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**LEGAL STATUS AND PARTICIPATORY RIGHTS  
OF ROMA MINORITIES IN WESTERN EUROPE:  
COMPARATIVE REMARKS**

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## 1. INTRODUCTION

This contribution aims to fill a gap in the comparative legal studies devoted to the protection of minorities in western Europe, where there is still little attention to Roma groups in comparison to the extensive amount of research in central and eastern European countries.

According to the data of the Council of Europe and the OSCE, there are between 10 and 12 million Roma spread in Europe, and most of them live in the Carpathian-Balkan area. With reference to the western countries adhering to the European Union, in eleven states the percentage of Roma with respect to the total population is less than 0.5% (Austria, Belgium, Cyprus, Denmark, Finland, Germany, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom). Exceptions are Portugal (0.52%), France (0.62%), and Ireland (0.9%), while the highest concentration of Roma in western Europe is recorded in Spain (1.57%) and Greece (2.47%)<sup>1</sup>.

My purpose is to highlight how the Western States react to the problems posed by Roma groups. Hence, firstly I will put forward a general framework, giving a definition of the term Roma in a comparative perspective and within the picture of the major problems that affect these groups. Then, briefly I will illustrate the sphere of collective rights conferred to the Roma in the western legal systems, considering constitutions, minority acts, ratification of international treaties where relevant. The aim is to present the different level of protection granted (at least formally) by the States. Subsequently, I will illustrate the principles and the measures indicated by the Council of Europe and the OSCE in order to facilitate the involvement of minorities in the decision-making processes. The reason is that the effective participation of minorities in public affairs is supposed necessary to ensure that they are respected and recognized. With this aim, "For Roma with Roma" is the international catch-phrase designed to promote the social inclusion of Roma minorities. "For Roma with Roma" is also a guiding principle according to which each policy should be elaborated and implemented through the active cooperation of Roma. So, I will discuss the mechanisms enabling the participation of Roma in public life, with reference to Roma consultative councils in western Europe.

To conclude, the goals of this paper are twofold. Firstly, the gap between Western and Eastern Countries regarding the recognition and promotion of the rights of these groups is emphasized. The article suggests that the primary factors determining this gap are connected with the different demographic distribution of Roma in Western and Eastern Europe and with the EU enlargement conditionality of minority protection. Secondly, the goal is to evaluate the role that Roma consultative councils may have in strengthening to some extent the legal status of these groups and their social inclusion.

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<sup>1</sup> The situation in former-communist countries is the opposite. In Estonia, Latvia, Lithuania, Poland, Slovenia, and Croatia, Roma are less than 1% of the population. In Bosnia-Herzegovina, Kosovo, Montenegro, Albania and Czech Republic the percentage of Roma varies from 1% to almost 4%. In the remaining six States there is a higher percentage of Roma. They are 7.05% in Hungary, 8.18% in Serbia, 8.32% in Romania, 9.17% in Slovakia, 9.59% in Macedonia and 10.33% in Bulgaria. For the statistics, see Cahn C., Guild E., «Recent Migration of Roma in Europe», CommDH(2009)37rev, at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1536357>.

## 2. THE DEFINITION OF THE TERM ROMA IN A COMPARATIVE PERSPECTIVE

It is well known that the word Roma identifies a variety of ethnic groups of different origins<sup>2</sup>. Gypsy is a term which has acquired a pejorative meaning in common speech, while having a neutral connotation in the academia. It is therefore important to use consciously the correct terminology. Roma in Romani language means “man” and designates an ethnic group prevalently living in the Carpathian-Balkan area. Since 1971, the representatives of fourteen European countries who participated to the first World Congress of Roma preferred the term Roma instead of gypsy<sup>3</sup>. Then, with the fall of the socialist regimes, the problems of Roma communities living in Central and Eastern Europe have attracted international attention. Subsequently, their migrations have emphasized the conditions of several groups living in the West. Thus, the word Roma has become the politically correct term to refer to a plurality of groups, including those having different names and origins<sup>4</sup>.

In its comprehensive meaning, as an analytical category and not as the name of the larger community, the term Roma is widespread in specialized literature, in international documents and in monitoring reports on the living conditions of these ethnic groups. One can see the path of the semantic change through the acts of the Council of Europe, which corresponds to a greater knowledge and understanding of these groups. The first recommendation of the Parliamentary Assembly of the Council of Europe, no. 563 of 1969, is devoted to «gypsies and other travellers». This was followed, in 1975, by the resolution of the Committee of Ministers no. 13, on the social situation of «nomads». In 1987, the founder of the *Centre de recherches tsiganes*, Jean-Pierre Liégeois, published a study on *Gypsies and Travellers* on behalf of the Council of Europe. The subsequent edition, in 1994, was entitled *Roma, Gypsies, Travellers*. Since the mid-nineties, the term Roma has been alleged in the recommendations of the Council of Europe’s dependent organs, too<sup>5</sup>. In 2007, the updated study of Liégeois is simply entitled *Roma in Europe*. The other definitions are still used, especially the term travellers to refer to itinerant groups.

