

# Between Exclusion and Assimilation, Which Fate for the Roma in an Enlarged Europe?

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## Introduction

Nation without a country, people scattered all around the world, the Roma have shared their history with Europe for centuries. They have experienced, assisted and often suffered from its transformations, its wars and its slow construction. They have always been the «forgotten people» and the people that everybody tried to make disappear by all means (physically or through assimilation). However, Roma have been able to maintain an impressive degree of cultural integrity by absolutely excluding *gadje*<sup>1</sup> from their private lives, their law, their personal practices, and their values. It is clearly *thanks* to this refusal to mix with the other peoples that Roma remain so deeply «Roma», even in their diversity, but it is also *because* of this refusal, linked to the incomprehension and the reject expressed by the other peoples that they became outcasts. The conflicting relationship between Roma and non-Roma will not be resolved easily or quickly: what comes from non-Roma is suspicious *a priori* and refuted by Roma, what comes from Roma is suspicious *a priori* and refuted by non-Roma. This reciprocal incomprehension constitutes the principal feature of their relationship, particularly when dealing with educational, social, economical or political issues.

Nowadays we face a very contradictory situation in which, on the one hand, there is an increasing awareness, in the whole society and particularly in the international institutions, of the urgent need to find solutions to improve the Roma situation. On the other hand, a lot of observers noticed how the plight of the Roma in Europe has worsened dramatically in recent years. Ladislav Fíziz, a Slovakian Roma leader, says the situation facing most Roma has deteriorated to the lowest point since World War II<sup>2</sup>. Nowadays it seems more and more obvious that

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<sup>1</sup> Romani name for non-Roma. *Rom* refers to a member of a group, *Roma* to a plurality of members or to the whole group, *Romani* is the name of the language and is also used as an adjective.

<sup>2</sup> In A. Krushelnycky, *How Will EU Enlargement Affect Romany Populations?*, in «EU Business», at [www.eubusiness.com/topics/East\\_Europe/EUNews.2004-03-24.5446/view](http://www.eubusiness.com/topics/East_Europe/EUNews.2004-03-24.5446/view), March 2004.

integration does not have to mean the dissolution of minorities into the majority but rather has to be the result of a sharing of compatible cultural elements. The European dimension of the «Roma issue» has become progressively unquestionable. While their number remains uncertain, it is currently estimated that there are about eight million of them in Europe. After so many centuries, they have every claim to be considered «part of Europe». They are indeed among the continent's few pan-Europeans.

The enlargement process involving countries counting big Roma communities has sparked a new-found interest on the Roma at the European level. Through the entrance of these ten new countries in the EU, the Roma are becoming the biggest minority of Europe. Various motivations pushed the EU to invest in the improvement of the Roma situation in these countries and diverse are the ways to protect them. The other European institutions (Council of Europe and OSCE) and the UN have tackled also the «Roma issue» through the general protection of human rights, the protection of minorities or specifically of Roma. The great diversity regarding every single Roma-related issue imposes consequently an impressive requirement of variety in the policies applied to them, as well as an effort of imagination in facing their problems in our societies. After two decades of involvement, the question remains the following: does the protection granted to the Roma correspond to their identity so particular and so strong? Could other ways be developed, in parallel or instead of the existing ones?

Some features of the particular identity of the Roma will be stressed in the first chapter in order to make clearer what kind of people they are and whether they have to be recognised as «minority» or as «people». The analysis of the different elements of this status issue will allow us to come up with a new proposal. The second chapter is dedicated to the protection of minority and Roma developed by the different levels of actors: international, national, civil society and Roma organisations. The status and the kind of protection granted to Roma by these actors are essential to determine in order to see if they are convenient for the efficient protection of this population and also in order to open new ways of reflection. This reflection will constitute the heart of the last Charter, in

which two directions will be followed. The first one aims at defining the possible contribution of the EU enlargement process for the protection of the Roma. The second direction followed in this third part leads at a new proposal on the Roma status, according to the analysis of their identity and of the legal international protection framework.

## 1. The Romani Complex Identity

It is undeniable that the situation of the Romani people in Europe nowadays is characterised not only by a glaring breach of respect towards this population but also «constitue une insulte de la personne humaine en tant que telle et de son inhérente dignité»<sup>3</sup>. Their status has not been clarified for decades and nowadays, it is not even the subject of an international agreement. Some people suggested that the heart of the problem is that Roma do not enter easily within the framework of traditional political organisations and in their form of national statehood. Therefore new more appropriated categories are needed. A first step is to think about the distinction between minority and people and its application regarding the Roma.

If it can be proved that the current international categories do not fit with their identity characteristics, a discussion about a new status in an enlarged Europe would be legitimated. While for a long time they were not given a precise status and considered just as an underprivileged social group, a lot of countries are nowadays recognising them as an «ethnic» or «national minority»<sup>4</sup>. A first problem arises about the definition of «minorities». International law has not provided us with a universally accepted definition, and the international legislations are therefore based on an object which is not officially defined. The problem is obviously that, in the case of minorities, the vagueness of the concept rebounds on them. The less precise the definition is, the more the rights of the population concerned are ignored. However, the recognition of the importance of minority protection is wide. As stated in the Preamble of the *Framework Convention for the Protection of National Minorities*, «the upheavals of European history have shown that the protection of national minorities is essential to

<sup>3</sup> A. Marchand, *La protection des droits des Tsiganes dans l'Europe d'aujourd'hui*, Paris, L'Harmattan, 2001, p. 39.

