

**A comparative analysis of the minority policies of Italy,
Romania, and Albania, in the context of the EU policies
with special reference to the Roma minority**

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The European Union is, in my opinion, today perhaps the world's best example of an open society, guided by the principles of democracy, tolerance, and international cooperation. An open society, in my definition, is an imperfect society that holds itself open to improvement. In no other area is the need for improvement as great as it is in the treatment of the Roma minority.

George Soros.

APPROVAL PAGE

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AUTHOR DECLARATIONS

1. The material included in this thesis consists of various sources such as books, newspapers, surveys, EU legal framework, internet websites, etc.
2. This thesis is made up of the following:
 - i) Observing the situation of Roma minority in Albania.
 - ii) Consulting several books in Albanian, Italian and English language on minority issues.
 - iii) Examination of different EU and Council of Europe conventions as compared to domestic legislation concerning minority rights.

Elona MURATAJ

July, 2010

ABSTRACT

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“A comparative analysis of the minority policies of Italy, Romania, and Albania, in the context of the EU policies with special reference to the Roma minority.”

Most countries today are culturally diverse. The European Union is a diverse union and it is composed of more than 300 minorities. The minority protection is a new issue for the EU. Since the beginning of the 1990s international community has paid an increasing attention to one of its biggest and most disadvantaged minority, the Roma minority. A significant era for the minority protection has started in Europe.

This thesis will look at some of the typical complaints and problems that Roma people have in Italy, Romania and Albania; will take in to consideration EU minority policy in Europe, how is it applied in Member States, the measures taken and why does EU put the minority protection as a condition for the candidate countries. However respecting minority's right has been and will always be an issue even for member states such as Italy; Is this a double standard? These issues and others related to them will be the focus of this study.

Key words:

European Union, European Union membership, International community, Minority protection, Roma minority, Double standard.

KISA ÖZET

Elona MURATAJ

Temmuz 2010

Roman azınlık özelinde AB politikaları kapsamında İtalya, Romanya ve Arnavutluk'un azınlık politikalarının karşılaştırmalı tahlili.

Günümüzde birçok ülke kültürel anlamda kozmopolittir. Avrupa Birliği kozmopolit bir birliktir ve içinde 300'den fazla değişik kökenden insandan müteşekkildir. Azınlıkların korunması Avrupa Birliği'nin yeni konusudur. 1990'lı yılların başından itibaren, Avrupa'nın en büyük ve en dezavantajlı azınlığı olan Roman azınlığına karşı artan bir ilgi ortaya çıkmıştır. Avrupa'da azınlıkların korunması ile ilgili yeni bir dönem başlamıştır. Bu tezde Avrupa Birliği için azınlık politikasını oluşturmada, Roman azınlığına yönelik benzer şikâyet ve sorunları olan İtalya, Romanya ve Arnavutluğa yoğunlaşılacaktır. Avrupa Birliği'ne üyelik için başvuran devletlere, azınlıkların haklarının korunması şartının neden ileri sürüldüğü de bu çalışma bağlamında anlaşılmış olmaktadır. Bununla beraber hâlihazırda Avrupa Birliği üyesi olan İtalya gibi ülkelerde azınlık haklarına saygı önemli bir sorun olarak ortaya çıkmıştır. Bu, çifte standart mıdır? Bu çalışmada bu hususlar ve bununla bağlantılı konular değerlendirilecektir.

Anahtar Kelimeler:

Avrupa Birliği, Avrupa Birliği üyeliği, uluslararası topluluk, azınlık haklarının korunması, Roma azınlığı, çifte standart.

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LIST OF ABBREVIATIONS

AMARO DIVES	‘Our Day’, Roma NGO in Albania
AMARO DROM	‘Our Way’, Roma NGO in Albania
COE	Council of Europe
CEECs	Central and Eastern European countries
CFI	Court of First Instance
EEC	European Economic Community
EDIHR	European Initiative for Democracy and Human Rights
EERC	European Roma Right Center
ECSC	European Coal and Steel Community
EU	European Union
EUMC	European Monitoring Center on Racism and Xenophobia
FCNM	Framework Convention on the Protection of National Minorities
OSCE	Organization for Security and Cooperation in Europe
ROMANI BAXT	‘Romani Chance’, Roma NGO in Albania
PHARE	Program of Community aid to the countries of Central and Eastern Europe
UN	United Nation

ACKNOWLEDGEMENTS

I remember exactly when a seven year old Roma child begged me to give her money to buy something to eat. She was a seven year-old girl, who instead of going to school was in the street begging to feed herself and her family. This is the tragic story of all the Roma children all over Europe. By then, I had become interested in the subject of minority protection, particularly the protection of Roma minority. Reading and learning more about the Roma, I remember how impressed I was about their culture, traditions and way of living. I also realized that the Roma minority was the largest and most disadvantaged minority in Europe. In spite of the attempts from different international organizations, they still were not integrated into the societies they lived.

This subject was challenging; and I was able to accomplish it, thanks to the support of different people. First of all, I want to thank different Roma people in Albania who shared their thoughts with me. They were a very important source of information for my study. Every thought was crucial for understanding better the Romani culture and problems. I would like to thank Mrs. Blerina Tepelena who works in the Ministry of Labour, Social Affairs and Equal Opportunities of Albania. She gave me the opportunity to be present in different meetings with Roma organization and its people, as well as participating in different conferences organized in the context of different problems and projects for Roma community. Finally, my sincere gratitude is for Mr. Berdal Aral, my master professor who helped and supported me throughout the different stages of my research.

INTRODUCTION

‘‘Most countries today are culturally diverse. According to recent estimates, the world’s 184 independent states contain over 600 living language groups, and 5,000 ethnic groups.’’¹ This diversity gives rise to different problems, which can lead even to civil wars and ethnic conflicts. Nowadays in culturally diverse countries, we observe minority-majority clashes over different issues. Minorities are fighting to obtain political representation, land claim, regional autonomy, protection of their language, culture, etc. There are even cases when minorities claim for independence or autonomy within the territories of the state they live in. When a minority wants to gain independence, the issue becomes more complex and difficult to be treated. Such can never be the case with the Gypsies, a nomadic people who have no homeland to dream of, no original territory to reclaim.²

It is difficult for international law to find a reasonable solution to these sensitive issues.

*Yet although the independence of national minorities may in theory be legitimate, in practice it is not easily obtainable because of inherent difficulties in the territorial redistribution that it requires.*³

This comes as a result of the vague definition of the concept of ‘minority’ as well as ‘the right of self-determination’. The issue about which minority should have the right of self-determination and which should not is still being debated therefore;

¹ Will Kymlicka (1995), *Multicultural citizenship: a liberal theory of minority rights*, New York: Oxford University Press, p.1.

² Michael Steward (2002), ‘‘The puzzle of Roma persistence: group identity without a nation’’, Thomas Acton et.al (eds) *Romani culture and Gypsies identity*, Great Britain: University of Hertfordshire Press, p. 85.

³Jennifer Jackson Preece (1998), *National minorities and the European nation-states system*, New York: Oxford University Press, p. 11.

different institutions, organizations, or people have provided a lot of definitions on the concept of minority and ethnic group. The term ‘national minority’ is still being discussed in the arena of politics. Joshua Castelino in his book, ‘‘International Law and Self-determination’’, stated as below:

*Minorities are different from the majority; with different interest that cannot always be fulfilled by a majority government that does not, in a literal political sense need to understand their peculiar desires. They therefore remain voiceless in a democratic society leading to feelings of exclusion.*⁴

Human right issues have been part of international law since the end of the Second World War. After this devastating war a lot of international and national organizations started to deal with human and minority rights in Europe. Some important organizations which have contributed to the improvement and protection of the rights of minorities are: the Organization of Security and Cooperation in Europe (OSCE), United Nations (UN), Council of Europe (CoE), and the European Union (EU).

