Legal Status and Participatory Rights of Roma Minorities in Western Europe: Comparative Remarks

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Abstract
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 the Roma peoples in comparison to the extensive amount of studies in Central and Eastern European Countries. This paper analyzes the legal status conferred to Roma minorities and the mechanisms enabling their participation in public life, with reference to the Roma consultative councils instituted in Western Europe.

Summary

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 the Roma peoples in comparison to the extensive amount of researches in Central and Eastern European Countries.

According to the data of the Council of Europe and OSCE, there are between 10 and 12 million of 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, Netherlands, Sweden, 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%).

My purpose is to highlight how the Western States react to the problems posed by the Roma groups. Hence, firstly I will put forward a general framework, giving a definition of the term Roma in comparative perspective.

1 The situation in the former-communist Countries is the opposite. In Estonia, Latvia, Lithuania, Poland, Slovenia, 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 other 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 C. Cahn, E. Guild, Recent Migration of Roma in Europe, CommDH(2009)37rev, at https://wcd.coe.int/wcd/ViewDoc.jsp?id=1536357.
and a picture of the major problems that affect these groups. Then, briefly I will illustrate the sphere of collective rights conferred to Roma in the Western legal systems, considering constitutions, minority acts, ratification of international treaties where relevant, in order 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 the 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 the Roma consultative councils in Western Europe.

Concluding, the goals of this paper are to highlight the gap between Western and Eastern Countries in order to recognize and promote the rights of these groups, pointing out that the primary factors determining this gap are connected with the different demographic distribution of the Roma in Western and Eastern Europe and the EU enlargement conditionality of minority protection. Secondly, that the policy of minority recognition could be an instrument to strengthen in some extent the status of the Roma, but it should be very clear that it can not solve their main problems, of social nature.

2. The definition of the term Roma in comparative perspective

It is known that by the word Roma is commonly identified a variety of ethnic groups of different origins. While having a neutral connotation in the academia, gypsy is a term which acquired a pejorative meaning in common speech. It is therefore important to use consciously the correct terminology, especially in wide-ranging investigations that need a word that acts as a comprehensive category to refer to a variety of minorities adequately.

Since the fall of the socialist regimes and, therefore, since the problems of the Roma communities living in Central and Eastern Europe have attracted the international attention – and subsequently their migrations have highlighted the conditions of the Roma that have always lived in the West too – the word Roma has become the politically correct term to refer to a plurality of groups, including those having different names and origins. Roma in romani language means “man” and designates an ethnic group prevalently living in the Carpathian-Balkan area. But since 1971, the participants in the first World Congress of Roma, which came from fourteen European Countries, preferred Roma instead of gypsy.

In its comprehensive meaning, as a generic category and not as the name of the larger community, nowadays the term Roma is widespread in the specialized literature, in the international documents and the monitoring reports on the living conditions of these ethnic groups. One can see the path of the semantic change – which corresponds to a greater knowledge and understanding of these groups – through the acts of the Council of Europe. The first recommendation of the Parliamentary Assembly of the Council of Europe, no. 563 of 1969, is devoted to the «gypsies and other travellers». This one was to be 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, publishes a study on Gypsies and Travellers on behalf of the Council of Europe, whose subsequent edition, in 1994, is entitled Roma, Gypsies, Travellers.

Since the mid-nineties, the term Roma is alleged in the recommendations of the Council of Europe’s dependent organs, too. In 2007, the updating study of Liégeois is simply entitled Roma in Europe. The other definitions are still used: especially the term travellers, which refers to the itinerant groups, so distinguishing them from the sedentary ones.

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. Notwithstanding this fact, the sociologists refer to a mosaic or a galaxy of Roma minorities, in order to emphasize that these communities do not share the same history, culture, language or religion. In this paper I will therefore adopt the term Roma in the broad sense, considering that this analytical category can not lead to forgetting the coexistence, in many Countries, of different groups. Even if they are included in the same collective name, they may have different instances to accommodate. Thus, I prefer to talk of minorities rather than minority.

3. Social exclusion and racial hate

The feature that all Roma minorities have in common is the high level of social exclusion and poverty and the fact that they are often victims of discrimination. 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. 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 collective identity of the Roma. A dividing line that is reflected in their permanent marginalization from the rest of the population.

In Central and Eastern Europe the Roma are poorer than other groups and have higher chances to fall into poverty and to remain poor. With the transition from a planned economy to a market one, most of them lost their work and the subsidies guaranteed by the socialist system. Low levels of education and professional skills have prevented their employment. So, in large part, the Roma have become victims of a vicious circle of multidimensional exclusion. Migrations from Central and Eastern Europe to the West, which can be observed starting from the nineties, are not just the result of an extreme poverty. One can remember other two reasons: the mass exodus caused by the wars in the


9 In this respect, M. Zago, Vivere sul confine: forme di discriminazione e scelte di integrazione, in S. Baldin, M. Zago (eds), Il mosaico rom. Specificità culturali e governance multilivello, Milano, 2011, p. 22.


