

Making the EU's anti-discrimination policy instruments work for Romani communities in the enlarged European Union¹

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The profound changes that the European Union is undergoing, which were triggered by enlargement and are most symbolically epitomized by the ongoing voting for adoption of the EU Constitution in Member States, reflect the EU's evolution from an economic to a political organization. Concomitant with this is the emergence of the EU's human rights regime. Its building blocks were the rulings of the European Court of Justice, a reference to the European Convention on Human Rights in the Union treaties and the anti-discrimination clause in the Treaty of Amsterdam. This process culminated in the proclamation of the Charter on Fundamental Rights at the 2000 Nice European Council. The provisions of the Amsterdam Treaty provided space for the adoption of the two EC directives (2000/43/EC and 2000/78/EC) that were of paramount importance in the area of anti-discrimination.

The trajectory of this evolution is evolving and the European Parliament has set out to define a new step in two recent motions for EP resolutions³. The resolution on protection of minorities and anti-discrimination policies opens the dimension of minority rights, which is a new area for consideration in an enlarged EU. To date EC/EU treaties have made no mention of minority protection or positive minority rights. The drafters were careful to refer to the European Convention on Human Rights, which does contain the anti-discrimination clause (Art. 14) but not provisions on minority rights. No other international conventions covering minority rights are mentioned. However, the Constitutional Treaty does mention "minorities", and if ratified the notion of minorities (and national minorities) will appear in the primary law of the EU. Still, it is up to the European Court of Justice and the European Council to provide authoritative interpretation of these entries in the Constitutional Treaty.

Without prejudging what course this may take, the view of the Reflection Group on Long-Term Implications of EU Enlargement under the chairmanship of Giuliano Amato still holds validity. Already in 1998 the Group claimed that "the EU will find it hard to maintain its agnostic stance on minority rights vis-à-vis its member states"⁴. The Group enumerated three main factors that may challenge this stance: 1) with enlargement new Member States will bring with them minority problems of direct concern to the EU; 2) increased migration both from new and poorer Member States and from third countries will accentuate the differentiation between these two groups and will necessitate regulation on the status of non-EU minority groups; and 3) the special situation of the Roma, which "points to a case for direct EU involvement where a minority issue

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³ Motions for a European Parliament Resolution on "promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency" (2005/2007(INI)) and on "protection of minorities and anti-discrimination policies in an Enlarged Europe" (2005/2008(INI)).

⁴ Minority Rights and EU Enlargement to the East, Report of the First Meeting of the Reflection Group on the Long-Term Implications of EU Enlargement: the Nature of the New Border, European University Institute, RSC Policy Paper No 98/5.

transcends the borders of member-states, and where an extremely marginalized minority lacks the resources to formulate and assert its rights effectively”⁵.

Promotion and protection of fundamental rights and especially monitoring of the EU anti-discrimination directives by a future Fundamental Rights Agency are for the Roma of paramount importance. Romani minorities are in a process of self-assertion and re-construction of their identity. Emerging Romani civil and political organizations have entered into a struggle for control and recognition of Romani identity and status as a legitimate ethnic or national minority⁶. Enhancing the level of protection of minority rights is therefore in the interest of Roma.

Since the beginning of the 1990s the international community has paid increasing attention to Romani concerns. The UN, the Council of Europe, and the OSCE, at various times, were the centers of focus in addressing Romani issues. Their efforts, while important, have not produced the expected results in terms of changing the situation of Romani populations; recommendations or political commitments are not binding and, in addition, have not been backed with financial resources.

With enlargement and the Copenhagen political criteria the center of gravity for Romani issues has shifted to the European Union and its institutions. The “minority conditionality” for EU accession placed inclusion of Romani minorities among the political criteria and spelled out requests for improvement in their social and economic standing as well as for better integration within their respective societies. The pre-accession PHARE support program for Romani communities was also a determining factor in developing national strategies and action plans for this population.

