system itself is a comprehensive one. The British legal and institutional framework to safeguard the protection against racial and ethnic discrimination largely complies with the EU Directive relating to the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin, even though it seems it does not offer adequate protection to Muslim citizens.

Representatives of these two minorities, where they exist, do not have a strong voice to put on the public agenda concerns for standardization or specific measures to improve the situation.

Although some religious communities have acquired protection against discrimination by emphasizing the extent they establish as ethnic groups (*ie* Bangladeshis and Pakistanis), the Muslims from countries where Muslims do not form the majority population can not benefit from this option. Except for Northern Ireland, the government

⁸ For a detailed comparison between the Spanish and German law and the minimum standards established by the Council Directive 2000/43/EC, see "Anti-discrimination legislation in the EU Member States", chapters about Germany and Spain EUMC, Vienna, 2002. Found at <<http://www.eumc.eu.int/publications/Article13/index.htm>>

bodies that promote equal treatment operate within the existing legal framework in order to solve the racial and ethnic inequality; they do not offer special attention to Muslims or other religious non-ethnic groups.

Furthermore, legislation is only a first step but often exceeded by reality.

Even in states with anti-discrimination legislation relatively comprehensive, such as Italy and France, the general public is too little aware of the possibility to address the law, so that very few cases were brought to court; the level of awareness regarding the law seems to be very low to immigrants and to other vulnerable communities (Schincaglia, 1999). The public authorities in these countries have made great efforts to encourage a more effective implementation of anti-discrimination legislation. For example, the courts in France sought to facilitate admission in court of the discrimination cases by accepting evidence gathered by “testing”⁹. In Italy and Spain there are simpler procedures to bring to trial cases of discrimination. The confusion is multiplied by bureaucracy and fear that immigrants often have to declare officially that they find themselves in difficulty.

In the United Kingdom, the anti-discrimination legislation is complemented by the obligation of the public bodies to encourage the equality of opportunity for various ethnic and racial groups by developing certain policies in this regard. To ensure the Muslims with non-discriminatory access to public services, this obligation should extend to cover religious beliefs. As even the British Government acknowledged “local modern authorities are those who are in contact with the people they serve, those who have an open structure for decision-making and provide services according to the user needs and not of the providers’ needs”.

The Pan-European bodies should be organized so as to encourage the development of a common basic understanding and interpretation of the shape the anti-discrimination legislation should have, both in theory and in practice, to the extent the different political and legal traditions allow it. Article 13 of the Treaty on European Union outlines provisions for the protection against discrimination on grounds of religion or belief but also of race or ethnic origin. This article leads the way for future initiatives to broaden the Directive regarding the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin or the development of new directives that should cover the fields of religion and language. European Union could strengthen the anti-discrimination framework by encouraging the Member States to sign the Protocol 12 of ECHR, which contains an autonomous prohibition of discrimination, among which the one determined by the religious affiliation and the accession to the ECHR.

Furthermore, the Member States in European Union must formally embrace and act under the principle that prohibition of discrimination should be accompanied by positive measures. The officials of the Member States should be required to find ways to ensure that public services are equally accessible to all, with special reference to the vulnerable minority groups; it is necessary to create opportunities for the exchange of information between Member States on this issue to highlight the best practices. Until the states will

⁹ The Court of Cassation, n. W 01-85.560 F-D. The technique of “testing” was first introduced by SOS Racism in order to prove the unjustified refusal of certain nightclubs and other public places to allow the entrance of foreign persons or immigrants. SOS Racism showed that testing may be a useful instrument in the fight against discrimination in other fields, such as employment and labor. See <http://www.lel14.com/actualites/fiche.php?Id_Actualite=68>, (accessed on 26 September 2002).

be able to adopt comprehensive legislation, it is necessary for them to develop guidelines or codes of practice to give public officials a basis for preventing discrimination in providing state services.

2.1. Lack of complete data

The presence of discrimination against minority groups is difficult to determine in many European Union countries due to the lack of statistical data and other relevant information in this regard.

Fluctuation makes the existing data to be incomplete and that is when errors occur in the steps applied. In candidate countries, in Eastern Europe, the lack of such data is justified by the provisions regarding privacy and personal data protection. At the same time, the absence of sufficient information is a clear obstacle in the way of developing effective policy for non-discrimination.

For example, there is not enough relevant statistical data at national level regarding the Roma situation in Spain or Germany, nor the Muslim situation in France or Italy; the specialized bodies on issues of human rights urged the authorities to remove this gap. Thus CERD stressed the fact that the lack of official socio-economic data of the Roma/Gitano in Spain can affect the effectiveness of the policies developed to improve their situation¹⁰. The Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin recommends also the use of statistical evidence in assessing the discrimination cases.

It was argued in the past by the Government of Spain and Germany that the legal norms for the ethnic data collection make the systematic collection of data impossible. In fact, the Spanish legislation does not prohibit the collection of fairly personal data where respondents are given adequate information and if the provisions relating to the processing of personal data collected are not violated. The German Federal Constitutional Court stated that such data can be collected if confidentiality is also provided. The government argued that ethnic data collection on Sinti and Roma situation is not practical as "it can only be achieved with unjustified investment of time and effort"¹¹.