I agree with the observation of those who see in the generic use of the term Roma the risk of oversimplifying the complex identity of these groups making them homogeneous<sup>6</sup>. Notwithstanding this fact, sociologists refer to a mosaic or a galaxy of Roma minorities<sup>7</sup>, in order to emphasize that these communities do not

<sup>2</sup> Piasere L., *I rom d’Europa. Una storia moderna*, Laterza, Roma-Bari, 2009.

<sup>3</sup> Guy W., «Romani identity and post-Communist policy», Guy W. (ed.), *Between past and future the Roma of Central and Eastern Europe*, University of Hertfordshire Press, Hatfield, 2001, p. 19.

<sup>4</sup> Vermeersch P., Ram M.H., «The Roma», Rechel B. (ed.), *Minority Rights in Central and Eastern Europe*, Routledge, London-New York, 2009, p. 66.

<sup>5</sup> See the Resolutions 11 and 16 (1995) of the Congress of Local and Regional Authorities – *Towards a Tolerant Europe: the contribution of the Roma (Gypsies)* – and resolution 44 (1997), *Towards a Tolerant Europe: the contribution of Roma*. See also the recommendation 1557 (2002) of the Parliamentary Assembly on the legal situation of Roma.

<sup>6</sup> Guy W., «Introduction», Guy W. (ed.), *op. cit.*, p. XV.

<sup>7</sup> Respectively, Liégeois J.-P., *Roma in Europe*, Council of Europe, Strasbourg, 2007, p. 51-52; and dell’Agnese E., Vitale T., «Rom e sinti, una galassia di minoranze senza territorio», A-

share the same history, culture, language or religion. In this paper I will therefore adopt the term Roma in its broad sense, considering that the analytical category can not lead to forgetting the coexistence of different groups in many countries. Even if they are included under the same collective name, they may have different instances to accommodate.

### 3. SOCIAL EXCLUSION AND RACIAL HATE

The features that all Roma minorities have in common are a high level of social exclusion and poverty, and the fact that they are often victims of discrimination<sup>8</sup>. Many of them are forced to live partially or totally segregated from the rest of the population. Furthermore, when the majority is obliged to cohabitate with them, and thus they share the same urban areas, the majority builds walls or barriers to keep them away, giving reasons of public order and security<sup>9</sup>. The Roma live on the border, a geographical-spatial (suburbs, camps, ghettos) concept, and also a social concept, that implies a set of relationships defining the individual and the collective identity of the Roma<sup>10</sup>. This border is a dividing line that is reflected in their permanent marginalization from the rest of the population<sup>11</sup>.

In central and eastern Europe, Roma are poorer than other groups and have higher chances of falling into poverty and remaining poor. With the transition from a planned economy to a market one, most of them loose their jobs and the subsidies guaranteed by the socialist system. Low levels of education and professional skills have prevented their employment. So, in large part, Roma have become victims of a vicious circle of multidimensional exclusion<sup>12</sup>. Migrations from central and eastern Europe to the West, which can be observed starting from the nineties, are not just the result of extreme poverty. One may remember another

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miotti G., Rosina A. (a cura di), *Identità e integrazione. Passato e presente delle minoranze nell'Europa mediterranea*, FrancoAngeli, Milano, 2007, p. 121.

<sup>8</sup> Liégeois J.-P., *op. cit.*; Piasere L., *op. cit.*

<sup>9</sup> Banach E., «The Roma and the Native Americans: Encapsulated Communities within larger Constitutional Regimes», *Florida J. Int. Law*, 14, 2002, p. 381-382; Xanthaki A., «Protection of a specific minority: the case of Roma/Gypsies», Thornberry P., Martín Estébanez M.A. (eds.), *Minority rights in Europe. A review of the work and standards of the Council of Europe*, Council of Europe Publishing, Strasbourg, 2004, p. 169; ERRC, *Standards do not apply: Inadequate Housing in Romani Communities*, 2011, p. 19, at [http://www.romadecade.org/standards\\_do\\_not\\_apply\\_inadequate\\_housing\\_in\\_romani\\_communities\\_2011](http://www.romadecade.org/standards_do_not_apply_inadequate_housing_in_romani_communities_2011).

<sup>10</sup> In this respect, Zago M., «Vivere sul confine: forme di discriminazione e scelte di integrazione», Baldin S., Zago M. (a cura di), *Il mosaico rom. Specificità culturali e governance multi-livello*, FrancoAngeli, Milano, 2011, p. 22.