The Accession States undertook efforts following the requirements and recommendations of the European Commission that were included in a number of documents, especially the Commission’s regular and progress reports. In fact, the Roma, along with the Russian minority in Estonia and Latvia, were the only groups mentioned regularly in the EC’s monitoring documents⁷. The Network of Independent Experts on Fundamental Rights, in its first “Report on the Situation of Fundamental Rights in the European Union for 2002,” devoted a chapter to the Roma. It is worth noting here that the Network recommended adopting the Roma Integration Directive⁸. The European Commission published a report on the “Situation of Roma in an Enlarged European Union” in 2004⁹. At the same time, expectations for “more direct EU involvement” in the case of Romani minorities have increased and have been formulated both by Romani representatives¹⁰ and by some governments of the new EU Member States.¹¹

⁵ Op. cit.

⁶ See: *The Roma in the Twenty-First Century: A Policy Paper*, PER Report, May 1997, Princeton, US; available at www.per-usa.org

⁷ G. Sasse, *Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality?*, (in) *Minority Protection and the Enlarged European Union: the Way Forward*, G. N. Toggenburg (ed.) OSI/LGI Budapest 2004, p. 66.

⁸ EU Network of Independent Experts in Fundamental Rights (CFR-CDF), *Report on the Situation of Fundamental Rights in the European Union and Its Member States in 2002*, pp. 176-179, at http://europe.eu.int/comm/justice_home/cfr_cdf/doc/rapport_2002_en.pdf

⁹ *The Situation of Roma in an Enlarged European Union*, European Commission Directorate - General for Employment and Social Affairs, Unit D3, Luxembourg 2004.

¹⁰ See the Open Letter to the Commissioners’ Group on Fundamental Rights, Anti-Discrimination and Equal Opportunities with the occasion of 8th of April the International Roma Day issues by the ERIO (Press release on April 10, 2005).

The situation of the Roma is described in numerous reports produced by major international organizations and specialized bodies and NGOs. These provide ample evidence that the overall situation of this population continues to be dire and there have been but few signs of change or improvement. The Roma experienced a paradoxical development in the last two decades. While the Roma gained new possibilities for ethnic and political mobilization, including the recognition of their identity and status as an ethnic minority, they were increasingly facing social exclusion, growing intolerance and discrimination, and economically, experiencing rapid and massive deprivation. The cumulative effect of a variety of unfavorable factors for the Roma, including negative side-effects of the transition in Central and Eastern Europe, led to a situation that some sociologists have described as the formation of a Romani underclass, with all its negative aspects, including a high degree of exposure to social exclusion, discrimination and victimization¹². In the mid of 1990s some governments rightly referred to the situation as one of 'crisis'¹³.

There is a clear link between the Roma's social and economic standing and the level of prejudice and discrimination against them. In other words, a minority which is impoverished, marginalized and politically powerless, incurs more prejudice and discrimination. The continuing deprivation of Roma contributes to the maintenance of societal prejudice and discrimination. Breaking out of this vicious circle therefore requires not only legal challenges to discriminatory practices but also significant improvements in the actual situation of Roma.

Prejudice and discrimination impacts many areas of interethnic relations and obviously hampers integration projects that many European governments attempt to pursue. They also inhibit the Roma's own efforts at integration within the majority society.

Against this background, improving the situation of Romani communities - a goal of all governmental programs for Roma that have been adopted in more than twenty countries in recent years - seems to be difficult to attain. The Decade of Roma Inclusion, an initiative of the World Bank and the Open Society Institute, pursues the same goal as a regional initiative. Attaining real improvement in Romani communities requires large resources, both financial and human, and, most profoundly, political will on the part of central and local authorities. In most

¹¹ That has been for example the position of the Czech Republic since long calling for "European" approach to Roma issues, for more see: *Leadership, Representation and the Status of the Roma*, PER Report, Princeton US, 2001, p.37; available at www.per-usa.org. Also G. T. Toggenburg maintains that: "The poverty and segregation of the Roma are a phenomenon that require an EU-born reply", G. T. Toggenburg, *Minority protection in a Supranational Context: Limits and Opportunities*, (in) *Minority Protection and Enlarged European Union*, op. cit. p. 20.