The EU is a supranational organization, which pays a lot of attention and contributes to the promotion of minority rights in different geographic regions.

With a population of about 500 million people, Europe is composed of 395 different minorities and it works hard to achieve one of its important goals, that is to be ‘‘united in diversity’’.⁵ This phrase is at the same time the motto of the European Union means a lot to us. It makes us understand that although a union of 27 different sovereign member states, Europeans are united in working together for the achievement of peace throughout different regions.

⁴ Joshua Castelino (2000), *International Law and Self-determination*, Netherlands: Martinus Nijhoff Publishers, p. 47.

⁵ *United in Diversity*, http://europa.eu/abc/symbols/motto/index_en.htm.

Persons belonging to minorities have all the rights to participate effectively in cultural, religious, social, economic and public life and they have the right to enjoy their own culture, to practice their own religion, speak their own language freely and without interference or any form of discrimination. But did the EU achieve the so called “European Identity”. Does every citizen of the EU feel European and enjoy equal rights? What about the minorities in Europe, despite different identities, languages and cultures? Do they feel European? These and other issues will be examined in the following pages of this thesis.

The protection of minorities has been a new area of concern for the EU. It has become part of its external policy. The EU has coordinated efforts with other European organizations. In the field of minority protection, EU has closely cooperated with OSCE and the CoE. This cooperation aims to protect and promote minority rights in Europe and through joint activities to expand the protection of minorities in the region. In addition to the cooperation with different organizations, the European Union plays a very important role in the minority issue with its own minority policy. The protection of minorities has been part of the European process since the Helsinki Agreement of 1975 and the Copenhagen Criteria of 1995. Minority rights, as one of the main pillars of the Copenhagen criteria, is a prerequisite for candidate countries which aspire to become members of the EU. The European accession process has had a substantial impact on the development of minority policies in the pre-accession countries. During the accession process of the Southeastern Europe, we can observe a big impact on the minority policies of the newly accepted countries. The inclusion of minority rights as an item of political conditionality has been a new important issue of the EU external policy. Especially

after the outburst of violence in the Balkans, the EU sharply accentuated the role of minority protection in the enlargement process hoping that by so doing it would be able to maintain political stability throughout the future territory of the Union.⁶ With the enlargement process, the new member states will bring with them their minority problems, which can be a danger for the European community. Minority issues are very important and delicate. The violence in the Balkans and in Southeastern Europe is a danger for the Union. Consequently, the EU has to be concerned about the minority rights; otherwise political instability will prevail in the future of the union. The EU promotes democratic values and the protection of fundamental rights as indispensable elements for a democratic country.

Since the beginning of the 1990s, the international community has increasingly paid attention to one of its biggest and most disadvantaged minority, the Roma minority. The Roma minority has its own culture and is fighting not to be assimilated in the states in which they live. Culture is not something fixed, inherited, unchallengeable, and unchanging. In his book 'Romani culture and Gypsies identity', Thomas Acton emphasized this dynamism:

*On the contrary, it is constantly developing, enabling, the self-expression of our self-realization re-inventing as well as representing and reproducing our ethnic identity. This is as true of Gypsies as of anyone else.*⁷

Migrating from India, the majority of Roma people settled in Southeastern Europe. After the fall of communism, the Roma community was faced with a lot of problems in Europe. They were victims of the economic changes that led to a market economy.

⁶ Peter Vermeersch, *EU Enlargement and Minority Rights Policies in Central Europe: Explaining Policy Shifts in the Czech Republic, Hungary and Poland*, University of Leuven (KU Leuven), Belgium, http://www.ecmi.de/jemie/download/Focus1-2003_Vermeersch.pdf.

⁷ Thomas Acton (*op. cit.*), p.1.

They were the targets of a number of assaults. This violence against them, coupled with their social and economic situation, obliged them to migrate towards West Europe. However, the West met them with the same violence and bad conditions.

Fifty years later things remain the same. The situation of Roma community has improved in some aspects, but in some others it has deteriorated. Because of their different culture and attitudes they are easily distinguished from the rest of the society: consequently they are not socially integrated into the societies in which they live. In truth, Gypsies all over Europe have been remarkably successful in preserving their way of life, adapting to their changed conditions in order to remain the same.⁸ Significant gaps remain between Roma communities and mainstream society in areas such as housing, education, employment and access to public services and justice. There is a lack of adequate policies by governments at the national, regional and local levels. Anti-Roma racism is widespread in Europe; indeed a rise of anti-gypsism in Europe is observed. Continuous attacks on Roma properties, houses, physical assaults, police violence are the typical crimes one frequently reported. Most of the crimes have resulted in deaths. Although there are some positive recommendations and good practices taking place at international and national levels, some of them have not been translated into country-wide practices. The European Union is paying a lot of attention to the Roma minority. But still this minority lacks the resources to assert its rights effectively. We have the case of Roma people in

⁸ Michael Steward (*op.cit*), p. 84.

Europe which needs the support of the EU institutions. When asked in an interview which directive made by the EU has been the least beneficial, Livia Laroka, the first female Roma member of the European parliament, stated the following:

They have all been beneficial, but regretfully I feel that we at the European parliament are almost always too late to help. We poorly supervise the application of each directive in all countries⁹

Both existing and future member states of the EU have to protect and promote the minorities within their territories. They have to obey and fulfill some of the important criteria of the EU concerning minorities.

In my thesis I have chosen to analyze three states: Italy, Romania and Albania, in order to compare their minority policies and the situation of Roma in their territories. Everyone can come out with the question: Why Roma minority and why these three states? The Roma minority, because there are ten to twelve million Roma, and Travellers in Europe are spread across practically all the Council of Europe's member countries.¹⁰ Different studies show that they are considered to be the only minority established in almost all the European states. On the other hand, they are the most disadvantaged ones.

The Roma people are part of the Albanian society and they have to be respected and not discriminated by the society and the law. The most important thing is that, they are human beings. According to Article 1 of the Universal Declaration of Human Rights says: "All human being are born free and equal in dignity and rights.

⁹ Fernando Navarro Sordo (02.06.09), "Livia Járóka: female, Roma and Euro MP", *The European Magazine*.

¹⁰ *Roma and Travellers*, http://www.coe.int/t/dg3/romatravellers/archive/default_en.asp.

They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹¹

The cases of Italy, Romania and Albania will help us understand the situation of Roma all over Europe. More or less they will show us a better or worse situation of Roma people which is not any different from other European countries. In this thesis, a comparative analysis of the minority policies of Italy, Romania, and Albania, in the context of the EU policies with special reference to the Roma minority, will be discussed. I chose Italy because it is one of the initiators of the EU and has supported the EU in all the European steps toward integration. Is Italy, then, supporting the EU policies with regard to the minority protection and the social inclusion of Roma?

I chose Romania because it has the greatest number of Roma minority in Europe and is also the newest member of the EU. This will allow us to see if the EU membership of Romania has influenced positively the social inclusion of Roma. The last country to be analyzed is Albania. Albania will be important for this study because it is a potential future candidate of the EU, as it will give us a better picture of the situation of Roma in non-EU countries. It is the right of every Roma women, men and children to feel free, to have an appropriate education, to work, and to have a normal life without discrimination.

EU with its anti-discriminatory legislation, programs and findings is working hard to achieve the social inclusion of Roma. We will analyze in the next chapters how successful and helpful have been the EU minority policies in Europe.

¹¹ Universal Declaration of Human Rights (art 1) (1948), <http://www.ohchr.org/en/udhr/pages/introduction.aspx>.