<sup>11</sup> About the condition of permanent marginalization of the Roma in Central and Eastern Europe, see Dimitras P., Papanikolatos N., «Riflessioni sulla politica dei diritti delle minoranze nei paesi dell'Europa Centro-orientale», Kymlicka W., Opalski M. (a cura di), *Il pluralismo liberale può essere esportato? Teoria politica occidentale e relazioni etniche nell'Europa dell'Est*, il Mulino, Bologna, 2003, p. 262.

<sup>12</sup> Ringold D., Orenstein M.A., Wilkens E., *Roma in an Expanding Europe: Breaking the Poverty Cycle*, The World Bank, Washington, 2005, p. XIV-XV, at [http://siteresources.worldbank.org/EXTROMA/Resources/roma\\_in\\_expanding\\_europe.pdf](http://siteresources.worldbank.org/EXTROMA/Resources/roma_in_expanding_europe.pdf).

two reasons: the mass exodus caused by the wars in the Balkans, and the repressive policies towards them in many parts of Europe.

The violence reported almost daily by the mass media is the contemporary version of the persecutions suffered by Roma over the centuries, culminating in their extermination during the Second World War. It is possible to get an idea of the abuses suffered by these groups analyzing the recent jurisprudence of the European Court of Human Rights. There are cases regarding the sterilization of Roma women without their informed consent<sup>13</sup>; cases of brutality and murder, even committed by law enforcement officials<sup>14</sup>; the pogrom of whole communities, with the destruction of their homes and the expulsion of the individuals from those areas<sup>15</sup>. Roma groups were deprived of citizenship in the Carpathian-Balkan region during the transition from the old to the new legal order in the Czech and Slovak Republics and during the war in former Yugoslavia. There, the *status civitatis* still remains a very serious problem. And in Western Europe Roma are victims of collective expulsions<sup>16</sup> and forced evictions<sup>17</sup>. Thus, one should remember that their wandering is often the consequence of other people's decisions.

In 1993, the European Union and the Council of Europe identified a framework of cooperation regarding Roma in areas of the fight against poverty, the field of education, the preservation of European cultural heritage, the recognition of minorities and the promotion of fundamental rights<sup>18</sup>. Since then, they have undertaken several initiatives aimed at improving the living conditions of these groups. Recently, the European Court of Human Rights has begun to develop a more careful and protective case law related to article 14 on racial discrimination inserted in the European Convention of Human Rights, thus better safeguarding the right to access to education of Roma pupils and condemning the praxis of

<sup>13</sup> The pending cases are: *V.C. v. Slovakia; I.G., M.K. and R.H. v. Slovakia; M.V. v. Slovakia; N.B. v. Slovakia; R.K. v. Czech Republic*. See also European Court of Human Rights, *K.H. and Others v. Slovakia*, 2009. The case law of the European Court of Human Rights is available at [http://www.echr.coe.int/ECHR/Homepage\\_EN](http://www.echr.coe.int/ECHR/Homepage_EN).

<sup>14</sup> European Court of Human Rights: *Assenov and Others v. Bulgaria*, 1998; *Velikova v. Bulgaria*, 2000; *Anguelova v. Bulgaria*, 2002; *Nachova and Others v. Bulgaria*, 2005; *Bekos and Koutropoulos v. Greece*, 2006; *Šečić v. Croatia*, 2007; *Cobzaru v. Romania*, 2007; *Angelova and Iliiev v. Bulgaria*, 2007; *Petropoulou-Tsakiris v. Greece*, 2008; *Stoica v. Romania*, 2008.

<sup>15</sup> See *Hajrizi Dzemajl et al. v. Yugoslavia*, CAT/C/29/D/161/2000, UN Committee Against Torture (CAT), 2 dicembre 2002, in <http://www.unhcr.org/refworld/docid/3f264e774.html>. Also see European Court of Human Rights: *Moldovan and Others v. Romania*, 2005; *Kalanyos and Others v. Romania*, 2007; *Gergely v. Romania*, 2007; *Tănase and Others v. Romania*, 2009. Haller I., «The Mendacious Government: Implementation of the Romanian Pogrom Judgments», in *Roma Rights*, 1, 2010, at [www.errc.org](http://www.errc.org); Liégeois J.-P., Gheorghe N., *Roma/Gypsies: A European Minority*, MRG International Report, 95/4, 1995, p. 14; Pogány I., «Refashioning Rights in Central and Eastern Europe: Some Implications for the Region's Roma», *Eur. Publ. Law*, 1, 2004, p. 100-105.

<sup>16</sup> See European Court of Human Rights: *Čonka v. Belgium*, 2002; *Sulejmanovic et al. v. Italy*, 2002.

<sup>17</sup> The pending cases are: *Tzamalīs and Others v. Greece; Ibishi and Others v. Greece*. On the violation of the European Social Charter in cases of forced evictions of Roma, see Baldin S., *Le minoranze rom fra esclusione sociale e debole riconoscimento giuridico. Uno studio di diritto pubblico europeo e comparato*, Bononia University Press, Bologna, 2012, forthcoming.