¹² J. Ladanyi, *The Hungarian Neo-liberal State, Ethnic classification and the Creation of a Roma Underclass*, (in) R. J. Emigh, E. Fodor, I. Szelenyi, (eds.), *Poverty, Ethnicity, and Gender in Eastern Europe During the Market Transition*, Westport, Conn.: Greenwood Press, 2001, 67-82. See also: D. Ringold, *Roma and the Transition in Central and Eastern Europe: Trends and Challenges*, The World Bank, Washington, D.C., 2000, see also, *The Roma in Central and Eastern Europe. Avoiding the Dependency Trap*, A Regional Human Development Report, UNDP, Bratislava 2002. It has to be noted that some scholars object to the concept and framework of analyzing Roma situation in terms of 'underclass' formation; for more see: M. Stewart, *Deprivation, the Roma and 'the underclass'*, (in) C.M. Hann (ed.), *Postsocialism, Ideas, Ideologies and Practices in Eurasia*, Routledge, 2001, pp. 133-157.

¹³ In Hungary for example, the first governmental programme adopted by the decree 1125/1995(XII.12) on the Most Urgent Tasks Concerning the Gypsy Community was elaborated as 'a crisis management package'; C. Tabajdi, *Report on the Situation of the Gypsy Community in Hungary*, Commissioned by the State Secretary at the Office of the Prime Minister, Budapest, 1996, p. 12.

cases both are problematic; neither political will nor finances are easy to secure, especially given the fact that Romani minorities represent no political power¹⁴.

In my view, some of the more effective measures to address the situation of Romani communities in an enlarged European Union are as follows:

1) Monitoring, legal challenges and litigation are the obvious ways to deal with prejudice and discrimination. In order to do so, however, Roma have to be aware of their rights and the legal means available to them. It is only in recent times that awareness of human rights among Roma is rising. With the EU "Race Equality Directive", which has been transposed into national legislation in most EU countries, a strong legal tool is being provided to Roma. Still, awareness of anti-discrimination directives among the Roma is minimal.

2) While monitoring of the situation of Roma communities as conducted by various agencies and organizations is a step forward, significant deficiencies remain. Effective and informative monitoring requires indicators and ethnic statistics. At the moment, neither of these is in place. Some governments are reluctant to collect disaggregated ethnic data, and the collection of such data is opposed by some Romani leaders. However, international organizations, the European Commission and also the EUMC have been clear in encouraging the collection of ethnic data, which is helpful.

3) As a recent publication of the EUMC¹⁵ shows, different traditions and conceptual frameworks make it difficult to compare data. In the EU-15, the dominant concepts have been "foreigners" or "non-EU nationals", or "immigrants" or "new minorities," which is in sharp contrast with the notions predominant among new Member States – national or ethnic minorities. Relevant data are not readily available or collected in a comprehensive way, violations of fundamental rights are not systematically recorded by state agencies and institutions, etc. These kinds of problems need to be overcome and might represent a strong argument for establishing an EU Fundamental Rights Agency.

4) Preventive measures established by anti-discrimination legislation and policy instruments are necessary but not sufficient to overcome the present level of discrimination, social exclusion and marginalization experienced by Romani minorities. These policies have to be accompanied with "Community incentive measures" as provided for by Art. 13 par. 2 of the Treaty establishing the European Community, and should follow the EU principle of subsidiarity to ensure effective integration of Roma. One of the tasks of the Fundamental Rights Agency might be the thematic focus on Romani minorities across the EU and recommendations on targeted incentive measures. Such an approach can build on and benefit from pre-accession PHARE Roma support policies. There are of course lessons to be learned from the PHARE assistance to Roma¹⁶. One of its lessons is that in the case of Romani minorities "anti-discrimination legislation (*provided it is imposed and translated into practice*) on its own will not tackle the root causes of social exclusion, as discrimination is only one contributing factor"¹⁷.