Adverse reactions occurred in all Member States, such as issuing biometric passports, the individualization of phone cards, filling up the identity documents with the nationality, in marriage documents, etc.

Furthermore, in some cases, such data have been collected selectively. For instance, according to the Spanish Data Protection Agency, in 2000 there were 85 legally registered databases containing public data and 60 private databases containing information related to race/ethnicity of subjects, also the laws for the drafting of the statistics for Community purposes contain few (or not at all) restrictions on the collection of data, on race and ethnicity. These data are used for the development of policies for the benefit of "the people recognized in Spain". Thus, the lack of statistical data on Roma/Gitanos seems to be due rather to the lack of political will than of legal barriers and constitute a serious

¹⁰ CERD, Conclusions of the Committee on the Elimination of Racial Discrimination: Spain, CERD/C/304/Add.8, 28 March 1996.

¹¹ The Observations of the Federal Republic of Germany Government on the opinion of the Advisory Committee on the Report of in the Federal Republic of Germany, p. 9, See <<http://www.humanrights.coe/int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Comments.htm>>

impediment to the development of public policies for the problems regarding discrimination and exclusion faced by the society.

Ironically, some states have used the lack of ethnic relevant data to counter the criticism of the way the state protects the minority groups against discrimination and violence. For example, Germany has rejected allegations according to which Roma children are disproportionately distributed in “special schools”, stating that “there is no statistical evidence to support the idea that this group participates in education in a smaller proportion ... [although] some Lands reported that in *isolated cases* Sinti and Roma children have a very high level representation in Recovery schools”. It is an interpretation given by the rigorous German administration.

Italy objected to the ECRI conclusions that the number of racist manifestations in Italy is higher than that of criminal proceedings brought to courts, arguing that this conclusion “is not sufficiently supported by factual evidence or statistics”¹² although such data are not available officially. In the United Kingdom, the comprehensive ethnic statistics have proven to be a valuable tool in the development of differentiated policies to improve the quality of public services offered to the racial and ethnic minority groups. These statistics showed that in education, health, social protection, housing, public services, employment and criminal justice Bangladeshi and Pakistani communities (mostly Muslim communities) are deeply disadvantaged, deprived and discriminated compared to other ethnic minority communities. These statistical reports on discrimination made by the Muslim representatives justify the additional studies and the collection of statistical data on religious communities in the United Kingdom and in other Member States. Given the fact that the decisions on population classification reflect policy decisions on models that must be selected and the groups that require protection, the release of such research initiatives would be a strong signal that Member States comply with their commitments regarding the protection of Muslim communities, along with the racial and ethnic minority communities. The statistical information provides a basis for assessing the situation of the minority groups and for the development of public policies, effective to solve the disadvantages that they have *before* they lead to alienation, resentment and even conflict. European Union should provide resources for the identification, closely related with the representatives of minorities, of acceptable methodologies for conducting research, while ensuring compliance with privacy and personal data protection. Also, it is necessary that European Union should encourage the Member States to use these methodologies for undertaking a survey of the case of vulnerable minority populations, a broader one than is currently undertaken.

2.2. Roma discrimination

Despite the almost total lack of reliable data, the EUMAP reports contain incidental evidence showing that in Germany and Spain, Roma communities face serious disadvantage in many areas; based on such evidence one may provide an analytical and more comprehensive statistical research.

¹² European Commission against Racism and Intolerance, the second report on Italy, adopted on 22 June 2000 and made public on 23 April 2002, p. 30.

Like their correspondent in Central and Eastern Europe, Roma communities face disadvantages in terms of equal access to education. These disadvantages arise in part from the area of poor living conditions and poverty, the emphasized marginalization and discrimination playing an important role. In Germany, a disproportionate number of Sinti and Roma children are placed in “special schools” for children with mental disabilities or retarded, regardless of their intellectual capacities; the graduates of these schools are unlikely to continue their studies or get good jobs. Although the enrollment rates in education for the Roma children in Spain increased in 1980, the high number of school leavers and absenteeism continues to be serious and few Roma/Gitano children get to graduate higher education. Spanish public schools are becoming more “ghetto” being reported difficulty accessing kindergartens and some schools. Both the German and Spanish government have admitted that inequality problem should be solved regarding the access to education. The Spanish government has developed education programs “compensatory” to provide additional support for Roma/Gitano children. However, Roma leaders are worried that these initiatives could strengthen segregation in education and it would not solve the current situation. Moreover, the lack of central coordination led to the unequal implementation of provisions from an autonomous community to another.