My thesis will be divided into separate chapters and will be organized as follows: The first chapter will start with a brief description of the relations of Italy, Romania and Albania with EU and EU legislation. Secondly, I will analyze EU minority policy in Europe. I will make a comparison of the European Court of Justice and the European Court of Human Rights, by explaining their importance in the decision-making process of these three countries. The Roma minority with their problems will take an important part in this chapter. I will focus on their living conditions, their culture and main problems. We will see the importance of minority policies for EU agenda and seek to find out their application in practice. In the second chapter, I will analyze individually each of the three states. I will focus on the legal framework that each of them is using to combat discrimination. How is each of them performing? Secondly, I will focus on the Roma minority in each of the states.

After analyzing individually each of the states, their legal framework and the situation of Roma, I will make a comparative analysis between the three states. Then I will continue by giving some examples of different Roma violations cases, which went to the ECHR. We will see if the violations committed by the states are debated in the European Parliament and how the EU is evaluating them. The media plays a very important role in pointing out and resolving different problems. We will see if the Roma problems are debated in the respective media of these countries. The last chapter will be at the same time the conclusion of the thesis. In this part, some of the questions that came out while writing this thesis will be answered. We will find out how EU policies and suggestions have influenced the policies in these states, in what aspects and to what degree. Besides, we shall try to find out how far the EU policies have increased stability, democracy and peace in Europe? If Roma rights were not

respected, would this be a negative influence for Albanian accession? Why is minority protection a prerequisite for candidate countries? If Roma rights were violated by any of the states, what would the role of the EU be? Are there any measures taken by the EU against those Member States that do not respect minority rights? If the answer is 'no', is this a double standard?

CHAPTER 1

EU Minority Policy and Roma Minority in Europe

The first part of this chapter will begin with the end of the Second World War. It is important to mention the need that led to the creation of the EU and its minority policy in Europe. Since 1945, questions concerning minorities have become important on the agendas of the EU and other international and non-governmental organizations. The EU minority policy and the legal framework in which minority protection is mentioned will be discussed in the second part of this chapter. In this part, the examination of the FCNM (COE) and the comparison between the ECJ and the ECHR will greatly contribute to this research. How do the two courts cooperate with each other? What is their role in the protection of human rights?

The Roma minority in Europe and the EU programmes toward the promotion of their rights will take an important place in the third part. These and other issues are discussed and will give us a clear picture of the EU minority policy in Europe and the situation of the Roma people.

1.1. EU Minority policy in Europe

The process of European integration is an on-going process. The need that led to the creation of the European Union has its roots since the Second World War. The Second World War was a devastating war, in which almost all the nations took part.

millions of people died. In Hiroshima and Nagasaki the radiation dose absorbed by the population from the detonation of two atomic bombs in August 1945 also continued to claim lives for decades after the end of the world war.¹² During this devastating war not only people were killed, but also a lot of the nations' economy, infrastructure, schools, hospitals, etc, were destroyed. It was time for a new era of peace to come in Europe.

In 1949 the European nations created the Council of Europe. This was the first step of cooperation between the European nations, but it was not to be the last. Italy, France, Germany, and the Benelux countries wanted to go further and create the European Coal and Steel Community in 1957 (ECSC). Both of these organizations' aim was to achieve peace, stop conflict and establish cooperation between the member states in areas like international law, security, economic development, social progress, and human rights. The EU was the result of a long process .It started with the ECSC and it still undergoing changes. The EU, as a replacement to the EEC, was established on 7 February 1992 by the treaty of Maastricht. The idea of the European integration was important because the countries of Europe would, after this time cooperate in different areas with each other and would not wage war against each other. Consequently, peace and cooperation would be achieved in Europe. Today EU is composed of 27 states with leadership from Brussels, where many of the important institutions of the EU are based. With the political changes of 1989, Europe's territory was not anymore the same. The problem of national minorities came out into the open.

¹² Bradley Lightbody (2004), *The Second World War: ambitions to nemesis*, London: Routledge, p.1.

*The collapse of communism in the former Soviet bloc between 1989 and 1991 was accompanied by an outpouring of antagonistic nationalism on the part of both national minorities and national majorities in the region...As a result, national minority questions rose to the top of the European international agenda for the first time since 1945.*¹³

These events were followed by other violent events in Europe. There have been other conflicts in Europe, some of them have been resolved but some others still exist.

“Minority questions are among the most contested issues in political life because they speak to an inherent tension in human affairs between competing desires from freedom and belonging.”¹⁴

The efforts of international organizations concerning the ethnic minorities have been important in the building of long-lasting peace in Europe. The UN, OSCE and the Council of Europe have a broad range of activities on the issue of ethnic minorities. The EU has relied on international documents of different international organizations. It has relied on the documents of the CoE, OSCE, etc. These international organizations have more experience in minority issues. On the other hand, in case of necessity, the EU accepted the norms, documents and laws of other international organizations. This is mainly due to the fact that the integration process has been first of all, an economic project, with political aspects too. . But, on the other hand, “more than other IGO in Europe, the EU was able to turn policy making on minority issues in post communist Central Europe into a matter of international

¹³Jennifer Jackson Preece (*op.cit*), p. 3.

¹⁴ *Ibid*, p. 5.

politics”.¹⁵ The direct role of the European Union in the protection of national minorities is still very limited. The EU seems to be much less engaged

The EU member states are currently engaged in a project of both deepening and widening. On one hand, by ‘deepening’ we mean, all the member states cooperating with each other in different areas in order to achieve a better Union. On the other hand, by ‘widening’ we mean the enlargement process. The enlargement process nowadays is still an ongoing process. We still don’t know its borders. The only thing that we know is that these demographic changes have been associated with important changes in world politics. In 2004 a lot of nations became new members of the EU. This round of enlargement is very important because it was the largest enlargement that made a lot of changes to EU’s demography. From this moment the EU was more diverse than ever and called for stronger human and minority directives to be done by the EU institutions. A significant era for the minority protection has started in Europe. Members of these minorities are fighting for the maintenance of their own culture, language and traditions. These values should be protected not only by the minorities, but also by the EU and the member states without any form of discrimination. Although minority protection is mentioned little in the different treaties of the EU, minority rights are provided through several pieces of EU legislation. Discrimination based on ethnic origin, religion or belief is mentioned in the Charter of Fundamental Rights, Copenhagen Criteria, different

¹⁵ Peter Vermeersch (2006), *The Romani Movement: Minority Politics & Ethnic Mobilization in Contemporary Central Europe*, United States: Berghahn Books, p. 195.

directives, and in the Framework Convention on National Minorities, which is a CoE document and is one of the most important documents in Europe concerning minority right.

1.1.1. The Charter of Fundamental Rights

One important document in which minority rights are mentioned is the Charter of Fundamental Rights. This charter has become binding since the entry into force of the Treaty of Lisbon on 1 December 2009.

*The charter was signed by the 15 EU members as a "political declaration". This means that it may be taken into account by individual national law courts and the European Court of Justice, but it is not legally binding. The European Union Charter of Fundamental Rights sets out a whole range of civil, political and social rights enjoyed by the EU's 372 million citizens.*¹⁶

The Charter of Fundamental Rights makes some references to the protection of the minorities through different articles, such as the preamble and Article 22. Its first article starts with a reference to human dignity, which is the most important thing for every human. "Human dignity is inviolable. It must be respected and protected."¹⁷ The human rights from other documents of the EU are collected and put together in this charter. It is composed of six chapters: Dignity, Freedom, Solidarity, Equality, Citizenship and Justice. The fourth chapter deals with the question of discrimination

¹⁶ Q&A: Charter of fundamental rights, http://ec.europa.eu/bulgaria/abc/faq/fundamental_rights_en.htm.