<sup>18</sup> See the recommendation of the Parliamentary Assembly no. 1203 (1993) on Gypsies in Europe.

school segregation<sup>19</sup>. The same activism is observed in the recent case law of the European Committee of Social Rights. It has the task of ruling on the conformity of states with the European Social Charter. Recently, the Committee has condemned France, Italy, Portugal and Greece for having discriminated Roma, but also several other countries are not in conformity with the European Social Rights for their treatment of Roma<sup>20</sup>.

#### 4. THE LEGAL STATUS OF ROMA MINORITIES IN WESTERN EUROPE

The Recommendation 1557 (2002) of the Parliamentary Assembly of the Council of Europe, concerning the legal situation of the Roma in Europe, elects them as a special minority. Roma have a double minority status: they belong to an ethnic community and most of them belong to socially disadvantaged groups. The Council of Europe calls upon States to recognize the minority status of Roma and to adopt measures for preventing their marginalisation.

The commitment of international organizations to protect the Roma is expressed in the monitoring of the States' compliance with their obligations and in the judicial guarantees related to the ratification of treaties on the protection of human rights. In particular, the political strategy of the conditionality for accession to the EU, contained in the 1993 Copenhagen political criteria, provides for the ratification of the Framework Convention for the Protection of National Minorities of the Council of Europe. (The western countries which are already members of the EU are not obliged to respect the same criteria.) It also includes the legal recognition of Roma groups and the adoption of specific assistance programs addressed to them<sup>21</sup>. Thus, States are encouraged to devise and implement policies aiming at the full participation of Roma in public life. Roma communities, organisations and political parties should be given the full opportunity to take part in the process of elaborating, implementing and monitoring programmes and policies aimed at improving their present situation. Hence, the goals are to pursue the social inclusion of Roma by combating poverty, marginalisation and discrimination, and to pursue their integration such as minorities in the States of residence, recognizing a sphere of group rights.

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<sup>19</sup> Strazzari D., «C'è un giudice a Strasburgo! La Corte europea dei diritti dell'uomo e la tutela contro la discriminazione degli appartenenti all'etnia rom», Baldin S., Zago M. (a cura di), *op. cit.*, p. 200-205.

<sup>20</sup> Baldin S., *op. cit.*

<sup>21</sup> Pentassuglia G., «The EU and the Protection of Minorities: The Case of Eastern Europe», *Eur. J. Int. Law*, 2001, p. 13-16. With particular reference to the Roma, see Rechel B., «Introduction», Rechel B. (ed.), *op. cit.*, p. 6; Vermeersch P., Ram M.H., *op. cit.*, p. 68; Pogány I., «Post-Communist Legal Orders and the Roma: Some Implications for EU Enlargement», Sadurski W., Czarnota A., Krygier M. (eds.), *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, Springer, Dordrecht, 2006, p. 349-351; de Witte B., Horváth E., «The many faces of minority policy in the EU», Henrard K., Dunbar R. (eds.), *Synergies in minority protection. European and International Law Perspectives*, Cambridge University Press, Cambridge, 2008, p. 371-375; Boev Y., «L'Union européenne et les tsiganes: la logique d'un double standard», Drobenko B. (ed.), *Territoires et minorités: la situation des gens du voyage*, Pulim, Limoges, 2005, p. 73-75.

The so-called politics of difference is a reflection of the contemporary societies that are faced with a broad spectrum of issues related to the different cultures of the members of the society. Its fundamental paradigm is that everyone should be recognized for her/his own identity, both as an individual and as belonging to a group. The assumption of this approach is that the non-recognition of the personal cultural identity could foster forms of oppression, trapping the individuals in a false way of life and causing inferiority and marginalisation<sup>22</sup>. The aim of several legal systems is to recognize the minority status of groups. It is a precondition to the conferral of collective rights, including participatory rights. In addition, some groups which were historically oppressed are nowadays recognized. They enjoy constitutional protection as a symbolic act to redress past injustices<sup>23</sup>. The recognition of groups implies the involvement of these minorities in the political community, thus reinforcing their inclusion.

The legal status of Roma is particularly weak in comparison to that of other groups, especially in Western Europe. On the basis of the recognition accorded to Roma minorities, it is possible to classify the legal systems in three categories. Countries recognizing Roma in the constitution; States recognizing Roma in national minority laws and/or through the ratification of international agreements; and States denying their recognition. In western Europe, only the Finnish Constitution mentions the Roma explicitly. They are referred to as a “group” in art. 17 Const., and qualified as a traditional national minority in other acts<sup>24</sup>. Several countries recognize the minority status of Roma in special statutes and/or as a consequence of the ratification of the Framework Convention for the Protection of National Minorities. Roma are recognized as a national minority in Ireland, Spain, and Sweden<sup>25</sup>. They are recognized as an ethnic group in Austria, Germany, and the United Kingdom<sup>26</sup>. The recognition of the legal status for a specific minority usually implies the conferral of cultural and/or linguistic rights. Basically, in Ireland and the United Kingdom the focus is on the policies aiming at accommodating the lifestyle of the travellers, while in the other countries the main aspect is attached to the use of the Romani language. Moreover, the recognition implies, with different degrees of extent, the conferral of participatory rights.