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 the Roma over the centuries, culminating in the 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. The case law reports claims regarding the sterilization of Roma women without their informed consent; cases of brutality and murders, even committed by law enforcement officials; the pogrom of whole communities, with the destruction of their homes and the expulsion of the individuals from those areas.

The Roma peoples were deprived of the 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 –, where the problem of the status civitatis still remains a very serious one. And in Western Europe, they are victims of collective expulsions.

Refashioning Rights in Central and Eastern Europe: Some Implications for the Region’s Roma

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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 the Roma and to adopt measures for preventing their marginalisation.

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 to themselves.

The fundamental paradigm of the politics of difference – as a reflection of contemporary societies that are faced with a broad spectrum of issues related to the different cultures of the members of the society – is that everyone should be recognized for her/his own identity, as individual and as belonging to a group. The assumption of this approach is that the non-recognition of somebody’s identity could foster forms of oppression, trapping her/him in a false way of life and causing inferiority and marginalisation. Among the aims of some legal systems there is therefore the recognition of the minority status for some groups as precondition to the conferral of collective rights, including participatory rights. Moreover, some Constitutions offer recognition to groups which were historically oppressed as a symbolic act of redress for some past injustice. This recognition implies the involvement of the minorities in the political community, reinforcing their symbolic inclusion.

The legal status of the Roma is particularly weak in comparison to other groups, especially in Western Europe. But we should remember that the fight for the recognition of the collective identity of the Roma minorities is a quite recent instance, as well as rather artificial. Until recently, this claim has been found mainly on the assumption that the Roma were a transnational minority, searching for a recognition at international level. This policy revealed its weakness in the fact that this could endorse the idea that the Roma are members of a stateless European nation, so absolving the Countries where the Roma are resident of their responsibilities.

If we classify the legal systems on the basis of the recognition accorded to the Roma minorities, we can outline three categories: Countries recognizing the Roma in Constitution; States denying the recognition; and States recognizing the Roma in national minority laws and/or through the ratification of international agreements.

In Western Europe, only one Constitution mentions explicitly the Roma. They are referred as a “group” in Finland (art. 17 Const., and qualified as a traditional national minority in other acts). On the contrary, the recognition is denied in France, Italy, Portugal, Netherlands, Belgium, Greece, Cyprus, Denmark and Luxembourg.

The remaining 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.

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19 J. Habermas, C. Taylor, Multiculturalismo: lotte per il riconoscimento, Milano, 2008.

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den”. They are recognized as an ethnic group in Austria, Germany, United Kingdom. Usually the recognition of the legal status for a specific minority implies the conferment of cultural and/or linguistic rights and, with different degrees of extent, the conferment of participatory rights. Basically, in Ireland and 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.

In this regard, few States that do not recognize the Roma as a minority however have provided a (very) limited range of policies for accommodating their instances. For example, the Netherlands protects the romani as a transnational language by way of the ratification of the European Charter for Regional or Minority Languages. In Italy and Belgium, the lifestyle of itinerant people is recognized at regional/federal level; and in France the instances of the gens du voyages are regulated at national level. The problems arise where, what could be the recognition of a right in a statute, really is a way to hamper the cultural dimension of a group. So, in Italy and France, there

23 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.

24 Just as in Hungary, Poland, and Albania.

25 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. The Charter, by contrast, 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 J.-M. Woehrling, The European Charter for Regional or Minority Languages. A Critical Commentary, Council of Europe Publ., Strasbourg, 2005, p. 32-33.


is not an effective positive accommodation for travellers, because we can see the negative attitudes of the legislators/local administrators in those rules that do not equalize the travellers to the rest of the population concerning the enjoyment of fundamental rights, as the right to vote because of problems connected to the residence, or because of the particular requirements linked to the freedom of movement and commerce. In this respect, if a group doesn’t obtain the constitutional recognition, it hasn’t an effective – judicial 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 the decision-making processes. The aim – as stated in article 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 and in the executive and the public administration. It also means participation in semi-state bodies, such as chambers of commerce, in trade unions, in boards of broadcasting companies, etc.

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 the States to promote some measures. They are supposed to involve the minorities in the adoption of any policies which may affect them directly. Some examples are consultation with these minorities; involvement in the preparation, implementation and assessment of national and regional develop-
ment 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.