<sup>4</sup> In 1995, the *Framework Convention for the Protection of National Minorities* established the criteria for recognizing Roma as a national or ethnic minority within each state in which Roma reside. Many states adopted these criteria, and thus Roma are now recognised as minorities in several dozen European states.

stability, democratic security and peace in this continent».

The major elements of the concept «minority» can be drawn and recognised as corresponding to the Roma situation, through the definition provided by the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti, within the framework of Article 27 of the ICCPR<sup>5</sup>. These factors are: 1) smaller group than the rest of the population but sufficiently representative, non-dominant position; 2) nationality of the state and strong link – through a permanent residence in it – with this state; 3) distinctive religious, cultural, ethnic or linguistic characteristics; 4) motivation to preserve together their own common identity, including cultural, traditional, religious or linguistic features. While all criteria correspond to Roma features and thus they can be considered as a minority, the issue of which *kind* of minority they represent remains. The analysis of the current variety of categorisations will not be tackled but rather a reflection about the presence of Roma as a minority in almost every European state and their incompatibility with borders associated with «barriers» in our societies.

The history of the past centuries can explain this deeply rooted conception of barriers between states, linked to the need for the people to protect their territory against the enemy (often the closest neighbour) and to the lack of contacts between the different populations. However, fifty years ago, the opposite idea grew up in the mind of some Europeans, convinced of the necessity to create a big area of peace with no physical borders between states for goods, services, workers and capital. Since that time, the European area has continuously pushed away its external borders, involving new members in this great challenge of peace. The intercultural dialogue amongst peoples is increasing every day but those considered too different from the European or even national «standards» are still excluded. J. Charlemagne states with appropriateness that «pour dépasser l'idée de souveraineté nationale, il est nécessaire de prendre en compte des revendications qui dépassent les frontières»<sup>6</sup>. Who better than the Roma can help to do it?

Roma do not recognise the value of borders. If they decide to stay in one country, it is not a giving up of their convictions but just a stop for a while – even if a very long while. This way of living thus corresponds to pushing at the furthest end of

<sup>5</sup> «A group, numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language», Recommendation 2/399 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (F. Capotorti), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, 1977.

<sup>6</sup> J. Charlemagne, *Où en est le droit des minorités, l'exemple tsigane*, in *Etudes Tsiganes*, vol. 2: *Tsiganes, expression d'une minorité*, Paris, FNASAT, 1993, p. 8.

ideology sustaining the enlargement. They want to be recognised as a «nation», but a nation without a referent state. Indeed, the main difference between Roma and other minorities lies in the absence of home-state, of territory and this also constitutes the biggest obstacle to the attribution of the minority status to them. Therefore if the status of «European minority» seems to be the one fitting better with their complex situation, as the Council of Europe declared, in 1993<sup>7</sup>, it is not even completely convincing.

What about the recognition of Roma as a «people»? The rights of peoples recognised in the *Universal Declaration of the Rights of Peoples* («Algiers Declaration», 1976) are the following: right to existence, right to political self-determination, exclusive right over their natural wealth and resources, right to culture, right to environment and, when they constitute a minority of a state, they shall enjoy the rights of minorities. This document presents thus quite an exhaustive list of rights but it is not legally binding. The rights of peoples recognised in legally binding documents constitute a very small part of the formal list of fundamental rights granted by international (universal) legal instruments. The right of self-determination is one of these and it is a fundamental principle enshrined in international law, including in the *Charter of the United Nations*, the *International Covenants on Civil and Political Rights* and *on Economic, Social and Civil Rights*. It embodies the right for all peoples to determine their own economic, social and cultural development<sup>8</sup>. It is important to stress that self-determination does not imply secession from the state. One form of accomplishment of this right is the creation of a self-government, which has been realised in Hungary. The *African Charter*, a regional instrument, contains the most complete list of the rights of peoples<sup>9</sup>.

The realities covered by the term «people» are numerous and, as in the case of minorities, no real world-wide accepted definition was found until nowadays, despite various proposals. Since criteria are however needed in order to check if Roma can be said a people, the UNESCO Secretariat definition was chosen, benefiting from a certain consensus amongst scholars:

Groups linked by certain cultural or quasi-politized institutions in the public and sometimes in the private domain. «Peoples» therefore

<sup>7</sup> Recommendation 1203 (1993) of the Parliamentary Assembly of the Council of Europe on *Gypsies in Europe*.

<sup>8</sup> Self-determination has been defined by the International Court of Justice (in the West-Saharan case) as: «The need to pay regard to the freely expressed will of peoples».