On the contrary, the recognition is denied in France, Italy, Portugal, the Netherlands, Belgium, Greece, Cyprus, Denmark, and Luxembourg. In accordance with the principle of formal equality, France does not recognize minorities. In Italy, Roma and Sinti are excluded from the protection afforded to a dozen of historical linguistic minorities because they are not supposed to have a

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<sup>22</sup> Habermas J., Taylor C., *Multiculturalismo: lotte per il riconoscimento*, Feltrinelli, Milano, 2008.

<sup>23</sup> Ringelheim J., «Minority Protection and Constitutional Recognition of Difference», Verstichel A. et al. (eds.), *The Framework Convention for the Protection of National Minorities: a Useful Pan-European Instruments?*, Intersentia, Antwerp, 2008, p. 33-34.

<sup>24</sup> Three post-socialist States explicitly mention the Roma in Constitution: they are “people” in Macedonia (Preamble to the Constitution, and considered as a national minority in other acts); “community” in Slovenia (art. 65 Const., as an ethnic community) and in Kosovo too (art. 64 Const., and defined as a national minority in other acts).

<sup>25</sup> In post-socialist States, the Roma are considered as a national minority in Czech Republic, Slovakia, Romania, Estonia, Latvia, Lithuania, Croatia, Bosnia-Herzegovina, Serbia, Montenegro, Bulgaria.

<sup>26</sup> Just as in Hungary, Poland, and Albania.

stable anchor in the territory<sup>27</sup>. The same reason prevents their recognition in Portugal and the Netherlands<sup>28</sup>. In Greece, Roma are considered within the Muslim community<sup>29</sup>; and Cyprus includes them in the Turkish group. Belgium grants extensive protection only to other linguistic minorities<sup>30</sup>, while Denmark declares the full integration of Roma, and Luxembourg denies the existence of minorities on its territory<sup>31</sup>. However, some States have provided a very limited range of policies for accommodating the instances of Roma. For example, the Netherlands protects the Romani tongue as a transnational language by way of the ratification of the European Charter for Regional or Minority Languages<sup>32</sup>. In Italy and Belgium, the lifestyle of itinerant people is recognized at regional/federal level<sup>33</sup>. In France the instances of the gens du voyages are regulated at national level, where the rules on the itinerant lifestyle are based on an objective criterion, given by the use of mobile homes, and not the belonging to an ethnic group<sup>34</sup>. Problems arise when, what could be the recognition of a right in a statute, is actually a way to hamper the cultural dimension of a group. In these cases, there is not an effective positive accommodation for travellers. The negative attitudes of the legislators and the local administrators emerge in those rules that do not make the travellers equal to the rest of the population with regards to the enjoyment of fundamental rights,

<sup>27</sup> Mancini L., «Il debole riconoscimento giuridico di una minoranza: il caso degli zingari», *Diritto, immigrazione e cittadinanza*, 3, 2001, p. 65-67.

<sup>28</sup> Palermo F., «Rom e Sinti come minoranza. Profili di diritto italiano e comparato e di diritto internazionale», Bonetti P., Simoni A., Vitale T. (a cura di), *La condizione giuridica di Rom e Sinti in Italia*, Giuffrè, Milano, 2011, p. 158. However, Portugal has ratified the Framework Convention for the Protection of National Minorities, and the monitoring reports assess the social situation of Roma.

<sup>29</sup> The only recognized group in Greece is the muslim one, living in western Thrace (Meinardus R., «Muslims: Turks, Pomaks and Gypsies», Clogg R. (ed.), *Minorities in Greece. Aspects of a Plural Society*, Hurst, London, 2002, p. 83). The greek Roma are considered a social group according to the act 2790/2000 which provides for positive measures in the sphere of housing. However, it seems that the public authorities have not sufficient legal tools to give effect to this legislation; see Pavlou M. (ed.), *Greece RAXEN National Focal Point*, 2009, p. 14, available at [http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-Greece\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-Greece_en.pdf).

<sup>30</sup> Belgium does not recognize the Travellers, who are recognized only at regional level. Jacobs D., Rea A., «Construction et importation des classements ethniques. Allochtones et immigrés aux Pays-Bas et en Belgique» *Revue européenne des migrations internationales*, 2, 2005, p. 9, at <http://remi.revues.org/index2487.html>.