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 process. For instance, if the minority communities are persistently unable to achieve representation in parliament, or in government at ministerial or deputy ministerial level, the need for extensive consultative mechanisms increases. Incidentally, this is the case of the Roma minorities in Western Europe, because they are too small and spread in each Country to gain an adequate voice in parliaments or in 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 serve to articulate minority interests and to represent them to 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 satisfaction of minority concerns and to the building of confidence.

Where minority consultative councils must be heard before certain decisions can be taken, one may speak of mechanisms of co-decision. Generally, minority consultative councils attached to the parliaments, and often also those attached to the governments, will at least have the right to review draft legislation of special interest to them and to offer views. In some instances, minority representative groups or minority consultative councils will have a right of legislative initiative, and possibly even blocking powers where the adoption of sensitive legislation affecting their interests is concerned.

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 ones. 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 the Roma.

6. THE ROMA CONSULTATIVE COUNCILS IN WESTERN EUROPEAN COUNTRIES

There is a great problem surrounding the participation of Roma in public matters in most countries, notwithstanding the massive efforts of the international organizations and the ONG to promote their active role in society. Several studies have indicated that the level of participation of Roma in the conducting of public affairs is low. 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 gov-

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ernmental structures responsible for minority affairs\textsuperscript{32}.

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 the 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 the 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 policy on Roma, founding an advisory body as early as 1956. Today, the National Board on Romani Affairs has a broad task in all the issues related to Roma. The Roma Advisory Council attached to the Austrian federal government, set up in 1995, provides for the participation of Roma in the development of minority policies and 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 in relation to any issue concerning accommodation for travellers. In France, the National Consultative Commission for Travellers was set up with decree n. 733/1999 with the task of studying the specific problems of itinerant peoples and to make 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 the Roma issues. The Swedish Delegation for Roma Issues has been appointed in 2007 to promote the rights of the Roma and to help break the political and social marginalisation of the Roma.

These bodies are attached to 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 can monitor and report to the authorities on the developments in some fields related to Roma matters (Finland, Spain, Sweden). They can make proposals (Austria, Ireland, France, Sweden, Spain, Germany), take initiatives (Finland, Spain), or participate in specific projects (Portugal) to improve the living conditions of the Roma. Moreover, the Finnish Advisory Board promotes the language and culture of Roma and takes measures to combat the discrimination, whilst the Portuguese Support Cabinet and the Swedish Delegation disseminate information about the 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 the cooperation and communication between authorities and the 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. So in Belgium, where there is a Mediation Centre for Travellers in the Wallon Region, and in Italy, where 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 those of the government seems a significant step towards overcoming their segregation and towards the accommodation of the cultural diversity of these minorities.

However, 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\textsuperscript{33}. The effective participation is conceivable if the minority representatives have a real influence on the outcome of the decision-making process\textsuperscript{34}. In a continuum, the minority representative bodies can dispose of non-binding advice up to absolute veto powers\textsuperscript{35}, and it seems that the Roma consultative councils can only provide non-binding advice, even if this condition has not as a necessary consequence the rejection of their suggestions and comments.

\section{7. Concluding remarks}

The lack of constitutional recognition of the Roma minorities in a large part of Western Europe is connected to the small percentage of the Roma, their dispersion in each territory, and above all to a negative attitude of the States to the recognition of groups in general or this group in particular. For these factors, a lot of Western Countries have provided pretexts for not granting them the official status of minority, even where other small minorities are largely recognized.

But it should be remembered that in the Central and Eastern Europe, the main reason why the Roma minorities are widely recognized is linked to the adhesion to the European Union, and not (only) for the reason that they are a relevant component of the population. The States which recently joined (or want to join) the European Union had (have) to conform to the standards of minority protection required by the OSCE and by the Council of Europe, and it is very likely that if the protection of the Roma had not been posed as a parameter for the adhesion, the States would not have changed their legal – negative – attitude to the Roma\textsuperscript{36}. Hence, in those Countries it is quite easy to find representative mechanisms and/or institutions that (at least formally) guarantee the participation of Roma in public life to a greater extent than in the Western Europe.

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

The participatory rights can serve for all these aspects, but it should be underlined that the political participation is not sufficient to achieve an effective participation in society. Political participation should be accompanied by a real involvement of Roma minorities in cultural and economic life. This goal is very difficult to achieve because the Roma still occupy a highly vulnerable position in each Country where they live and are exposed to discrimination and segregation, without the possibility to participate in the community on the same terms as the majority population\textsuperscript{37}.

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\bibitem{34} A. Verstichel, op. cit., p. 33.
\bibitem{36} See P. Vermeersch, M. H. Ram, op. cit., p. 67.
\bibitem{37} See the opinions on the States rendered by the Advisory Committee for the Framework Convention for the Protection of National Minorities, at http://www.coe.int/t/dghl/monitoring/minorities/default_en.asp.
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