<sup>9</sup> Articles 19-24.

may have a territorial base. This territorial base may be accompanied by sharp discontinuities in historical, cultural or political institutions with regard to the state. However, in many cases the territorial base – and claims – may reflect continuities in some domains, with differentiation in other, such as shared political and legal institutions with local autonomy within certain other social institutions, e.g. education and culture. Demands therefore are likely to be for a degree of decentralization with regard to central state power<sup>10</sup>.

A first element comes into light through this attempt to define the concept. It seems indeed obvious that a central point for a «people» definition is the reference to the territorial base. A confirmation lies on the fact that the principal right recognised to peoples is the right to self-determination, which can be exerted only if the people in question is under colonial or alien rule or under arbitrary oppression in its territory. But is the right to self-determination really conditioned by the will to possess a state of one's own? This is of crucial importance in the case of the Romani population for which the question of territory is a problematic element. The International Romani Union has indeed clearly put forward the idea of a «Roma nation», but a nation «which does not want to become a state»<sup>11</sup>. Without this territorial dimension, can Roma ask for self-determination and be represented in international bodies? Or, to ask it the other way around, could somebody legitimately pretend that they are not constituting a «people» because they are not fighting to obtain a land?

A short analysis of the other constitutive elements of the «people» definition is needed at this point. They are of two categories: a common identity and the sharing of some interests. Both can quite clearly be identified as shared by the Roma, even if they constitute a group marked by a high level of diversity at the same time. Indeed, common history, culture and basic elements of language characterise the Roma as a group. Then, European Roma are discriminated everywhere they are, have very low living standards, little access to social services and labour market, suffer from oppressive laws against nomadism (when they are still nomads), and are often victims of persecution. An interest to improve this dramatic situation is thus common to all: a general focus on basic human rights such as the right to education and to job opportunities but also a fight against discrimination and exclusion are needed.

<sup>10</sup> Quoted by A. Michalska, *Rights of Peoples and Human Rights in International Law*, in «Peace, Human Rights, Rights of Peoples», special issue *Rights of peoples, droits des peuples*, edited by G. Kutukdjian and A. Papisca, Padova, Cedam, 1991, p. 21.

<sup>11</sup> E. Scuka, *We the Roma Nation*, at [http://www.romanothan.ro/engleza/romarights7rrom/we\\_rom\\_a\\_main.htm](http://www.romanothan.ro/engleza/romarights7rrom/we_rom_a_main.htm).

Moreover, they share, through the voice of their leaders, the will to maintain their culture and their language.

Then, about the concept of self-determination, we can wonder why reproducing boundaries when the existing ones are so numerous? The right of the peoples to self-determination could not find accomplishment in the multiplication of the nation-states, which increases the barriers and thus the infertile limits between «us» and «the others». As Alborghetti has quite rightly pointed out, the right to self-determination should be seen as a concept of overpassing nation-states, in an approach of solidarity, of development and thus at a world level<sup>12</sup>. The concept of the right to self-determination, as linked to the right to peace, to development, etc. cannot be limited to the creation of new nation-states and this orientation of moving closer to other human rights has been followed by the UN and other international organisations through different essential documents<sup>13</sup>. In the case of the Roma, who recognise themselves as a nation<sup>14</sup>, there is no doubt about the legitimacy of the claim for self-determination, which can have territorial or extra-territorial forms and is principally, in the view of most Roma leaders, about the «right to participate in a wider public and political debate»<sup>15</sup> and «to make decisions on their own»<sup>16</sup>. This perception of self-determination would perfectly fit with the enlarged European area ideal, which does not aim at reproducing exclusive nation-states but rather consists in various nations or cultures living in contact in this great area.

In conclusion, Roma can be recognised both as a minority and as a people. However, we have seen that their identity features make them get off the boundaries of the existing categories of minorities even if nowadays these remain the most efficient way to protect them. Before coming with new proposals, it is necessary to see who is protecting Roma in Europe and in which way (status, instruments, etc.), in order to see if this protection could be improved.

## 2. Which Actors and Machinery for Which Protection?

The absence of a home-state is a sizeable obstacle in the protection of the Roma. Indeed, while they can be identified in almost every European country, the states would hesitate to

<sup>12</sup> A. Alborghetti, *Oltre lo Stato-Nazione. Territori transnazionali. Il caso dell'Africa occidentale*, thesis presented at the Scuola di Specializzazione in Istituzioni e Tecniche di Tutela dei Diritti Umani, Università di Padova, 1993.

<sup>13</sup> *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* (1966); *CSCE Final Helsinki Act* (1975); *African Charter on Human and Peoples' Rights* (1981), *Declaration on the Right of Peoples to Peace* (1984).

<sup>14</sup> To be precise, it has to be mentioned that a complete consensus about this point does not exist, even through the main Romani leaders. A few of them still defend the idea that Roma are a minority and not a nation. See the debate reproduced in Per Report, *Roma and the Question of Self-Determination: Fiction and Reality*, Jadwisin, Poland, 15-16 April 2002.

<sup>15</sup> *Ibidem*, p. 16.