¹⁷ The Charter of Fundamental Rights (art 1) (2000), http://www.europarl.europa.eu/charter/default_en.htm.

and it has great importance for the national minorities in Europe. All these provisions concern the cultural, religious and linguistic diversity. According to Article 20 of the Equality chapter, “everyone is equal before the law.”¹⁸

Article 21 deals with the question of discrimination based on a variety of factors. Clauses 1 and 2 state that: “Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”¹⁹ Article 21 then extends all rights listed previously to minorities by outlawing any form of discrimination against them. Article 22 is very important because it directly talks about the cultural, religious and linguistic diversity. It states that “The Union shall respect cultural, religious and linguistic diversity.”²⁰ This article also is of great significance because Europe is a diverse union. Hence, in this union, cultural, religious and linguistic diversity shall be respected by all the member states and the future members of the Union.

1.1.2. The Copenhagen Criteria

The second and the most important document concerning minority rights is the Copenhagen document. The minority protection has been more effective in the external relations of the EU. The European Union has become active in the

¹⁸ *Ibid*, article 20.

¹⁹ *Ibid*, article 21(1, 2).

²⁰ *Ibid*, article 22.

promotion and protection of minority rights in the candidate countries by virtue of Association Agreements whose terms are guided by the Copenhagen Criteria. The different Association Agreements include guaranties for the rights of ethnic minorities and groups. Similarly the Copenhagen Criteria, established by the European Commission in 1993 constitutes the benchmark to monitor and recommend to the candidate countries on the issue of minority rights. In June 1993, in Copenhagen, the European Council approved a set of criteria which every state interested in accession had to achieve. One of the important political criteria of this treaty is the respect for and protection of minorities by the candidate countries. Although the Copenhagen criteria are not legally binding, they have to be applied by all candidate states. What about the member states? Do they have to act in accordance with these criteria? In 1993, there was no mechanism for ensuring that any country which was already an EU member state was in compliance with these criteria.²¹

The EU minority laws should be respected in the same way in all the European states. Sanctions should be imposed also against EU members which do not respect the minorities in their territories. More present than ever, the minority protection has been present in Europe particularly since the Copenhagen Criteria. It is very important because it incorporates the minority protection into the legislation of the future members of the EU. With the Copenhagen Criteria, minority protection has become a very important requirement that should be achieved by all the

²¹ *European Union membership criteria*, http://www.worldlingo.com/ma/enwiki/en/Copenhagen_criteria#European_Union_membership_criteria.

candidate countries in order to become future members of the union. Minority protection has become one of the political requirements for the membership.

The influence of the EU integration process has a very big impact on domestic politics of the candidate states.

1.1.1. The Framework Convention for the Protection of National Minorities

The EU has engaged in joint activities with other organizations in the promotion of minority rights in Europe. One of them is the Council of Europe with its significant document for minorities: “The Framework Convention for the Protection of National Minorities”.²² The Council of Europe was founded in 1949. Almost all the countries of Europe are members of the Council of Europe. This organization is very important for the national minorities in Europe, especially the Roma minority.

The Council of Europe has been very active in protecting and promoting the Roma/Gypsies rights, through both standard-setting documents and practical programmes.

*One of the most important contributions of the organization has been the recognition that Roma constitute a minority in Europe and should be protected as such.*²³

²² Kinga Gal, (2000), *The Council of Europe Framework Convention for the Protection of National Minorities and its Impact on Central and Eastern Europe*, Germany:European Centre for Minority Issues, pp.7-13.

²³ Patrick Thornberry et al (Eds.) (vol-2) (2006), *Minority rights in Europe*, Belgium: Council of Europe Publishing, p.188.

According to the Council of Europe Statute, the aim of the organization is to: ‘achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress’ (Art 1a).²⁴

Again according to one of the principles of the Council of Europe, every member state ‘must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms’ (Art 3).²⁵

The FCNM came into force as a binding international document whose aim is to protect minorities all over Europe. Actually 32 states have ratified the FCNM. Just three countries, France, Greece and Turkey, didn’t sign this document. They deny the existence of national minorities in their territories. The FCNM is a very important convention also for the EU, because almost all the EU member states have ratified this convention. Collective rights include not only the fundamental right to official recognition and the right to existence and identity, but other fundamental rights as a consequence of the recognition, such as:

- the right to use one's own language in the public sphere and the right to education in one's native language,
- the right to establish political parties,
- the right to maintain their culture and to be educated in one’s native language, and a lot of other rights that are listed in this document. Although this is the most important document for the protection of minorities in Europe, still there is the problem of the ambiguity of the definition. Any examination of international minority protection is

²⁴ Statute of Council of Europe (art 1)(1949), <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=001&CL=ENG>.

²⁵ *Ibid*, article 3.

immediately confronted with the problem of conceptual clarity stemming from the lack of a universally agreed upon definition of the term 'minority'.²⁶ Which are the minorities that can benefit from these rights? What about the immigrant populations? Why are they not mentioned in this convention? As a result, a lot of member states added official information which clarified the position of the minorities in their countries.

1.1.2. The European Court of Justice and the European Court of Human Rights

One of the most important institutions/courts is the judicial branch of the state which plays a very significant role in the decision-making process. Impartial judiciary is one of the essential elements of a functioning democracy. Without impartial judiciary, human rights cannot be protected.

The European Court of Justice is the highest court of the European Union and it enforces the EU law. The court was established in 1952 by the Treaty of Paris (1951) as part of the European Coal and Steel Community. The Court of Justice has the responsibility to observe if the laws are interpreted in accordance with the treaties of the European Union. It has broad jurisdiction to hear various types of action. Some important competences of the court are the following: to take actions against the member states for failure to fulfill all the required obligations; to rule on applications for annulment or actions for failure to act brought by a Member State or

²⁶ Jennifer Jackson Preece (*op.cit*), p. 14.

an institution. It is easier for member states to apply to this court. But in some cases, individuals can also apply to the European Court of Justice. The two courts are based in Luxembourg. Although the CFI is an independent court, it works alongside the ECJ. “The number of cases sent to the ECJ has grown dramatically since the institution was established. As a result, a Court of First Instance (CFI) was set up in 1989 to help split the workload.”²⁷ The primary role of the CFI is to hear all actions brought by individuals, while the ECJ deals just with actions brought by member states or institutions.

On the other hand, we have the European Court of Human Rights, which is an international judicial body established under the European Convention on Human Rights. All member states of the Council of Europe are required to sign and ratify this Convention. Most of the EU members are also members of the Council of Europe and have signed the Convention on Human Rights. Its aim is to observe if human and minority rights are respected by states. Human and minority rights violations can be brought to the court. Not only states but also individuals can bring their case to be heard in the ECHR. It is the right of every European citizen to appeal to this court. The Court of Human Rights is separate from the Court of Justice. However in order to avoid discord, the Court of Justice and European Court of Human Rights co-operate to ensure their case-law does not conflict with each –other and protects human rights in Europe are protected.

²⁷ *European Court of Justice*, <http://www.civitas.org.uk/eufacts/FSINST/IN5.htm>, (27/08/10).

1.2. The Roma Minority in Europe. The legal Framework for Combating Discrimination

When we talk about the EU and its minority policy in Europe, we cannot leave without mentioning the Roma minority. It is better to give the right definition of the term 'Roma', because it can be easily misunderstood.