<sup>31</sup> Tozzi P., Étienne R., *Educational Policies that address Social Inequality. Country Report: Luxembourg*, Université Paul Valéry, Montpellier, 2008, p. 3, available at <http://www.epasi.eu/CountryReportLX.pdf>.

<sup>32</sup> The purposes of the Framework Convention and the Charter are different. The Framework Convention aims to protect the groups through their legal recognition. It follows a sphere of rights that, in the case of linguistic minorities, embraces the safeguard of the mother tongue. By contrast, the Charter does not confer specific rights to the speakers; the States are committed to promote policies to keep alive the lesser-used languages. However, some measures of protection tend to overlap. See Woehrling J.-M., *The European Charter for Regional or Minority Languages. A Critical Commentary*, Council of Europe Publishing, Strasbourg, 2005, p. 32-34.

<sup>33</sup> For the case of Italy, see Furlan F., «Rom e Sinti nelle legislazioni regionali», Bonetti P., Simoni A., Vitale T. (a cura di), *op. cit.*, p. 703-710. In Belgium, on the recognition of travellers in the Walloon region, see Jacobs D., Rea A., *op. cit.*, p. 9.

<sup>34</sup> Le Berre C., «Categorie giuridiche e identità etnica nel diritto francese: dalle gens du voyage alla 'questione rom'», Bonetti P., Simoni A., Vitale T. (a cura di), *op. cit.*, p. 554.

as the right to vote for problems connected to residence<sup>35</sup>, or as the particular requirements linked to the freedom of movement and commerce<sup>36</sup>. In this respect, if a group does not obtain the constitutional recognition, it does not have an effective, judicially enforced, enjoyment of rights.

## 5. THE PARTICIPATION OF MINORITIES IN PUBLIC LIFE

The OSCE and the Council of Europe had formulated a set of principles in order to facilitate the involvement of minorities in decision-making processes. The aim, stated in art. 15 of the Framework Convention for the Protection of National Minorities, is to create the necessary conditions 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. The participation of minorities in public affairs is a broad concept. It means political participation in elected bodies at national and local levels, as well as in the executive and the public administration. It also means participation in semi-state companies, such as chambers of commerce, trade unions, boards of broadcasting companies, etc.<sup>37</sup>.

In order to create the necessary conditions for such participation, the Council of Europe (through the *Explanatory Report* of the Framework Convention for the Protection of National Minorities) invites States to promote measures to involve the minorities in the adoption of any policies which may affect them directly. Some examples are consultations with these minorities; involvement in the preparation, implementation and assessment of national and regional development plans and programmes; effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels; decentralised or local forms of government.

With reference to parliamentary representation, this is guaranteed to Roma minorities only in Romania<sup>38</sup>. In Germany (and also in Poland), the representatives of minorities are exempt from having to reach the minimum threshold requirement<sup>39</sup>. However, this rule does not facilitate Roma groups in participating at

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<sup>35</sup> As in France, condemned by the European Committee of Social Charter in the case *ERRC v. France*, no. 51/2008, because of the quota limit of 3% of the number of holders of circulation documents without a fixed domicile or residence, attached to a given municipality. When the 3% quota is reached, travellers cannot attach themselves to a municipality and do not therefore have the right to vote. The case law on the European Social Charter is available at <http://hudoc.esc.coe.int/esc2008/query.asp?language=en>.

<sup>36</sup> As in Belgium, where the travellers can not obtain a licence of commerce to trade legally in different part of the territory. See Kusters J., «Criminalising Romani Culture through Law», Foblets M.-C., Renteln A.D. (eds.), *Multicultural Jurisprudence. Comparative Perspectives on the Cultural Defense*, Hart Publishing, Oxford, 2009, 206-208.

<sup>37</sup> Verstichel A., *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs*, OUP, Oxford, 2009, 28-30.

<sup>38</sup> Tanasescu S., «Protezione giuridica e inclusione sociale della minoranza rom in Romania», Bonetti P., Simoni A., Vitale T. (a cura di), *op. cit.*, p. 512. There are reserved seats for Roma also in Croatia, the former Yugoslav Republic of Macedonia, and Kosovo.

<sup>39</sup> This exemption is adopted also in other western states, but not in favour of Roma minorities.

national level<sup>40</sup>. At present, there are no Roma representatives in any parliament of western Europe<sup>41</sup>. The Advisory Committee attached to the Framework Convention has emphasized that minority consultation becomes particularly important where minorities are not directly represented in the political decision-making processes. For instance, if the minority communities are persistently unable to achieve representation in parliaments, or in governments at ministerial or deputy ministerial level, the need for extensive consultative mechanisms increases. Incidentally, this is the case of Roma minorities in western Europe, because they are too small and spread in each country to gain an adequate voice in parliaments or governments.