<sup>16</sup> *Ibidem*, p. 18. It means to refuse non-Roma to engage projects on behalf of Roma, non-Roma experts, etc.

stand up for them at the international level. They are thus deprived of any form of international protection, as well as of official representation to defend their rights. In parallel, the nation-states proved to have dramatic limits in their possibility – and willingness – to act in front of the large crisis faced by the Roma people. Indeed the states protect minorities only if they have a direct interest or are obliged to do so. The risk of internal conflicts often constitutes an important pressure for the states to act in favour of minorities in order to ensure the precious stability of the country. Another strong argument motivating the states to protect them can be the willingness to be accepted in an international order. This was the case of the Eastern and Central European countries, pressed to adopt new legislations and implement new policies aiming at the protection of minorities to be able to accede to the EU. Other actors – including Roma themselves – entered on stage and developed new ways and instruments to protect Roma population. The position and involvement of different levels of organisations will be analysed in the present chapter. The aim will not be to present an exhaustive landscape of the measures and initiatives developed by the actors but rather to underline general tendencies and principal preoccupations.

### 2.1. European and International Organisations

The fields of action of the international and European institutions are broad but a certain confusion clearly appears in front of the diversity of the problems. There is a risk of replication and therefore of resources wasted with such large boundaries to their work and if the activities/involvement are not co-ordinated. Moreover, the Romani legal status issue is almost not tackled in the official texts or instruments. The Council of Europe has expressed the only clear position at this regard in its Recommendation no. 1557<sup>17</sup>. However, each institution presents specific positive characteristics, which could be reinforced in order to build a more coherent answer to the Roma situation. The United Nations system has produced a lot of documents which can apply to the Roma but are too general to protect them in an efficient and concrete way. The application mechanisms – national reports or individual complaints – are not really adapted to this group either. Yet, the great number of reports on the Roma situation

<sup>17</sup> Recommendation 1557 (2002), *On the Legal Situation of Roma in Europe*, in which the Council of Europe recommends to attribute the status of ethnic or national minority to the Roma in every country.



is offering a very positive dissemination of information at the world level and the integration of the IRU into the UN is a factor able to give the Roma the possibility to gain an international voice.

The European Union presents a huge model of financial and technical aid, linked to precise political, economical and social requirements. Its adaptability to the needs of the populations should be more strongly accompanied by monitoring but some interesting protection mechanisms have progressively taken place. The Council of Europe allows the recognition of the violation of their rights in Strasbourg, through binding judgements of the European Court. This is an important element of protection. The OSCE and the Council of Europe, then, present the great advantage to have specific offices to deal with Roma issues. The CPRSI<sup>18</sup> (OSCE) is important for the formulation of policies to apply and for the accent put on political participation and on the prevention of discrimination while the MS-G-ROM (Council of Europe) is an essential source of observations, comments and refreshing proposals. The second specific office of the Council of Europe is the ECRI<sup>19</sup>, which recently developed the country-by-country approach, a very interesting answer to the impressive intellectual challenge the international institutions have to face when dealing with Roma issues. Indeed, the extensive diversity among Roma combined with a lack of accountability for commentators drives scholars such as Kovats to state that «just about any statement can be made about Roma which, though probably true for someone somewhere, must inevitably prove misleading unless placed in his proper context»<sup>20</sup>. The country-by-country approach should therefore be extended to the work of other institutions. In this connection, it can be affirmed that a more integrated approach would be needed within the European/international institutions, through more frequent contacts between the specialists of the Roma issue in each of them and through a better co-ordination of their initiatives. A constructive dialogue between these institutions and the Roma organisations is the key for a suitable solution aiming both at the respect of their cultural features and at the elimination of their discrimination and marginality.

However, it seems that the essential issue of the Roma legal status in Europe could be efficiently faced by the Council of

<sup>18</sup> Contact Point for Roma and Sinti Issues.

<sup>19</sup> European Commission against Racism and Intolerance.

<sup>20</sup> M. Kovats, *The Emergence of European Roma Policy*, in W. Guy (ed.), *Between Past and Future. The Roma of Central and Eastern Europe*, Hatfield, University of Hertfordshire Press, 2001, p. 97.

Europe. If the current proposals – national or ethnic minority – do not perfectly fit with the Roma particular identity, the framework offered by this institution could permit further adjustments. Before opening the thought towards alternative possibilities of status, it is important to analyse the protection offered and the difficulties met by other levels of actions; Roma organisations and civil society.

## 2.2. Roma Organisations and Civil Society

While the «Roma issue» is quite new at the European level, small Roma organisations were created some time ago in the different countries where the populations were living, in order to defend their interests and to be recognised by the dominant culture<sup>21</sup>. Then, progressively, while the national and regional movements continued to develop, some groups started to raise their voice at the international level. The year 1971 has been an important date for the newly born international movement with the organisation, in London, of the first World Romani Congress, with the representatives of fourteen countries. The aim of the Congress was to unify the Roma and to stimulate their action in the whole world, to give an impulsion in order to maintain and develop the Romani culture, to struggle in a common way against the problems. On this occasion, they adopted an official name (*Rom*), a flag and an anthem, and established five commissions to work permanently on the topics of social affairs, education, war crimes, linguistic aspects and culture<sup>22</sup>.