The German government has advanced the idea of “promotion school” as a means of equalizing opportunities for Sinti and Roma children. Sinti and Roma leaders believe that, many of these “promotion schools” are imposed arbitrarily to Sinti and Roma children and some school authorities stated that “promotion schools” are just “a new label for an old problem”¹³. Some German Lands provide support initiatives from NGOs which is directed towards eliminating the disadvantages that Sinti and Roma children have in terms of access to education. However, there was no systematic evaluation on the effectiveness or an observation of “good practices” related to the sharing of experience and exchange of ideas and no comprehensive policy was formulated to ensure that the successful initiatives benefit from sustained financial support.

Serious barriers stand in the way of *legal employment* and *labor force* for Roma and Sinti population. In addition to the disadvantages related to the relatively low level of education and training, there are strong biases related to hiring and treatment at work for Sinti and Roma. Many Roma families combine formal employment and informal jobs that are considered undesirable for the rest of the population, such as vendors, waste collectors or seasonal workers. Although no studies have been undertaken on this subject, Roma leaders in Germany and Spain, but also active organizations in the field of human rights, argue that discrimination against Roma on the labor market is a daily reality. Employment offices in Spain openly refuse to hire people of Roma ethnicity. Quoting a representative of a special program for Roma employment, we find that “in five cases out of ten, employers tell me directly that they do not want Roma”.¹⁴ There are no discrimination cases brought to court neither in Germany nor in Spain and there are few legal decisions in this area, in any of these countries.

¹³ OSI Roundtable Meeting, Hamburg, April 2002.

¹⁴ Interview with a Roma woman employee of the office work placement, anonymity was requested in this case, December 2001.

The recruitment practices remain selective and limited to the number of foreigners who come from a certain country, such as England. It fosters an underground phenomenon that eventually leads to problems addressed to authorities.

The government responses to the problems related to employment which affects the Roma community in Spain were made in terms of stereotypes and generalizations on the lack of skills and different cultural attitudes toward work in Roma/Gitano communities; little attention was paid to the role of racial discrimination and, therefore, few reactions of political strategy appeared to solve the discrimination issue. Encouraging is the development of the "Acceder" program, supported by the European Union, which includes for the first time the Roma community as a target group of the operational program of the European Social Fund.

Public authorities in some German states have made attempts to reduce the high rate of unemployment for Sinti and Roma communities through various projects generating jobs; however, the effectiveness of these projects has proved limited. As in the field of education, no comprehensive evaluations of the successful projects were conducted in order to create new jobs, experience exchange or to identify best positive practices. These assessments could have helped develop more systematic policy measures to improve the disadvantages faced by the Sinti and Roma on the labor market.

Most Roma live in sub-standard *housing*, often in separated areas (Spain) or separated settlements (in Germany), located within the periphery of urban centers with minimal infrastructure and conditions which often raise serious *health problems*. Discrimination in what concerns the access to public and private housing and other *goods and services* was reported both in Germany and Spain. Apartment rental ads which specify "excluded foreigners", "excluded Arabs", "excluded Gitanos" or "excluded people from Eastern Europe" are widespread in central Madrid and other major cities in Spain, and recent surveys indicate the persistence of favorable attitudes for segregation: many non-Roma people say that "Roma have to live separately", "they shouldn't receive housing in our neighborhoods" or "they should be expelled from the country" (T. C. Buezas, 10 April 2000). In a survey from 1994, about 68 percent of Germans stated they did not want to have Sinti and Roma as neighbors. The German government recognized the need and confirmed its intention to improve the living conditions of Roma and Sinti and to promote their integration into society, and some Lands have initiated successful projects relocation. The representatives of Roma and Sinti in Germany point out that the most successful projects are those that involve them in the decision-making process requiring integration of *ad-hoc* projects in a wider and more comprehensive government policy designed to solving widespread problems of segregation.

In Spain there have been attempts in the 80s and 90s to eradicate segregation by displacement the Roma/Gitano from the separate neighborhoods to "transitional" housing, which meant buildings (often substandard), located within the periphery of urban centers, as an intermediate stage for integration into mixed neighborhoods. On a short term, although this motion has done too little to solve the marginalization and segregation, the transfer of thousands of families from slums (substandard housing) in apartments with running water, electricity and sanitation is, undeniably, a progress. However, the transfer was not designed and was not implemented as part of a long-term political initiative and there was no central body to coordinate the implementation. Although in this way the local authorities were guaranteed great flexibility and a wide freedom in drafting policies

consistent with the actual situation – sometimes effective integration policies were developed – there has been very little experience exchange between communities on the positive and negative experiences and no coordinated evaluation was effected. Solutions that were initially improvised as palliative for crisis situations threaten to become permanent: in August 2002, thousands of Roma were living in transitional housing, without having any idea when this transitional period would come to an end. As Sinti and Roma leaders in Germany, the Roma leaders in Spain claim that the failure to significantly improve the housing situation is the direct result of the failure of the state to ensure their active participation in the development and implementation program. Moreover, there was the tendency to move the responsibility of solving the housing problem in the responsibility of NGOs which lack the authority and necessary expertise to address problems on this scale in a consistent or effective way, especially because of the absence of a comprehensive state policy.