The consultation of minorities through their representative institutions and their involvement in the preparation, implementation and monitoring of development programs that affect them are tools of *ex ante* participation. With regard to the type of activities, the minority consultative councils help to articulate minority interests and to represent them in governments or parliaments. These bodies should be able to raise issues with decision-makers; prepare recommendations; formulate legislative and other proposals; monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence<sup>42</sup>.

One may speak of mechanisms of co-decision when minority consultative councils must be heard before certain decisions are taken. Generally, minority consultative councils at least have the right to review draft legislation of special interest to the minorities and to offer views. In some instances, minority representative groups or minority consultative councils have a right to legislative initiative, and possibly even to block decisions where the adoption of sensitive legislation affecting their interests is concerned<sup>43</sup>.

With regard to the subject area to which the minority consultative bodies relates, most of the modalities of consultation can be applied throughout the hierarchy of public power within the state, from the central government to the local administration. A second aspect is that minority consultation bodies may also be arranged according to specific issue areas. These typically include education or cultural policy. Moreover, in addition to general consultative mechanisms, special mechanisms may be established in relation to minorities that face particularly pronounced problems, such as Roma groups<sup>44</sup>.

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<sup>40</sup> Council of Europe, *Third Report submitted by Germany*, ACFC/SR/III(2009)003, p. 273; Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on Poland*, ACFC/OP/II(2009)002, p. 8.

<sup>41</sup> A.a.V.v., *Human rights of Roma and Travellers in Europe*, Council of Europe Publishing, Strasbourg, 2012, p. 211.

<sup>42</sup> Weller M., «Minority Consultative Mechanisms. Towards best practice», Weller M., Nobbs K. (eds.), *Political Participation of Minorities. A Commentary on International Standards and Practice*, OUP, Oxford, 2010, p. 483-486.

<sup>43</sup> Council of Europe, *Handbook on Minority Consultative Mechanisms*, DH-MIN(2006)012, at [http://www.coe.int/t/dghl/monitoring/minorities/5\\_IntergovWork/PDF\\_DH-MIN\\_Handbook\\_MinConMecanisms\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/5_IntergovWork/PDF_DH-MIN_Handbook_MinConMecanisms_en.pdf).

<sup>44</sup> Weller M., *op. cit.*, p. 486-488.

## 6. THE ROMA CONSULTATIVE COUNCILS IN WESTERN EUROPEAN COUNTRIES

There is a great problem surrounding the participation of Roma in public matters in many countries, notwithstanding the massive efforts of international organizations and the NGOs to promote their active role in society. Several studies have indicated that the level of participation of Roma in conducting public affairs is low<sup>45</sup>. Some states have taken measures to enhance the participation of Roma in the decision-making processes, for instance through special provisions for minority representation in elected bodies at national or local level, or through the establishment of advisory councils or special governmental structures responsible for minority affairs<sup>46</sup>.

In western european countries, the mechanisms enabling the participation of Roma in public life are still quite rare. Generally speaking, the governments address the problems of Roma within ministerial committees. In few cases one can find specific institutions based on the representation of Roma organizations which have the task of advising the government with regard to issues of concern for these minorities. There are provisions of consultative councils for Roma communities in Finland, Austria, Ireland, France, Spain, Portugal, and Sweden.

Finland has been a forerunner in the development of the administrative structures of the policies on Roma, founding an advisory body as early as 1956. Today, the National Board on Romani Affairs has a broad task in all issues related to Roma. The Roma Advisory Council dependent on the Austrian federal government, set up in 1995, provides for the participation of Roma in the development of minority policies and in the provision of recommendations for the allocation of relevant government funding. In Ireland, the National Traveller Accommodation Consultative Committee was set up in 1999 to advise the government on issues concerning accommodation for travellers. In France, the National Consultative Commission for Travellers was set up with decree no. 733/1999 with the task of studying the specific problems of itinerant groups and of making suggestions in order to facilitate their way of life. The Spanish State Council of the Roma People was established in 2005 for the development of social welfare policies based on the full promotion of the Roma population. The Portuguese Roma Community Support Cabinet was set up in 2007 to address Roma issues. The Swedish Delegation for Roma Issues was appointed in 2007 to promote the rights of Roma and to help break their political and social marginalisation.

These bodies depend on the minister of social/educational/health affairs (in France, Finland, Sweden, Spain), or the minister of local government (Ireland), or to the government (Austria, Portugal). The advisory councils monitor and report to the authorities on developments in some fields related to Roma matters (Finland, Spain, Sweden). They make proposals (Austria, Ireland, France, Swe-

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<sup>45</sup> Vatta A., «I gruppi d'interesse e la rappresentanza politica dei rom», Baldin S., Zago M. (a cura di), *op. cit.*, p. 133-135; Council of Europe, *Preliminary draft study on forms of participation of Roma and Travellers in decision-making processes*, GT-ROMS(2003)9, at [https://wcd.coe.int/ViewDoc.jsp?Ref=GT-ROMS\(2003\)9&Language=lanEnglish&Ver=original](https://wcd.coe.int/ViewDoc.jsp?Ref=GT-ROMS(2003)9&Language=lanEnglish&Ver=original).