The term "Roma" refers to a variety of groups of people who describe themselves as Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti, as well as other titles. The use of the term Roma is in no way intended to downplay the great diversity within the many different Romani groups and related communities, nor is it intended to promote stereotypes.²⁸

The largest ethnic minority in Europe, the Roma population, are the poorest and the most disadvantaged. Indian Prime Minister Indira Gandhi on October 29, 1983, while inaugurating the second International Romani Festival in Chandigarh, India, announced as below:

There are 15 million Roma spread the world over. Their history is one of sorrow and suffering. But it is also the story of the triumph of the human spirit over adversity. The persecution which the Roma have faced so gallantly for nearly a thousand years, marked in our own days by Hitler's genocidal frenzy, makes them an example of courage and endurance. These qualities are associated with India, which they regard as their original home.²⁹

They are known for their skills as musicians and use those skills for a living. Most of the Roma are unemployed and their major concern is to find work to earn a minimal living. The Roma live mainly in Eastern and Southern Europe. Migrating from India

²⁸ *The European Union and Roma*, <http://ec.europa.eu/social/main.jsp?catId=518>.

²⁹ Indira Gandhi (1984), *I Feel Kinship with the Roma People*, Chandigarh: India, <http://www.romani.org/rigadr.html>.

they settled not only in Eastern and Southern Europe, but also in Western Europe and in the American continent. The fact that the Roma population exists in all European states and have been living there for a long time, doesn't make any difference to their social and economic situation. They still suffer a wide range of human rights violations. All over Europe there is negative perception about the Roma people. They are considered as lazy, ignorant, criminals and stinky. These prejudices are difficult to change, unless the Roma people are educated. They could thus enjoy equal employment chances based on their qualifications and experience. A negative fact for this minority is that any time a person is involved in a crime, it is not the individual who committed a crime but he/she is seen as a representative of an ethnic group.

In fact, we have seen increased violence across Europe, not only against the Roma people, but also against other groups. For example, Muslims face similar problems. It is true that discrimination and violence affect all minority and migrant groups. However, it is also true that across Europe, the Roma population experience the highest level of racist victimization.

Since the collapse of communism, a tension of ethnic minorities in the territories of post-communist states has been observed. Significant problems concerning domestic and international stability emerged. The European Union borders were no longer secure. We can say that the former socialist regime was more generous to the Roma, especially when compared to the treatment they had in the past and their treatment nowadays. Most of them are still not integrated into the societies they live. They have a rich culture and they do their best to protect it. The Roma Minority is the largest minority in Europe. There exists a huge social and

economic gap between the Roma and the societies where they live. This gap has contributed to the social exclusion of the Roma minority. They are facing discrimination in different areas like housing, education, health, etc. Anti-gypsyism in Europe is rising day by day. The European institutions and the member states are playing a very important role in promoting, respecting and improving the social inclusion of the Roma minority in Europe. The Roma are known to western culture as nomads and travelers (peripatetics, in anthropological terminology), while to southeastern European society they are familiar as the lowest and most stigmatized social stratum³⁰.

In addition to the Charter of Fundamental Rights, Copenhagen Criteria and the FCNM, there exists other legal framework to combat the Roma discrimination in Europe. Discrimination is condemned in both Art.1 of Directive 2000/43/EC and Directive 2000/78/EC. The purpose of these Directives is to lay down a framework for combating discrimination. The combat of discrimination targets those that are based on racial or ethnic origin. Directive 2000/43/EC³¹ implements the principle of the treatment of equality based on ethnic and racial origin. Similarly, Directive 2000/78/EC,³² has established a general framework for equal treatment in employment, again condemning discrimination with regard to racial and ethnic origin. The directives must be adopted in all the candidate and member states. It is

³⁰ Yaron Matras (2002), *Romani: a linguistic introduction*, United Kingdom: Cambridge University Press, p. 1.

³¹ *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>, (19/07/2000).

³² *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML\(02/12/2000\)](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML(02/12/2000)).

the member states' duty and responsibility to translate these directives into their own national legislations.

An important organ to combat racism and xenophobia is European Monitoring Center on Racism and Xenophobia (EUMC). This specific organ is important because it doesn't rely only on the EU legislation, but also on various programmes, projects and mutual cooperation between the states.

Several EU programs, Roma Summits, and financial projects are contributing to the Roma inclusion in programs related to education, employment, health, anti-discrimination, and social inclusion.

The Program of Community aid to the countries of Central and Eastern Europe (PHARE), the European Initiative for Democracy and Human Rights (EDIHR), and The Decade for Roma Inclusion are three important programs that are designed to help minorities all over Europe. The PHARE³³ program is the main financial instrument of the pre-accession strategy for Central and Eastern European countries (CEECs) which have applied for membership to the European Union.

The PHARE program has two main priorities: institutional and capacity-building, and investment financing. This is not just a program for the CEECs, but it is also extended to the countries of the western Balkans. The other important program is the European Initiative for Democracy and Human Rights (EIDHR)³⁴. Its aim is to provide support for the promotion of democracy and human rights in non-EU countries. It deals with the promotion of justice and the rule of law, defense of

³³ *Phare Programme*, http://europa.eu/legislation_summaries/enlargement/2004_and_2007_enlargement/e50004_en.htm.

³⁴ *European Instrument for Democracy & Human Rights (EIDHR)*, http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm.

human rights, fight against torture, democratic process in different countries, and the advancement of equality. This initiative is also concerned with peace and tolerance with equal rights and equal treatment of individuals, including people belonging to minorities and indigenous peoples.

Decade of Roma Inclusion³⁵ is one of the best examples of programs of this nature. This initiative has been done by the EU Commission. It is dealing with the Roma Inclusion into the member states and future candidate states of the EU. The Decade of Roma Inclusion is a program which started in 2005 and will end in 2015. Twelve European countries are part of this initiative. Two of them are Albania and Romania. The Decade of Roma inclusion is an on-going project of the European Union. An EU Framework Strategy on Roma Inclusion is very important because it is a roadmap for Member States. This will enable member states to incorporate the anti-discrimination directives into their national laws. President of the Open Society Institute, Mr. George Soros, said as below: “The Decade represents a comprehensive approach to address the issues that Romani leaders have identified: education, employment, housing, and discrimination.”³⁶ Each of these countries has developed a national Decade Action Plan to work for the improvement in areas such as education, employment, health and housing. The countries which are participating in this decade should adopt their legal legislation as below:

Participating countries should take into account the provisions of EC anti-discrimination legislation and policy, as part of their strategy to tackle discrimination (legal and other relevant measures, including

³⁵ *Decade of Roma Inclusion*, <http://www.romadecade.org/>.

³⁶ The Government of Romania National Agency for Roma (December, 2006), *The Decade of Roma Inclusion- One year of Romanian Presidency July 2005-June 2006*, National Agency for Roma: Bucharest, p. 11.

*awareness-raising) in the Decade priority areas (employment, housing, health, education) within their Decade.*³⁷

All of these countries have significant Romani minorities and they are being disadvantaged, both economically and socially. The initiative was launched in 2005, with the Decade of Roma Inclusion running from 2005 to 2015, and represents the first multinational project in Europe to actively enhance the lives of Roma.³⁸

This is the situation of Roma all over Europe. They are established in almost all the European states and are facing almost the same problems. For example, we have the special case of Italy which is one of the founding states of the EU and among the states that discriminate against the Roma in Europe. In spite of the lack of comprehensive policies, the EU with its co-funding and programmes has contributed to the promotion of minority rights and the Roma rights in Europe. In some respects the situation of Roma has become better. While the combating of discrimination and xenophobia has been more important in fields such as education, labor and free movement of persons, to date there has been no integrated and comprehensive EU policy that specifically targets Roma discrimination/integration. All EU member states have an obligation under international and European human rights instruments to stop all forms of discrimination in their territories. Discrimination shall be condemned because:

It constitutes a violation of the civil, political, economic and social rights of Roma women, men and children. All EU member states have an obligation under international and European human rights instruments

³⁷ *Ibid*, p. 57.