The important point for the Roma is, beyond the fragmentation, the fight for recognition and respect. For centuries, they have had to become the smallest possible in order to avoid persecutions and rejection. The will to proclaim an identity and to be recognised at the world's eyes is an important change. A sign of the awareness that times have changed can be found also in the explosion of the number of Roma organisations and NGOs, especially in the Eastern countries where their identity has been harshly repressed. Public debates, protest marches, publications and distribution of information, artistic manifestations and cultural exhibitions are all forms proving that the movement is general and counterbalances the impressive repression of the previous centuries<sup>23</sup>. However, this Romani movement needs now to be more coherent and to present clearly formulated claims to the world. Indeed, if it is obvious

<sup>21</sup> In 1925, the creation of the Union of the Gypsies living in the Soviet Socialist Russian Republic; in 1933, the General Association of the Romanian Roma; in 1939, Panhellenion Syllogos Ellinon Athinganon in Greece; in 1952, the Association of German Sinti; in 1966, the Gypsy Council was created in the United Kingdom, etc. For more details and examples, see J.-P. Liegeois, *Rom, Sinti, Kale... Zingari e viaggianti in Europa*, Strasbourg, Council of Europe Press, 1994, pp. 204-214.

<sup>22</sup> The second World Romani Congress was organised in Geneva (1978), the third in Göttingen (1981), the fourth in Serok, close to Warsaw (1990), and the fifth in Prague (2000). For a report on these congresses, see the Romani web pages ([www.romani.org](http://www.romani.org), [www.geocities.com](http://www.geocities.com), [www.romnews.com](http://www.romnews.com), etc.) or the chapter of T. Acton and I. Klimova, *International Romani Union: An East Answer to West European Questions?*, in W. Guy (ed.), *Between Past and Future...*, cit., pp. 157-226.

<sup>23</sup> This «third sector» has grown so much that some scholars considered that it has been one of the most active participants on the stage of the «transition» from Communist rule to post-Communist rule in Central and Eastern Europe. See N. Trehan, *In the Name of the Roma? The Role of Private Foundations and NGOs*, in W. Guy (ed.), *Between Past and Future...*, cit., p. 134.

that nothing can be done for the Roma without them, they have to develop a vision of their community needs, starting from the concrete definition of the nature of their leadership. The activities and initiatives driven by Romani organisations and NGOs<sup>24</sup> have thus to be sustained by a clearer project and by their own vision for the future. Most of the current leaders have indeed the feeling that their destiny is in the hands of private foundations or organisations and that they are participating to meetings and conferences without having anticipated them<sup>25</sup>. The feeling of the other European populations is that Roma are just passively waiting for changes and improvements without being willing to adapt themselves to the society requirements. A unified voice is needed for them to become more active and to drive by themselves on the road towards their future. The intervention of some other actors, coming from civil society, could help to reinforce the positive direction already initiated.

While the NGO sector offers an interesting possibility for the Roma population to become actively involved in the policies and changes affecting them, their role is not an easy one. They indeed constitute a kind of bridge between public powers, local communities and sedentary populations on the one hand, and Roma on the other hand. They often have to act as a buffer or filter between both parts, as an intermediary, a translator, etc. When they are composed by non-Roma, the situation of these associations is even harder. They have theoretically quite an independent status but, while they want to defend the Roma population, they are anyway a product of the «other» society, and can be criticised as such by the Roma themselves. The only way to go out of this unhealthy and somehow sterile situation is to make Roma participate more and more.

<sup>24</sup> Among the most famous NGOs dealing very actively for Roma rights, the European Roma Rights Centre (ERRC) and the Human Rights Project (HRP) can be mentioned.

<sup>25</sup> The Western sponsors are, for example, the Open Society Institute, the National Soros Foundations, Ford Foundation, Charles Mott Foundation, etc. as well as the European Union and the World Bank, more recently.

### **3. The Road Ahead, in Search of Adequate Solutions**

As often reminded by specialists in Roma affairs, there is no easy answer to the problems this European population has to face. No easy and overall no unique answer. That is why this chapter intends to present only insights of solutions about this highly complex issue, results of reflection, discussions, but always driven by a strong will to respect the inherent nature of the Roma.

Our wondering now is the following: at a European level, what could the possibilities of appropriate status and situation for this unique people be? In other words, what could Europe offer them in order both to improve their living conditions and to protect them by an adequate legal status?

In order to answer these complementary questions, two directions will be followed, based on the work of two of the main European institutions. First, it will be underlined how the European Union is able, especially through the enlargement process, to improve the Roma situation. Secondly, the Council of Europe's framework will be proposed to develop a more appropriate status, in the form of an additional Protocol to the *Framework Convention on National Minorities*.

### 3.1. Against Assimilation, the Enlargement and Beyond

If we think of how much failing to ensure an efficient protection for minorities cost the EU during the last century, it is hardly surprising to notice the great importance granted to minorities, and generally to human rights, in the Copenhagen Accession Criteria<sup>26</sup>. The EU knows how important the welfare of its minorities is for the Union's stability. The human rights standards actually imposed by the European Union are such that, if observed, they have to lead to a better human rights situation. Indeed the situation of some minorities remains truly worrying and the Roma are the first in this line. The enlargement of the European Union opens therefore a great opportunity for new forms of solution.