There are no national statistics or studies on the *health situation* in Roma communities neither in Germany nor in Spain. However, the data collected at regional or local level in Spain as well as numerous incidental evidences in both countries suggest that Roma have a short expectancy life, have a higher incidence of disease, and their access to services healthcare is more difficult than for the majority population. Both in Germany and Spain, the Roma state that the medical staff is often insensitive to their distinct culture traditions, which leads them to seek little preventive medical services and use more emergency services; in Germany, distrust in the medical institutions was submitted as a legacy, because of the sad memories of the Nazi period, when the Sinti and Roma population was subjected to medical experiments.

The direct consequence of the almost complete lack of information in this area is that there are no special government programs or policies in any of these countries to solve serious health problem the Roma communities are facing. As a first measure, a systematic attempt should be undertaken to combat suspicion and mistrust in health care, attitude persisting for a long time in the Roma communities. Projects introducing the sanitary mediators, implemented in several countries of Central and Eastern Europe, including Romania, can be a good example to follow. In Spain, the state support for health programs addressing Roma focus on AIDS, on substance abuse or psychic disorders – a choice that Roma leaders have criticized as being inappropriate and made under prejudice.

The most disturbing manifestation of discrimination is of course the *violence of race motivation*, a growing phenomenon both in Germany and Spain. The effects of this type of violence are exacerbated by the widespread and persistent discrimination statements of the *criminal law system*, including ill-treatment and harassment by law enforcement forces. Despite the seriousness of these allegations, made by several international organizations for monitoring both countries, German law does not provide enhanced penalties for crimes racially motivated or harsher sentences for crimes racially motivated committed by the law enforcement officials. Moreover, the legal support is based on chances of obtaining victory. Although the Spanish Criminal Code prohibits incitement to discrimination racially motivated, these provisions are rarely applied.

2.3. Discrimination against Muslims

As noted above, it is often difficult to determine the extent of discrimination against Muslims since little evidence was gathered by taking religion as indicator. However, the experience of Muslims in the United Kingdom is a useful example: many British Muslims arrived as immigrant workers many generations ago. The awareness of religious discrimination and the need for policies to solve the problem of discrimination appeared only after several decades after the compilation of extended ethnic and racial statistics, indicating high levels of disadvantage faced by the Muslim communities of Bangladesh or Pakistani origin. Differentiated data collection about the situation of Muslim communities in the United Kingdom and other European Union countries allow legislators in those countries to develop effective policies both ways before the problems occur. There were found certain segregation patterns of Muslim children regarding education in some cities in the United Kingdom, a situation which, it is believed, was the key factor in the serious disturbances in Bradford, Burnley and Oldham in the summer of 2001.¹⁵

The European Commission against Racism and Intolerance (ECRI) expressed its concern on the separation of foreign children or of children of immigrants in class neighborhoods and special schools in France. There are still a few immigrant children in the education system in Italy but there are already signs of a frequency and a lower school performance than the average, and high dropout rates, phenomena which the Government seeks to solve by hiring “cultural and linguistic mediators” to support them and to assist teachers working with large numbers of foreign students. “The linguistic mediator” is usually, an adult of the same nationality as the foreign students, holding the task to help students adjust to school requirements and facilitate the relationship between school and family. “Cultural mediators” assist the teacher who teaches in state-funded classes the reading and writing and in integration classes for adult foreigners.

However, there are no data to show the specific situation of Muslim children in France or Italy. In the light of the ethnic statistics in the United Kingdom, indicating a reduced school performance for the children of Bangladeshi or Pakistani communities in education, on all levels, gathering such data may be an unfavorable process for developing an effective educational policy. British and French Muslims reported incorrect treatment as a result of the educational policies and practices that are insufficiently sensitive to their civilization and culture. In France, for example, one of the basic tasks of education in public institutions is to foster the values of the Republic, including *laïcité* (secularism). This has led to Muslim tensions when students have claimed the right to wear veils, thus revealing the inherent difficulties in balancing the requirements imposed by the *secularism* and other republican values - which largely correspond to the values of the majority – on the Muslim cultural background; similar difficulties arise whenever cultural assumptions of a minority group differ from those of the majority.

Research undertaken by the British Ministry of Interior show that, compared with other communities of other beliefs, Muslims reported most cases of discrimination in terms of *employment*. Moreover, ethnic statistics show lower rates of economic activity and employment and high rates of unemployment among Pakistani and Bangladeshi

¹⁵ Report of the Ministerial Committee and Community Cohesion, *Building Cohesive Communities*, London, Ministry of Interior, 2001; Report of the Independent Review Team, chaired by Ted Cante, *The Cohesion of the Community*, London: Ministry of Interior, 2001.

Muslims than among any other minority groups (Office, 2001). Although in France there are no detailed statistics on discrimination against a particular ethnic or religious group, the temporary employment agencies report that they receive explicit requests from employers to avoid hiring Muslim workers, in fact Muslims in France reported the most cases of discrimination in the workplace, although they rarely submit legal complaints. There are no data stating that Muslims are particularly more disadvantaged than other immigrants in Italy, who mostly work either unskilled jobs, seasonal or illegal, which often offer insufficient social protection.