³⁸ Vesna Injac, *National Library of Serbia as the coordinator of the European Romani Digital Collection*, Belgrade: National Library of Serbia, p.3.

*to stop these violations and prevent their reoccurrence in their territories.*³⁹

³⁹ Amnesty International EU Office, *Discrimination Against Roma In Europe*, http://www.soros.org/initiatives/roma/news/erpc_20080306/factsheet_20080306.pdf.

CHAPTER 2

The Legal Framework of Italy, Romania and Albania Concerning Minority Rights

Anita Inder Singh, in her book, 'Democracy, ethnic diversity, and security in post-communist Europe', defines a minority as an ethnic, religious, linguistic, or national group which constitutes a numerical minority and has a non-dominant position in a state.⁴⁰ This is the case of the Roma people all over Europe; they constitute a numerical minority and have a non-dominant position in the states they live in. I am focusing specially on the Roma ethnic minority group, because they are the largest minority in Europe and do not have a certain territory and a kin state. Although they have been settled in Europe for several centuries, still some European states don't recognize them as ethnic or linguistic minority. Firstly, I will examine the integration of Roma into the Italian, Romanian and Albanian societies. And then I will continue with the examination of the legal framework of the individual states concerning minority rights. Discrimination of Roma through social exclusion and physical violence is not only observed in Italy, Romania or Albania, but it is present in all European countries. Besides, Romania is home to the largest Roma population in Europe, after Hungary.

⁴⁰ Anita Inder Singh (2001), *Democracy, ethnic diversity, and security in post-communist Europe*, United States of America: Greenwood Publishing Group, p.xx.

2.1. Italy

Italy is one of the largest countries in the EU and it has played an important role in the establishment of the European Union. Among five other states, Italy was one of the initiators of the EU. Since that time, the Italian people and government have strongly supported all the steps that the Union has taken toward the European integration, such as single market, euro and Schengen Convention. What about the protection of minorities? Is Italy respecting the Roma rights? In Italy there exist 12 official minority groups. Although settled for several centuries, Roma people are not listed as a linguistic minority. Roma first arrived in Italy from the east having originally left India, probably around the 10th century AD, and entered Europe through the Balkans toward the end of the 14th century.⁴¹ According to the Italian government: “The basic criteria for the label of ‘linguistic minority’ depend on the stability and duration of the settlement in a delimited area of the country, which is not the case for Roma populations.”⁴² Discrimination of Roma has been present for centuries throughout their history in the Italian territory. In the past, in some areas of Italy, cholera was called ‘lo Zingaro’ or ‘the Gypsy’.⁴³

Many years later it looks like the situation of Roma did not change: their exclusion from the Italian society still goes on. There is a rise of racism and xenophobia against Roma in Italy. As a result of the different cases of crimes

⁴¹ Fraser Angus (1992), *The Gypsies*, Oxford: Blackwell, pp. 45-83.

⁴² Italy: Fifteenth Periodic Report to the UN Committee on the Elimination of Racial Discrimination, 26.03.2006.

⁴³ Leonardo Piasere (1991), *Popoli delle dissariche, Saggi di antropologia zingara*, CISU, p. 183.

committed by the Roma criminals, the Italian society is showing intolerance toward this minority. There have been several cases where the Italian society and government, by different violent acts, is directly targeting and discriminating this minority. There exists a significant increase of pro- Roma racism in Italy, after the 2008 elections. The elections in April 2008 were won by Berlusconi's Party. Berlusconi's People of Freedom Party (PDL) has taken some actions and adopted some laws which are explicitly discriminatory against the Roma. Some of these discriminatory provisions which I am going to examine in the next pages of this chapter include: the anti-Roma laws made by the government; the anti-Roma statements by officials and politicians; the forced evictions of Romani communities; and the taking of fingerprints of all Roma including also the children as part of a census of Romani settlements. In this part, I will focus on three important discriminatory laws which are in contradictions with the human rights treaties.

-Law decree No. 92 on "Urgent measures in the field of public security"⁴⁴

According to this law, the EU and non-EU citizens who will commit any crime and will be sentenced to more than two year imprisonment, will be expelled from the Italian territory. On the other hand, an illegal immigrant will get one third increase punishment compared to the same crime committed by a legal person. This law was criticized by different international organizations because it contradicts different human right documents. It violates Council Directive on the principle of equal

⁴⁴ Elena Gaita, (December 3), *The Roma and Sinti Minority in Italy: A Violation of Fundamental Rights?*, <http://www.euroalter.com/2009/the-roma-and-sinti-minority-in-italy-a-violation-of-fundamental-rights/>.

treatment, articles 12 and 13 TEC on non-discrimination, and Council Directive on EU's citizens freedom of movement.

- Law No. 94/2009⁴⁵ on Public Security

According to this law all the illegal entries and sojourn in the Italian territory will be punished by a fine and other different sanctions. Some of the sanctions can be the expulsion of the immigrants that don't have a legal status.

The Law No. 94/2009⁴⁶ and its additional sanctions do not seem lawful and they are not in accordance with the European Charter of Fundamental Rights and with other international legislation concerning the safeguarding of fundamental individual rights. According to this law, the president of the Everyone Group stated as below:

*Currently, because of this law, many immigrants in Italy are living like animals, hunted down, thrown into vans with bars on the windows, subjected to inhumane and degrading treatment, separated from relatives, deprived of civil rights and medical/social care, denounced by informers, ill-treated in the Centres of Identification and Expulsion (CIE), and assaulted by racists.*⁴⁷

We have to emphasize once more that the treatment of the immigrants by the Italian government is not the best in Europe and poses a threat to the protection of human rights. A lot of anti-Roma measures are taken by the government in order to provide the security of the Italian people. Beginning from December 2006 various towns,

⁴⁵ Roberto et.al (eds.), *Italy: Law 94/2009 is a serious violation of Human Rights*, Rome, Italy. (17.October. 2009).

⁴⁶http://www.everyonegroup.com/Everyone/MainPage/Entries/2009/10/17_Italy__Law_94_2009_is_a_serious_violation_of_Human_Rights.html.

⁴⁷ *Ibid.*

cities, provinces and regions throughout Italy began to develop and adopt “Pacts for Security” which planned the forced eviction of more than 10,000 Roma from their homes in Rome alone.⁴⁸ Following the adoption of the ‘Security Pacts’, the lives of Roma people become more difficult. The Italian authorities in the name of the ‘security’ systematically destroyed the Roma properties, homes, and also force evictions took place. The right of everyone to an adequate housing is guaranteed by different human rights documents, in which Italy takes part. Forced evictions have in some cases involved the total destruction of Roma settlements. Most of them took place in bad weather, and without assurances of adequate alternative accommodation.

The discrimination of the Roma people is present everyday and everywhere, even in speeches made by the Italian politicians. The Italian Minister of Interior Roberto Maroni in an interview talking about the measures taken against immigrants, stated as below:

*That is what happens when gypsies steal babies, or when Romanians commit sexual violence. The whole point of our security package is to reassure citizens, precisely so that they don't take the law into their own hands. It is the job of the state to guarantee public safety.*⁴⁹

In a state where the government is directly targeting the Roma people, then the society has a negative perception about them; such statements made by Italian

⁴⁸ *Submission of the European Roma Rights Centre, Osservazione and Amalipo Romano Concerning Italy For Consideration Under the Universal Periodic Review by the United Nations Human Rights Council At its 7th Session, http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/ERRC_oA_AR_UPR_ITA_S07_2010_EuropeanRomaRightsCentre.pdf (February 2010).*

⁴⁹ Dr Theodore Dalrymple (May 29, 2008), “The politics of fear return to Italy: Immigrants are under attack from the resurgent Right - and even from vigilante mobs”, *The Times*.

officials can serve to mobilize extremist groups, which often attack the Roma camps and individuals. The anti-gypsism in Italy is rising day by day.