#### 3.1.1. The «Stick and Carrot» Approach

The protection of minorities constitutes a core value within the framework of the political criterion and has to be understood in both senses of protection from discrimination and traditional minority rights. These are two complementary answers to the problems minorities have to face, that is exclusion and assimilation. Both are very relevant dimensions of the Roma situation and are hopefully taken in great consideration by the European Union. As a direct consequence, the candidate states had to demonstrate their willingness and ability to ensure this double protection also towards the Roma population. Indeed, if Roma, more than any other group, face a problem of systematic exclusion in the countries where they live, they are also denied

<sup>26</sup> «Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union; and the ability to take on the obligation of membership, including adherence to the aims of political, economic and monetary union», by the Copenhagen Council, 1993. Full text at <http://www.dpt.gov.tr/abigm/abtb/Zirveler/1993%20Copenhagen%2021-22%20Haziran.doc>.

the right to enjoy their own culture, through the education of their language at school for example. Therefore, in order to comply with the criteria imposed by the EU, each state has undertaken considerable effort to modify its legislation as well as to adopt programmes aiming at the improvement of the minorities' situation or at their integration into the society. To follow the evolution of the countries and to be sure that they comply with all of them, it was decided to analyse their progress through «Regular Reports», drawn up by the Commission since 1998.

But oddly enough, the Copenhagen Criteria are not integrated into existing EU standards<sup>27</sup> and thus, the requirement to «respect and protect minorities» – presented as a core value by the EU – is not matched in internal EU documents binding upon member states. The *EU Charter of Fundamental Rights and Freedoms*, for example, does not explicitly mention minority rights. This failure to reproduce the standards of the Copenhagen Criteria within the EU lead to the misperception that candidate countries were held to different standards than the other European states. The consequence is also that, since the 1st of May 2004, the accession date, the new member states have not been monitored for the Copenhagen Criteria anymore.

The main channel of EU support for Roma populations in the new European countries is the *Phare Programme*. Other previously presented initiatives, such as the *European Initiative for Democracy and Human Rights*, the *Socrates* and *Youth Programmes*, sustain the participation of the Roma to the enlargement process. They are all managed by different departments in the European Commission.

### 3.1.2. A Comprehensive Approach

The crucial importance of the enlargement has been underlined by highlighting the direct pressure put on Eastern and Central European countries. At this point it seems clear that there is no single road to improve the living conditions of the Roma. However, the enlargement can also bring improvements in the way to deal with the Roma issue, by introducing global methods applying to all European countries. The present enlargement gives a unique opportunity to the twenty-five European countries to deal together with this challenge. Three

<sup>27</sup> They are indeed not considered as a part of the *acquis*.

different «struggle lines» have to be combined in order to consider the issue in its totality, in accordance with a comprehensive approach. The first and vertical line represents the levels of action; European, national and local, which have to be considered in a complementary way with a country-by-country approach. Then a second horizontal line is constituted by the principal features of the Roma situation in Europe: diversity, multisectorial poverty, and overwhelming exclusion. The third one is transversal and focuses on three fundamental issues for the improvement of the situation: education, Roma participation and partnership. The first two elements are essential in the struggle for both aspects of the protection of minorities, anti-discrimination and minority rights.

Two features must then characterise the whole comprehensive approach: the learning by example method and political willingness. Both are necessary in order to build a solid and feasible strategy, including systemic reforms in all fields.

Moreover, the value and the benefits of the multiculturalism and diversity for the EU are both recognised and underlined by the institutions. Article 21 of the *Charter of Fundamental Rights* enshrines that the respect for cultural and linguistic diversity is one of the cornerstones of the Union.

### **3.2. Towards a New Status: Imagining a Transterritorial Dimension**

The previous discussion on the identity issue raised the conclusion that both the status of minority and that of people could theoretically apply to Roma but that the current minority categories do not fit perfectly. Further wondering about which protection is offered by different actors at international, national and local levels, it was highlighted that, beyond the worrying problem of the way to deal with the Roma issues, which would require a comprehensive approach, the question of their status remains concretely little tackled at international level<sup>28</sup>. Keeping in mind the particular Romani identity and the human rights recognition at international level, it is now possible to close this essay with theoretical thoughts and imaginative proposals about the Roma status, as well as viable solutions for them within national states, without disturbing the actual frontiers, and overall without any pretence to bring the solution.

<sup>28</sup> Please note that interesting proposals such as the Hungarian self-governments are developed nationally.

It is undeniable that Roma constitute a unique and disconcerting people compared to the other peoples in the world. This features characterising them as a «particular people» were also stated in the second General Observation of the Recommendation no. 1203 (1993) of the Parliamentary Assembly of the Council of Europe:

A special place among the minorities is reserved for Gypsies. Living scattered all over Europe, not having a country to call their own, they are a true European minority, but one that does not fit in the definitions of national or linguistic minorities<sup>29</sup>.