European Union Directive on employment requires Member States to prohibit specifically and explicitly the direct and indirect discrimination employment of religious motivation. Therefore, it requires the employers to monitor the recruitment decisions taken according to religious affiliation to make sure that there are no policies, practices, provisions or criteria that have the unintended effect of disadvantaging Muslims or other employees of another religion. The Directive also requires the application of measures to ensure the efficient implementation, through information dissemination, social dialogue and dialogue with non-government organizations; the legislation will have to be supplemented by practical instruction to inform the candidates, employers and the general public about their rights and responsibilities they have.

Immigrants in general appear to be widely discriminated in the *housing* field, whether public or private, and access to other goods and services. Statistics gathered in the United Kingdom taking as a criterion ethnicity show that the most disadvantaged Muslims are the Pakistani and Bangladeshi communities. Although it has been very little studied the particular case of the Muslims, some studies conducted in France show that racial or ethnic discrimination is commonly practiced in the selection process for housing applicants, especially the housing funded and also on the private housing market. Both France and Italy have reported cases in which public officials have used as discriminatory criteria in assessing applicants for public housing, discouraging foreigners¹⁶. In Italy this practice was brought to court, the plaintiff being in favor in at least one case, however the members of immigrant communities are less aware of the legal provisions that offer the immigrants the right to housing from the state budget than the Italians and the citizens of the Member States. Moreover, the available housing are of lower quality¹⁷.

Many Muslim groups in the United Kingdom strongly complain about the lack of welfare of civil servants, about their refusal to consider their needs. The lack of information or statistics related to the experience of Muslims is a real obstacle in the policy development and in the appropriate community services provided to British, French and Italian Muslims.

There are few studies about the special treatment given to Muslims patients within the French *health system*, including hospitals, although the data are incidental suggesting that, in general, Muslims face the lack of understanding and respect for their cultural and religious practices and the requirements they make when they appeal to medical services. Inequalities have been proved regarding health protection between different minority

¹⁶ Tribunal of Milano, 20 March 2002, Dr.ssa Paola Gandolfi, in the case *El Houssein, El Mouden, Zerai v. Comune di Milan*.

¹⁷ See Rete d'urgenza contro il razzismo, *Annually Report 2000*, p. 8-36, found at <<http://www.unimondo.org/reteurg/ra00it.zip>>.

groups, showing that health care providers do not serve Muslim communities or do not satisfy their needs. Three quarters of Muslim organizations have reported, in a study conducted by the Ministry of Interior, that they are subjected to unfair treatment by the welfare staff and practices within the offices of social welfare (Interior, 2001).

Given the tendency of the population of the Member States to associate Muslims with the “foreign” elements in their societies and to consider monolithic Islam (see above), the events of 11 September 2001 led to a stronger association of Islam with terrorism and fundamentalism. There has been an increase in attitudes of harassment and *violence* against Muslims and those perceived as Muslims after 11 September 2001 in several European Union countries, including Italy and the United Kingdom¹⁸. As the number of racist acts decreased in 2001 in France, many of racist acts registered after that period were related to those occurred on 11 September 2001. According to Muslim leaders in Britain and France, within Muslim communities the conviction that Muslims are stopped, questioned and investigated not based on evidence and reasoned suspicion, but on the basis that “they show like a Muslim” is increasingly strong. Studies conducted on the criminal justice system in the United Kingdom reveal differences related to the judgments given for both white people and colored people. There are signs confirming the presence of inequalities in the French legal system. For instance, although data were not collected systematically and it is impossible to isolate the religious motivation, there seems to be a pattern of discrimination in the determination of judgments, meaning that those whose ethnic origin (or alleged ethnic origin) is not French, receive heavier judgments for similar crimes. The enforcement institutions must act towards strengthening the relations with the Muslim communities in order to reduce mistrust and suspicion; such an approach would also have the benefactor side effect of providing the police with the support in combating crime and information collection.

In response to the violence started after 11 September 2001, the United Kingdom adopted legal measures to incriminate violence of religious motivation as a separate crime¹⁹ and the racial or religious motivation as aggravating circumstances for any offense²⁰ in France and Italy. There are data showing that there are cases of violence against Arab communities, Muslims and immigrants; it is however difficult to isolate their religious motivation. In France the racial violence has often a clear religious dimension: the worship places (such as mosques and synagogues) are often the target of attacks, throwing stones and partial or total destruction. It is required that all Member States organize courses of responsibility factors for law enforcement for the purposes of policy making, in order to address the problems that arise due to crimes of “religious” hate and for monitoring their implementation and enforcement.

¹⁸ C. Allen, J.S. Nielson, Summary report on Islamophobia in EU after September 2001, Vienna, The European Center on Racism and Xenophobia, May 2002, pp. 23, 28-29; Islamic Commission for the Human Rights, Great Britain, Today: Anti-Muslim recrudescence after 11 September 2001, Islamic Commission for the Human Rights, London, 2001.