Another shocking event is the registration of the fingerprints of the Romani persons, including also the children as part of a census of Romani settlement. The taking of the fingerprint of the Roma people, including also the children it is in contradiction with Article 8 of the ECHR. According to this article: “Everyone has the right to respect for his private and family life, his home and his correspondence.”⁵⁰ This action is also in contradiction with Article 14⁵¹ that deals with the right to freedom from discrimination and is based on a wide range of grounds such as sex, race, colour, language, religion and several other criteria. This shocking action taken by the Italian authorities was condemned by different international organizations, including also human rights NGOs.

2.2. Romania

The second state to be analyzed is Romania. EU membership was the main goal of every Romanian government and practically every political party in Romania in the early 2005. After fulfilling most of the Copenhagen Criterias, on 1 January 2007, Romania, together with Bulgaria, became the newest member of the European Union. What about Romania’s legal framework concerning minority right? How has been the situation of the Roma before and after the membership? What have the EU

⁵⁰The European Convention on Human Rights (art 8) (1953), <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>.

⁵¹ *Ibid*, article 14.

and Romanian government done so far for the social inclusion of this minority? These and some other questions will be discussed in this part of this chapter.

In Romania there are 18 officially recognized minorities. One of the principal minorities in Romania is the Roma minority. Although, the Roma minority is one of the major minorities in Romania as the second-largest ethnic minority after Hungarians, they are the most disadvantaged ones. Nowadays, Romania respects human rights and fundamental freedoms. Nevertheless, social inclusion of the Roma minority still requires additional efforts. The accession of Romania to the European Union in 2007 prompted many members of the Romani minority to migrate in masses to various Western countries hoping to find a better life. But in these Western countries, they faced almost the same problems; so their situation has continued to be the same.

The protection of minorities is present in the Romanian constitution and different international treaties that Romania is part of. Some important anti-discriminatory laws are written in different articles of the Romanian constitution (1991). Article 20⁵² of this Constitution states that the rights and freedoms of human beings must be in accordance with the international treaties which Romania is part of. The principle of anti-discrimination is mentioned in Article 4(2)⁵³ of the Romanian constitution. It states that there is equality between all Romanian citizens. Article 6⁵⁴ is very significant for the minorities because it mentions the right to ethnic, cultural, linguistic and religious identity. In other words, this article

⁵² Romanian constitution (art.20) (1991) , http://www.cdep.ro/pls/dic/site.page?den=act1_2.

⁵³ *Ibid*, article 4 (2).

⁵⁴ *Ibid*, article 6.

recognizes all the ethnic, cultural, linguistic and religious minorities in the Romanian state. Romania has also a relatively appropriate educational system for the minority populations. The Law for Educational System no. 84/1995,⁵⁵ in its Chapter XII provides for the representation of national minorities in Romania. Articles 118-129 of this law talks about the education of the persons belonging to the national minorities. Another important law for the national minorities is the Law of Local Public Administration no. 215/2001.⁵⁶ According to this law, the minorities who represent 20 % of the population of a certain area have the right to use their own language in their dealings with the local public administrative authorities. Another very important law that represents the political rights of minorities is the Law no. 70/1991⁵⁷. This law states that minorities will have to be represented in the organisms which take political decisions. The Governmental Order no. 137/2000⁵⁸ prevents and sanctions all forms of discrimination based on racial, national, ethnic, linguistic and religious differences. According to all these laws that I have stated above, we observe that the minorities in Romania enjoy all the civil and political rights.

With the cooperation of the European Union, some specific organizations and institutions have been created. The enhancement of the situation of Roma minority is one of the political criteria enshrined in the Accession Partnership

⁵⁵ Christina McDonald (vol - 10) (1999), Roma in the Romanian Educational System: barriers and leaps of faith, Intercultural Education, pp. 10- 25.

⁵⁶ EU Accession Monitoring Program (vol-2) (2002), *Monitoring the EU accession process: minority protection*, Open Society Institute: Hungary, pp. 516- 520.

⁵⁷ Eniko Baga, ‘‘ Romania’s Westwrn Connection: Timisoara and Timis Country’’, Melanie Tatur (ed.),*The Making of Regions in Post-socialist Europe: Romania's western connection* , VS Verlag , p. 52.

⁵⁸ *National Council for Combating Discrimination* , Romania, http://www.coe.int/t/dghl/monitoring/ecri/good_practices/1-specialised%20bodies/sb_romania_EN.asp.

documents drawn for candidates for membership of the EU. The National Governing Program 2001-2004⁵⁹ offered efficient protection for the Roma minority, and also new structures have been created. Some of them are: The Joint Committee of Implementation and Monitoring, the Ministerial Commissions for Roma, the local bureaus for Roma and the local experts for Roma's problems. The EU, with the help of the Ministry of Education and Research, is working on some programs one of which is the PHARE 2001 program, named "Fighting against social exclusion by the access of Roma children to education", and the Decade for Roma Inclusion. *Roma minority in Romania has the support of different national and international organizations, which are working hard to raise awareness between the Roma and non-Roma people regarding the Roma rights and culture. Although Romania has adopted anti-discriminatory laws and a lot of institutions are being built to fight discrimination, the situation of Roma is almost the same, discrimination through social exclusion still exists. Their social inclusion into the social and economic life is still facing a lot of difficulties.*

2.3. Albania

On 12 June 2006, the Stabilization and Association Agreement between the European Union and Albania was signed, in Strasbourg. Austrian Foreign minister Ursula Plassnik said that "The signature of this agreement is a milestone on

⁵⁹ *The Governing Program for 2001-2004 represents the ensemble of actions and measures aimed at implementing the PDSR Electoral Offer for the Parliamentary and Presidential elections in November 2000, <http://www.roembus.org/english/journal/PROGRAM%20GVERNARE/introducere.htm>.*

Albania's road to European standards".⁶⁰ This is a very important agreement because it is the first step toward Albania's EU membership. It will govern the relations between the EU and Albania. The agreement provides for political and economic cooperation between the parties and the creation of free-trade area within ten years. The country is facing a lot of difficulties in dealing with the EU reforms. The Albania government has to work hard in the achievement of the standards in municipal elections, press freedom, institution building, and respect for ethnic minorities. Albania is a potential candidate for the EU membership. The Stabilization and Association Agreement (SAA) between Albania and the EU entered into force in April 2009. Albania applied for the EU membership in April 2009.

The protection of human rights has been an important task for the successive Albanian governments. The protection and enforcement of human rights is present in the entire legal framework. They are present in Albania's constitution and in different international and national treaties ratified by Albania. According to the Albanian 2009 Progress Report:

Albania has an adequate legal framework to guarantee the promotion and enforcement of human rights. However, existing legislation is often not enforced, especially in the field of prevention of torture and ill treatment, gender equality, child protection and discrimination⁶¹.

The same report continues as below by saying thus:

Concerning anti-discrimination policies, discrimination based on gender, race, language or religion is prohibited by law. However, the Law on Anti-discrimination prepared in consultation with civil society has not

⁶⁰ Albania: First step towards EU membership, <http://www.euractiv.com/en/enlargement/albania-step-eu-membership/article-156099>, (13.June.2006).

⁶¹ Albanian 2009 Progress Report, Brussels, p15, http://ec.europa.eu/delegations/albania/documents/eu_albania/2009_progress_report_en.pdf, (14.10.2009).