This impossibility to make them fit in one of the existing categories opens the door for new proposals which would allow Roma to enjoy the rights linked to a legal and precisely defined status. As already stated, Roma can be identified in almost every country in Europe. Big or small communities, integrated or not, nomadic or sedentary, their group presents an impressive diversity of features. Next to this variety, they share essential values and elements allowing us to speak about a «Romani culture», which resists to assimilation everywhere in the world<sup>30</sup>. The symbolic value of travel – even for sedentary groups – is one of these essential elements for all the Roma. But it is less a fundamental part of their identity than a consequence of their conceptual way to see the world – a big area without borders. They do not identify themselves with the territory in which they live and have no country of reference.

For the Roma «every country is a “foreign” country, a country of residence; there is no homeland to go back to, or even to turn to in a symbolic capacity»<sup>31</sup>. This idea of territorial area allows them to keep a «nomadic spirit» even when not travelling because, without roots in and without borders between countries, they feel free to leave any time. They are thus in opposition with all European cultures, which remain very nationalistic and proud of their borders. Their spatial representation of the world does not follow the boundary lines and if Roma have to take them into account, it is only because, travelling – or having moved in the past –, they fall under the national rules and limits.

An interesting system created in Europe in order to give peoples living close to national borders the possibility to

<sup>29</sup> Recommendation 1203 (1993) of the Parliamentary Assembly of the Council of Europe on *Gypsies in Europe*, 2 February 1993.

<sup>30</sup> According to Barany, the Romani culture and its resistance to assimilation are together the misfortune and the safety of this people, in Z. Barany, *Living on the Edge: The East European Roma in Post-Communist Politics and Societies*, in «Slavic Review», vol. 53, no. 2, Summer 1994, p. 326.

<sup>31</sup> Z. Barany, *Orphans of Transition: Gypsies in Eastern Europe*, in «Journal of Democracy», vol. 9, no. 3, 1999, p. 148.

overpass these frontiers is the Euroregion structure. In European politics, a Euroregion is a form of transfrontier cooperation between two or more European countries in order to avoid obstacles linked to the existence of borders. They are usually arranged to promote common interests across the border and co-operate for the common good of the border populations and do not create a new type of government at transfrontier level. They do not have political powers and their work is limited to the competences of the local and regional authorities which constitute them<sup>32</sup>. However, this original method cannot be applied to Roma for the obvious reason that, scattered in numerous countries, they do not enjoy the local autonomy within precise regions.

It remains that the Roma are challenging these barriers within Europe and, according to what was presented previously, it is understandable that a claim for a territory would make no sense to them. Together with this, it was shown that their large perception of self-determination would perfectly fit with the enlarged European area ideal, which does not aim at re-producing exclusive nation-states but rather consists in various nations or cultures living in contact in this great area.

The international process is influenced by national political processes, which often tend to be more pragmatic and flexible than the international one. National experiences of self-determination, such as the Hungarian self-government<sup>33</sup>, directly influence the international debate and thereby move the discourse forward.

Lots of Roma leaders are claiming the right to be a «nation», together with the right to self-determination. However, in the same time, the *Framework Convention for the Protection of National Minorities* established the criteria for recognising Roma as a national or ethnic minority. How can Roma be simultaneously several dozen separate minorities and also a single Roma nation<sup>34</sup>? One IRU representative suggested that this claim to be recognised as a nation has to be intended to supersede the definition of Roma as a minority<sup>35</sup>. The absence of a homeland, the recognition as a nation, the claim for the right to self-determination without a territory and the denial of the borders in their geographic conception turn them into a people belonging to the whole world, who could give us the example, if a serious work were done on both parts, of the

<sup>32</sup> Some examples of Euroregions: Inn-Euroregion in Austria, Eurégion Transcanal in Belgium, Euroregion Baltic in Lithuania, Tatra (Tatra) Euroregion in Poland, The Kvarken Council in Sweden, etc. For an exhaustive list and the criteria to be recognised as an Euroregion, please see the Council of Europe website: [http://www.coe.int/T/E/Legal\\_Affairs/Local\\_and\\_regional\\_Democracy/Transfrontier\\_cooperation/Euroregions/2Definition.asp](http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Transfrontier_cooperation/Euroregions/2Definition.asp).

<sup>33</sup> Per Report, *The Romani/Gypsy Self-Government System in Hungary: Experience and Prospects for the Future*, workshop, Budapest, 9-10 May 1997; available at [http://www.per-usa.org/self\\_gov.htm](http://www.per-usa.org/self_gov.htm).

<sup>34</sup> This wondering was one of the problematic issues tackled by the Roma leaders during the workshop *Roma and the Question of Self-Determination: Fiction and Reality*, organised at Jadwisin in Poland, 15-16 April 2002.

<sup>35</sup> It has to be specified that this view is not shared by all Romani representatives. Roma have indeed, still nowadays, difficulties in defining who they are and which status they want to claim. In the absence of such a consensus, my personal proposals will be shaped according to some realistic trends, even if they cannot correspond to all Roma convictions.



most achieved European people, keeping its own culture, entering in contact with all the others, in a constructive intercultural dialogue. This study would thus propose the concept of *transterritorial* people for this «special people» who needs a precise status, corresponding to its particular way of life and world conceptions. However, since non-territorial and non-nation-states are not recognised a legal position within intergovernmental organisations, if Roma were granted such a status it would mean setting an important precedent for other similar groups, beyond the breach of international law. The case of the Roma would therefore become exemplar of a new kind of people recognition, linked to the necessity of a special governance which would be in accordance with the creation of a world progressively liberating itself from its frontiers. The Roma could therefore drive Europe to consider new forms of supranational policies or intergovernmental relations.