¹⁹ Law against Crime and Disorder 1998, s. 28-32 amended by the Law on Anti-terrorism, Crime and Security 2001, s. 39.

²⁰ The Law of the authorities of the criminal courts (judgments) 2000, s. 153 amended by the Law on Anti-terrorism, Crime and Security 2001, s. 39.

3. MINORITY RIGHTS

3.1. Recognition

Many Member States have adopted restrictive definitions of the concept of “minority”, establishing a hierarchy of protection given to different groups. In Italy, for example, a number of minority rights are guaranteed for traditional minority groups such as the French, Germans and Slovenes. Both Muslims and Roma – probably two of the most vulnerable groups in the country - are excluded. Roma/Gitanos are not recognized as a *pueblo* (part of the Spanish people), reason for which they are not treated the same as other minority groups in different areas of economic, political and social life. In Germany Sinti/Roma are known as a minority group with the Danes, Frisians and Serbians, while Muslims are not recognized as such. In the United Kingdom, the government has adopted an inclusive definition of the national minority, but which excludes the Muslims and the members of other religious communities from access to minority rights. The concept of minority is not seen as relevant in France; the existence of minorities is seen as a threat to the republican model, aspiring to ensure equal treatment for all. Although representatives of French Muslims have attacked this model, there is perceived a full consensus among them about the fact that Muslims are treated differently than other religious minorities.

Given the fact that the European Union is an organization that promotes explicitly respect and protection for minorities regarding the third countries and which established the compliance with this condition as a requirement towards the new members, the need for an internal consistency requires the European Union to pay more attention to developing a common definition for the term minority in the European Union context and to urge Member States to develop a legal framework and policies in accordance with this definition. The definition must be periodically reviewed and evaluated to reflect changes and to be able to give way to the new emerging minority groups.

3.2. Citizenship

Most Muslims in the United Kingdom are British citizens, many of them being the second or third generation in this regard. Instead, a large number of Muslims living in France were given citizenship only in the last decade or they are still non-citizens; Muslims in Italy have not obtained citizenship. Both “new minorities” and non-citizens are denied access to minority rights regime. Non-citizens are particularly vulnerable in several respects: they tend to accept illegal work, lacking regulations and protection; they are often separated into districts or zones with cheap housing and misery; they face discrimination and violence; and in the absence of a legal statute, too little aware of the rights they have, many of them are afraid to turn to law enforcement authorities or to other public officials. The rights and obligations of non-citizens generally fall under a different legal regime (in other words, outside the minority protection regimes), an issue which is not subjected to the review of these reports²¹. It is recognized, however, that the fundamental human rights and protection should be granted to all, regardless of their

²¹ Although the EUMAP reports focused on the rights of the Roma citizens of Germany and Spain, it should be noted that there are a large number of refugees and asylum seekers in these countries as well as in other UE Member States.

status in relation to citizenship. Some states, such as Italy, reacted to the presence of a large number of non-citizens adopting a special legislation, which emphasizes the fact that the protection against discrimination and violence is included in these rights and fundamental safeguards. It is becoming increasingly clear that Muslim immigrants (including “temporary workers”, asylum seekers and migrant workers) came to Europe to settle here and that European economies depend increasingly more on the immigrant labor. The differences in culture, religion, language and values have already begun to transform the image and character of many European Union Member States such as Italy and Spain, which, until recently, have been relatively homogeneous. Most Member States accept the idea that citizenship is a key step in the integration process and take measures to facilitate the naturalization of immigrant workers and their families. A large number of Muslims obtained French citizenship in the past decade and we expect a similar phenomenon in Italy. As the number of Muslim citizens is growing, it requires the reconsideration of the minorities’ rights in terms of their traditions in education, language, media and, especially, participation in the political life. Transforming EU Member States in multicultural and multireligious societies raises new problems to the existing legal regime for the protection of minorities. Integration should be a two-way process, requiring not only adaptation of the new groups in the European social and cultural context, but also ensuring the equal treatment and equal protection against discrimination and respect for their distinct identities. The increasing complexity of integration policies could bring benefits for other marginalized groups such as Sinti and Roma, whose culture, language and history were underestimated and set aside for centuries²². While it is clear that the State holds the power to decide which groups will be recognized and when, the EU should encourage Member States to adopt broad and comprehensive definition of the concept “minority”, thereby extending the rights of minorities also upon non-traditional groups. It is also necessary to articulate a minimum standard of equal treatment for those who are not included within the definition adopted. Member States must take measures to facilitate the access to citizenship for non-citizens.