¹⁴ For more in: *Roma and EU Accession: Elected and Appointed Romani Representatives in an Enlarged Europe*, PER Report, Princeton US, 2004; available at www.per-usa.org

¹⁵ "Migrants, Minorities and Legislation: Documenting Legal Measures and Remedies Against Discrimination in 15 Member States of the European Union" (December 2004)

¹⁶ "Review of the European Union PHARE Assistance to Roma Minorities" commissioned by the EC Directorate E (Evaluation Unit) and prepared by an independent EMS consortium. (December 2004)

¹⁷ Op. cit. p. 37

5) An integrated approach to equality and non-discrimination and their mainstreaming in relevant EU policies with respect to Romani minorities have been discussed in various fora recently. While Roma representatives are divided on the question of mainstreamed or targeted policies, a conclusion from the above-mentioned PHARE review can be instructive. This document states: "Roma minorities should be included in a broader social inclusion agenda which would be a step towards a more coherent and strategic approach to the problems. Roma should feature as a clearly identified high priority within a wider social inclusion strategy and resource allocation should be clearly identified and explicitly guaranteed. But there are also considerable concerns that in such a wider strategy context, discrimination would be exercised and Roma would be overlooked in favor of other disadvantaged groups within the majority population or other minority populations"¹⁸ . Additionally at the government level there is "no genuine strategic framework to clearly define what social inclusion (integration) of Roma means, how it will be achieved, over what period of time or how the process will be resourced"¹⁹ .

6) Mainstreaming will remain a weak policy approach without ensuring the effective participation of Roma in public and political life. Roma have to become active agents of policy making and decision making. Roma are currently in the process of political mobilization. This requires of course a more numerous Romani elite, which is better educated and more skilled. Some progress has been achieved in this regard. In Hungary, Bulgaria and Romania Roma representatives have entered into national parliaments, and Romani political organizations have become coalition partners to ruling parties. In the present European Parliament there are two Romani Members from Hungary. Roma policies have become institutionalized and a number of Roma representatives have taken positions in governmental structures responsible for their implementation. Still, not enough has been done to guarantee strong partnership relations within national politics. The promise of reformulating Romani issues as political issues and making them part of mainstream politics is that once Roma become stakeholders in their countries' politics they will be less dependent on the bad or good will of others. The future of Romani communities depends on their successful development into effective interest groups, conscious of their rights, interests and power. This will combine human rights advocacy with political mobilization and organization.

7) Structural funding represents a major opportunity for change, also for Romani communities. In December 2003 the Project on Ethnic Relations organized a two-day event in Brussels that brought together Roma representatives and representatives of the European Commission and European Parliament. One major topic related to Romani minorities in the post-accession context.²⁰ There is no doubt that Structural Funds can make a decisive difference if used effectively to improve the situation of Romani communities. The new member states are in the process of utilizing structural funds for 2004-2006. In some States Romani interests were included into National Development Plans (NDPs) and Operational Programs. It is critical to undertake an immediate assessment of their use by Romani communities and of the results achieved. At the same time, member states are currently preparing new National Development Plans for the structural funds programming period 2006-2013. Some countries aim at completing public consultation and drafting by the end of this year in order to start negotiations with the Commission at the beginning of 2006. There is therefore a small window of opportunity to lobby and advocate for inclusion of Romani interests into new NDP's and Operational Programs.

¹⁸ Op. cit. p. 38

¹⁹ Op. cit. p. 38

²⁰ *Roma and EU Accession: Elected and Appointed Romani Representatives in an Enlarged Europe*, PER Report, op. cit.; available at: www.per-usa.org.