This status of *transterritorial people* could be legally formulated in an internationally recognised document, within the framework of an international institution. The Council of Europe seems to be the most appropriate, thanks to the kind of protection it offers to Roma (special offices, long-term vision, strong involvement since decades, etc.) and to its conception of minority (as a group and not a collection of individuals as in the UN point of view). One possibility would be to add a Protocol to the *Framework Convention for the Protection of National Minorities* in order to ensure that, even if Roma are granted a special status of «transterritorial people», they keep enjoying the rights recognised to minorities. Moreover, the high flexibility of the *Framework Convention* is a very positive aspect to be mentioned.

This status should be linked to an international representation of the Roma, as required by Romani leaders, and also to an improvement of their political inclusion at national level. Political inclusion does not absolutely mean integration or assimilation and, at this regard, self-government constitutes a great way for Roma to achieve their right to self-determination, without secession or other conflicting forms of relationship with European borders.

In conclusion, the addition of a Protocol to the *Framework Convention* is one proposition which could be analysed by the concerned actors and subjects. It should make reference to the

long history of Roma in Europe and to their particular identity, formed by the diverse and conflicting experiences they had. It would grant the Roma a particular place somewhere between people and minority, within the framework of an institution which traditionally defends human rights and can even enlarge the scope of European Union protection.

## Conclusion

In a Europe of security, of trans-borders communication, of recognition and defence of the rights of individuals and groups, the position of Roma is together atypical and in syntony with the ideals of a great Europe. It requires both the application of the most essential and ancient principles of the Union – such as the right to dignity, to a decent housing, etc. – and the implementation of the most innovative initiatives – such as the creation of special offices, protection mechanisms more adapted, etc. The Roma appears as a challenge for the EU, as a strength which pushes Europe to build itself in a more coherent way, indeed differently. The approach of such a matter is extremely complex. The Romani world as seen by the *gadje* is full of contradictions, incomprehension, inventions, repressed fantasy. The collective unconscious, fabricated with the passing of long centuries of hatred and exclusion, turned them into the eternal foreigners, the «incompatible» citizens. But we should not forget the battles of the European previous century, which invented the concept of an area of «peace and prosperity», the recognition of minorities, the right to free movement, the protection of cultural diversity, etc.

One *fil rouge* of this research has been the status issue linked to the categorisation of Roma as minority or people. Introduced in the first chapter in order to define the terms and precise how open is the question regarding this atypical group, it has been picked up again in the second chapter, going through the issue of the protection offered to Roma both by international law and by the different actors more or less involved in this field. The analysis of the international institutions revealed that each of them adds its contribution to build Roma protection but also that the lack of co-ordination of their activities, together with the relative lack of communication between the

specialists of Roma issues leads to a problem of coherence and the dispersal of energies (and funds). Then about the status issue, it was underlined that while the Council of Europe sustains the status of «ethnic minority» for the Roma there is no real consensus in Europe about it and, moreover, the status of minority is not fitting perfectly with their identity and conception of the world.

The third part of the analysis thus intended to open some *avenues* to think about possible new solutions. On the basis of previous learning, two ways were considered. On the one hand, the first one aimed at demonstrating that the EU had – and keeps having – an important role to play for Roma within the framework of enlargement and, on the other hand, the previous analyses allowed the formulation of a comprehensive approach, articulating the important elements around three lines of action. The aim was to prove that it is essential to face the problems of Roma globally, without focusing exclusively on one single issue, such as poverty, or education, or political participation. Addressing the issues regarding Roma is a challenging task which will require experimentation, creativity, and patience. There are no easy answers, and changes will not come overnight. The Roma attitude and culture have a great part of the responsibility in the situation, often making the situation harder because of their mistrust towards non-Roma and, in most cases, of their refusal to communicate with them. If nothing can be done without Roma, as it has been stressed on several occasions in this essay, they have also – and not only their leaders – to learn and accept to make a move in the direction of non-Roma in order to allow a constructive exchange.

The question of the status constituted the second important step in the search for new and adequate solutions. The proposal was to adopt the status of *transterritorial people* through a Protocol added to the *Framework Convention on the Protection of National Minorities*. This status would respect the will of a great part of them to be recognised as one people, beyond the frontiers which do not correspond to their conception of the world. As it would be a Protocol added to the FCNM, Roma would be automatically granted the whole body of rights granted to other minorities. In conclusion, the Roma, because of their atypical position in Europe, enable us to reflect on the status of peoples in Europe and on the ways to allow them to

freely integrate, on the right to self-determination and its different implementation, on the rigidity of national systems and on the necessity to get strong and innovative European institutions in order to give coherence and direction to the initiatives regarding the most destitute.

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