3.3. Issues of minority rights for Roma

Roma communities in Germany and Spain have received very little support from the State to protect and promote their distinct cultural and linguistic identity. In some areas, the state practices caused even discouragement in promoting the minorities’ rights for Roma people. Especially when compared to the generous treatment accorded to other minority groups, the less favorable treatment of Roma is in itself a form of discrimination. For example, although many languages of other minority groups are recognized and may be used largely in the public sphere, *calo*, the Spanish Roma language is not legally recognized anywhere in Spain and it is not recognized by the state as a language protected under the European Charter for Regional or Minority Languages (ECRML). Although very few Roma/Gitano have *calo* as native language, it plays an important role as a factor of ethnic unification; in the political context, language recognition is essential for the recognition of the minority identity, which is the key to recognizing the political rights of a group. The survival of the *calo* language is of great importance for the Roma community

²² For instance, the inheritance of the passed legislation (which is no longer in force) which prohibited customs, clothing, traditional language of Roma/Gitano thus leading to an almost complete loss of the *calo* language.

and Roma leaders have asked the Government repeatedly to support and to promote the study and use of this language. In light of historical persecution that has undergone Roma due to the use of *calo*, inter alia, the state should recognize the injustices done in the past by supporting these requests.

By August 2002, Hesse remains the only German Land which has accepted all 35 points required by the implementation of Section III of CRML, although *Romani* language "is spoken in most of the Lands in the Federal Republic of Germany". Regarding the right to use the *Romanes* language in the relation to civil servants, the Government stated that as the Sinti and Roma "grow up as bilingual speakers of Romani and German and usually have a good proficiency in both, there is no real need to use *Romanes* in the relations with public servants." Sinti and Roma leaders have expressed their concern about the lack of effective protection granted to *Romanes* language.

Both in Germany and in Spain the dominant approach to education for Roma is the compensatory education or the idea developed in the "promotion classes" (see subchapter 3.1.2); in this framework, the Roma identity and culture is often perceived by teachers as a problem to be overcome rather than as a privilege to be cultivated. Although Spanish teachers' associations and Roma NGOs have repeatedly requested the inclusion of special courses of history and culture of Spanish ethnic groups on the one hand, and intercultural communication and teaching curricula for teachers, psychologists, magistrates and social workers on the other hand, these recommendations were not adopted. Information of this kind have been published and disseminated in a number of German Lands, but the of Sinti and Roma leaders claim that the curriculum does not yet provide adequate information on their history and culture, or about their victimization during the Holocaust. The competence regarding the cultural and educational issues is held by the individual German states. Except Hamburg, no German state provides *Romanes* language education in the public education system because such education "is not desired by German Sinti parents". The Government stated that the majority of Sinti and Roma²³ opposes the development of a form of *Romanes* written language and rejects the learning and teaching of *Romanes* by the outsiders. However, this statement is not based on a wide consultation of the opinion of Roma and Sinti communities across Germany, but on the views expressed by organizations acknowledged by the Government as the official representative of the Sinti and Roma communities²⁴.

Both in Germany and in Spain, Roma are underrepresented both in public administration as well as in the government bodies that protect and promote the rights of the minorities. Various Roma communities are officially represented, in both countries, by one or many organizations which are funded mostly by the government. Although this

²³ The FCNM (Framework Convention for the Protection of National Minorities) Report of the German State admits that certain Roma Organizations have a different opinion and "pronounce in favor of including *Romani* language in school education and also want to support measures like those taken in the European neighborhood states ie. the development of the written form of this language", moreover it shows that the Government chose to respect the majority of the Sinti population, which, insists on "cultivating the language only within the family and the clan". The FCNM Report of the German State, p. 96.

²⁴ The OSCE High Commissioner of National Minorities noted regarding the NGOs financed by the State (Spain) that they can't expect the NGOs "to offer totally disinterested advice" when a certain attitude could affect their very financing, The OSCE High Commissioner of National Minorities, *Report and recommendations on the situation of Roma and Sinti in the OSCE area*, 2001, p. 145.

approach provides the Government with a prepared interlocutor and a reliable partner in the implementation of various projects, it does not tend to promote the development of critical and independent views of the Roma population and did nothing but fueled the conflict rather than the cooperation between different Roma organizations. In Spain, this approach meant that the main national policy of the state to improve the situation of Roma has gained rather a feature of a social program rather than that of a strategic plan designed to protect and promote the rights and identity of the Roma minority. Governments should develop comprehensive mechanisms to ensure that Roma and Sinti population is granted equal chance with those of other acknowledged minorities, including the right to cultivate and to study its language. It is also necessary for them to improve the mechanisms that ensure their opportunity to fully participate in the public life, including active participation in the development of policies and programs for their own benefit and in leading the implementation and evaluation of those policies and programs.

3.4. Issues related to minority rights for Muslims

By definition, Muslims are largely excluded when it comes to the protection regime of minorities in France, Italy and the United Kingdom (*see subchapter 3.3.1*). Most institutions, even if neutral or secular in formal terms, favors often implicitly (and sometimes explicitly) the culture and the religion of the majority. For example, Christmas and Easter are officially recognized holidays; during official ceremonies they use symbols and religious rites; the curriculum provides teaching the traditions and the Christian history (even in schools with very few Christians). However, all three governments embrace formally the multiculturalism and diversity and make efforts to solve the cultural and the religious needs of the Muslim communities within the existing legal and institutional framework.