<sup>46</sup> Sobotka E., «Special Contact Mechanisms for Roma», Weller M., Nobbs K. (eds.), *Political Participation of Minorities: A Commentary on International Standards and Practice*, OUP, Oxford, 2010, p. 514-517.

den, Spain, Germany), take initiatives (Finland, Spain), or participate in specific projects (Portugal) to improve the living conditions of Roma. Moreover, the Finnish Advisory Board promotes the language and culture of Roma and takes measures to fight discrimination, whilst the Portuguese Support Cabinet and the Swedish Delegation disseminate information on Roma in their countries.

In few States, these mechanisms have been reproduced at regional or provincial or local levels. In Finland, there are regional advisory boards on Romani affairs to facilitate cooperation and communication between authorities and Roma population. In Spain, councils for the Roma community are created in some autonomous communities and municipalities. In Ireland, there are local traveller accommodation consultative committees. Other states, which do not contemplate this type of contact mechanism at national level, have set up regional or local consultative bodies. In Belgium, for example, there is a Mediation Centre for Travelers in the Wallon Region, and in Italy there are Roma consultative bodies at regional and provincial levels.

The consultative nature of these various bodies raises the question as to whether this is really an avenue to participatory rights for Roma. The institution of a new body which brings together the representatives of the Roma and the representatives of the government seems to be a significant step towards overcoming their segregation and towards the accommodation of the cultural diversity of these minorities.

However, generally speaking, many of these consultative bodies experience problems of mandate, modes of procedure, frequency of meetings, access to official documentation. The representation and selection of members, particularly the Romani members, is rarely transparent, and many criticise the lack of impact of their input on policy development and implementation<sup>47</sup>. Effective participation is conceivable if the minority representatives have a real influence on the outcome of the decision-making processes<sup>48</sup>. In a continuum, the minority representative bodies can dispose of non-binding advice up to absolute veto power<sup>49</sup>, and the Roma consultative councils seems only to provide non-binding advice, even if this condition does not have as a necessary consequence the rejection of their suggestions and comments.

## 7. FINAL REMARKS

The lack of constitutional recognition of Roma minorities in a large part of western Europe depends on various reasons. It is connected to the small percentage of Roma and their dispersion in each territory, or, above all, to the negative attitude of the states to the recognition of minorities in general or of this group in particular. For these reasons, many western countries have provided pretexts for

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<sup>47</sup> European Commission, *Improving the tools for the social inclusion and non-discrimination of Roma in the EU*, 2010, at <http://ec.europa.eu/social/main.jsp?catId=518&langId=en>.

<sup>48</sup> Verstichel A., *op. cit.*, p. 33.

<sup>49</sup> Verstichel A., «Understanding Minority Participation and Representation and the Issue of Citizenship», Weller M., Nobbs K. (eds.), *op. cit.*, p. 85.

not granting the Roma the official status of a minority, even where other small minorities are largely recognized.

However, it should be remembered that in central and eastern Europe, the main reason why Roma minorities are widely recognized is linked to the policy of conditionality of the European Union, and not only to the mere fact that they are a relevant component of the population. The states which recently joined (or want to join) the European Union have had (will have) to conform to the standards of minority protection required by the OSCE and by the Council of Europe. It is very likely that if the protection of Roma had not been posed as a parameter for adhesion, the eastern states would not have changed their legal attitude towards Roma groups<sup>50</sup>. Hence, in these countries it is quite easy to find representative mechanisms and/or institutions that guarantee (at least formally) the participation of Roma in public life to a greater extent than in western Europe.

Other relevant points worth noting are that the Roma identity is very fragile and that most of their main problems are connected with social status and not with ethnic membership. The aspect of social inclusion is a priority that must not be obscured by the instances of minority recognition. In this respect, tools which might be useful in both situations are the advisory councils, where Roma groups can give voice to their socio-economic conditions, and, in case, to their right to maintain a particular lifestyle.

Participatory rights can serve for all these aspects, but it should be underlined that political participation is not sufficient to achieve effective participation in society. Political participation should be accompanied by the real involvement of Roma minorities in cultural and economic life. This goal is very difficult to achieve because numerous Roma still occupy a highly vulnerable position in the countries where they live and are exposed to discrimination and segregation<sup>51</sup>, without the possibility to participate in the community on the same terms as the majority population.

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<sup>50</sup> See Vermeersch P., Ram M.H., *op. cit.*, p. 67.

<sup>51</sup> On the relevance of Council of Europe and the European Union to fight the social exclusion of Roma groups, see S. Baldin, *op. cit.*

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