There are significant differences in the relationship of the three states with different beliefs. The Church of England is the acknowledged church of England²⁵ and in Italy there is a Concordat that deals with the relations between the State and the religion of the majority (Roman Catholicism). Only religions represented by an officially recognized institution can enjoy certain benefits (such as tax exemption on religious buildings) in France and Italy, causing inequalities regarding the treatment of various forms of worship²⁶; in any of these countries the Muslims have failed to reach an agreement with the state so that the exercise of religious rights is practically limited. To resolve these inequalities, the state authorities in France and Italy encouraged Muslims to designate a single representative to facilitate negotiations in order to conclude an agreement with the state. The process, however, has proved to be difficult. In Italy, for instance, it appears that the designation of a single organization as a “representative” could result in the alienation of others, therefore the state decided that it is too early to conclude an agreement. In France, a few Muslim associations participated in the consultations that led to the development of a draft agreement on a methodology for choosing a representative body, but other groups have not participated, therefore, some leaders of the association

²⁵ The Church of Scotland is the National Church of Scotland; there is no church established in Wales and Northern Ireland.

²⁶ In Italy, for instance, the groups that have not signed an agreement with the State cannot allocate a part of their personal income to the community, cannot deduct their donations to the community of the taxable income, cannot delegate teachers to teach in public schools, cannot legitimately refuse to work on religious holidays, etc.

felt excluded. Up to the negotiation of such agreements, the Muslims living in France and Italy will not enjoy guaranteed access by law to important religious rights. Although some local authorities have taken certain steps to address the needs of Muslim communities, they are taken discretionary, and sometimes they face opposition from their electorate; both in France and in Italy, the local communities often objected to building Islamic places of worship. In many respects, the existing frameworks for addressing the problems of the minority religious communities do not match the realities and needs of the numerous and distinct Muslim population. This is not surprising as they were firstly drafted in conditions much different than those they refer currently as a response to the needs of the indigenous religious communities. Some Muslims (and non-Muslims) have criticized the approach made by the state as “post-colonial”, with the intent to control the Muslim communities rather than to facilitate their active involvement. It is necessary that the Member States review the bodies that standardize the life of the religious communities to determine in what proportion they serve the interests and needs of the religious minority groups; where it is the case these bodies must be fined to make them more responsive to the current realities.

Given the diversity of Muslim communities in France, Italy and the United Kingdom, it results that they do not have a single “minority language”. Therefore, the claims related to the use of a minority language and of the education in a minority language are not relevant to Muslim community as a whole, although such claims may be relevant to some linguistic groups. Although Muslim communities in France and especially in the United Kingdom, acknowledge the need to learn a majority language, they pay as much attention to learning Arabic as for the interest to promote the knowledge of Islam and the Muslim contribution the way other religions do in schools. The British Muslims stressed the importance of training elementary school teachers with knowledge about Islam to give them the ability to enable them to be more effective in multi-religious contexts. The recognition of the Islamic dimension of the identity of Muslim students and cooperation with the Muslim community may be important factors in the development of innovative policies which operate to improve standards in schools. In present, most of the teaching and the Islamic religious education in Arabic is done either at home or in the mosque, after school classes. With little time and few resources available, the mosques are often in a position to provide only basic knowledge of Arabic and Islam. For this reason, the younger generations of Muslims are missing opportunities to engage fully in their religion and acquire adequate knowledge of the Islam history and traditions. In the absence of education and an adequate knowledge, young Muslims are insufficiently equipped to engage in debates and dialogue with the organizations that give different interpretations and, perhaps more radical to Islam.

Providing classes of Arabic language in the context of modern languages in state schools would offer Muslims children and parents a chance to cultivate their interests and skills and to integrate the knowledge about the communities and the cultures speaking Arabic in the education plans. Where there is demand, the schools should consider offering Arabic as a modern language option alongside other modern European languages. The problem is alleviated by the predisposition of the Muslim communities for English, coming with it from their home countries.

As mentioned previously, the traditions and history of Islam are hardly present in the public consciousness, and intolerance against Muslims is a real problem, exacerbated by the use of super simplified stereotypical images, appeared in mass media with a wide audience. The Muslim reaction to the stereotypical images of the mass media is moderate; the bodies that govern public media can provide useful information related to the mechanisms of filing complaints by the Muslim community. Governments and media bodies state the question of having to consider projects to support greater participation of Muslims in the media organizations, a field where success was recorded, to get a concerted effort in order to promote the identity and the positive examples.

The subject comes more than sequentially to the attention of the policy makers, when it is forced by events that highlight weaknesses, so far unnoticed or silenced.

Once with Romania's adherence to European Union followed by expansion projects, great challenges arise along with the old ones multiplied to reach the programmatic and pragmatic horizon of inter-community harmonization where ethnic minorities as a whole, and on the particular situation, require an approach with punctual and concrete settlement prospects.

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