*been adopted yet. Discriminatory practices against women and some minority groups such as Roma are widespread.*⁶²

The law on anti-discrimination is an important requirement for the future EU membership of Albania and it was absent for a lot of times. After an intensive work by the EU institutions, human rights and other NGO's, on 4 February 2009, the Law on discrimination was adopted by the Albanian Parliament. According to Åsa Bergqvist, a Programme Officer for Albania

*This is an important step forward, when it comes to fighting discrimination in Albania. The law will be an important safeguard and tool for individuals being exposed to discrimination, as well as for organizations trying to decrease the level of discrimination against vulnerable groups*⁶³

The law on Discrimination is a very important law for the protection of individual freedoms and rights of the Albanian society and ethnic minorities.

The law bans discrimination on the grounds of various characteristics, such as political, religious or philosophical beliefs, disability, ethnicity, sexual orientation and gender identity.⁶⁴ What is the situation of minorities in Albania? Are their rights protected by law and the government? What about the Roma minority? Throughout the Albanian history there has never been tension between the ethnic minorities and the Albanian society. In Albania a harmonious co-existence is evident between the dominant society and the ethnic and religious minorities. In a National Strategy for improving Roma living conditions in Albania, the OSCE emphasized once more the harmonious co-existence between the dominant society and the ethnic minorities. It was stated as below:

⁶² *Ibid*, p. 20.

⁶³ Albania adopts all-inclusive anti-discrimination law, <http://www.civilrightsdefenders.org/articles/lang/en-us/news/4133/>, (2010-03-02).

⁶⁴ *Ibid*.

Historically, the country of Albania has been singled by for the harmonious co-existence between the dominant society and ethnic minorities. The peaceful co-existence has withstood the times of history to make Albania a point of reference with regard to tolerance among ethnic and religious communities.⁶⁵

But this fact does not have to be misunderstood, because it does not mean that the minorities in Albania are not facing difficulties and even discrimination. The problem is not with the community itself, but with the state. There is a lack of adequate policies toward this community. Although discrimination is banned by law it is present in the Albanian society. Roma Minority in Albania is living in bad conditions and is facing discrimination in every aspect of their lives. Historians assert that:

Roma people have been living in Albania for over six hundred years.

They reached the country before the Ottoman occupation⁶⁶

The Roma people live all over the Albanian country; most of them are located in central and southeast Albania. Their official name in Albanian language is 'Rom'. According to different estimates, their number varies from 1.300 to 120.000 people out of a total population of 3.4 million in Albania.⁶⁷ Their spoken language is the Romani and Albanian language. In Albania there are two distinct identity groups which are identified as gypsies, one of them is Roma people that originally came from India, and the other one is Jevgs with origin from Egypt. I mentioned the second group, because, in the Albanian society, both of them are considered as "Gypsies". But this is a big mistake made by the majority of the population in

⁶⁵ OSCE, *National Strategy for improving ROMA living conditions*, Tirana: Pegi, p. 8.

⁶⁶ OSCE(2003), *National Strategy for improving Roma living condition*, Tirana: Pegi, p.8.

⁶⁷ Cedime- se, *Roma in Albania*, p.1, www.greekhelsinki.gr/pdf/cedime-se-albania-roma.doc.

Albania. Both Roma and Jevgs see very sharp distinction between themselves. The Jevgs speak Albanian and not Romani, and they also intermarry with Albanians.

During the communist time, the Roma people had a better life. Mostly of the Roma were non-skilled workers because of their lack of education. Even they were working in some low-level public activities; however, at least they could earn money in order to feed their families. Although the Roma enjoyed certain benefits from the regime, like employment and the general notion of security for tomorrow? They were not treated on an equal basis with the majority.⁶⁸ During the communist era they had better life because they didn't face economic problems. All of them were employed and did not face such problems as the need to seek work to earn their living. During this period, the educational integration was also secured by the state. The economic and educational integration into the society was due to the general policies of the communist state. The policies' aims were at least to introduce full employment and obligatory primary education to the whole society. Same as in other East-European countries, economic and political changes of 1990 brought about difficulties for the Roma minority. In contrast with the communist period, after 1990, most of the Roma became unemployed. These changes happened because of the under-education of the Roma. As a result, the situation of Roma continued to be more and more dramatic. Roma were the first to lose their works. Like no other ethnic label in Central and Eastern Europe today, the name of Roma brings to mind dramatic images of mass unemployment, poverty, ill health,

⁶⁸ Cedime-se (2000), *Minorities in Southerneast Europe: Roma of Albania* ,European Roma Center: Budapest, p.6.

discrimination and social exclusion⁶⁹. A general characteristic not only in Albania but all over Europe is that the Roma defend their identity and often refuse to integrate into the societies their live. They do not change their way of nomadic life.

Discrimination of Roma has been present for several centuries in the Albanian society. Roma in Albania are an officially recognized minority. They are being discriminated not directly by the law. There exist some cases in which the state through some practices of different institutions such as the police, military, hospitals, school and municipal authorities is discriminating the Roma people. It is known in Albania that many Roma go to Greece and work seasonally; this fact is known also by the police who go to them with the purpose of extorting money.

Although discrimination of Roma is present in Albania, the most important problem of Roma people is unemployment. Asked in an interview Mr.Andrzej Mirga, the chairman of the Project on Ethnic Relations Romani Advisory Council stated as below:

Discrimination and exclusion still characterize the lives of most Roma and Sinti today. They are constantly confronted with racist violence and hatred, unemployment, poverty, illiteracy and high infant mortality .⁷⁰

As a consequence, it is very difficult for Roma to find jobs. Most of the Roma children don't go to school; instead they prefer begging, because only by begging, they can earn some money and survive.

After 1990, some progress has been done in different areas. Three non-governmental organizations were established to represent the Roma in the Albanian

⁶⁹ Peter Vermeersch (*op.cit*), p.1.

⁷⁰ OSCE Magazine, *Rating action on Roma rights*, October – November 2008, p.1, http://www.osce.org/publications/sg/2008/09/33333_1195_en.pdf.

society. These organizations are: Amaro Drom (Our Way), Rromani Baxt (Romani Chance) and the Democratic Union of Roma in Albania Amaro Dives (Our Day).

They work on the development of the culture and on developmental projects concerning the Roma. Another important aspect of these organizations is that they are working hard to raise the Roma's consciousness for their human rights.

The protection of minorities is one of the important political criteria for the EU membership. Minority rights are mentioned in some articles of the Albanian Constitution. They are as follows: Article 18(2)⁷¹ is very important because it guarantees equality before the law and prohibits discrimination "for reasons such as gender, race, religion, economic condition, education, social status or ancestry". Article 20⁷² is more direct for the national minorities. According to this article, "Persons belonging to national minorities exercise, in full equality before the law, the human rights and freedoms". They have the rights to "freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging". They have also the right "to preserve and develop it, to study and to be taught in their mother tongue as well as unite in organizations and societies for the protection of their interest and identity". According to Article 31, during a criminal proceeding, everyone has the right: "To be provided assistance with a translator, without payment, when he or she does not speak or understand Albanian language",⁷³

Albania is part of different international treaties concerning human and minority rights. These instruments include the following: International Covenant of Civil and Political Rights (1991), Council of Europe's Convention for the Protection

⁷¹Albanian Constitution, <http://www.ipls.org/constitution/const98/contents.html>.

⁷²*Ibid*, article 20.

⁷³*Ibid*, article 31.

of Human Rights and Fundamental Freedoms and its protocols 2,3,4,5,7,8, and 11 (1996), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment and its protocols 1 and 2 (1996), the Framework Convention for the Protection of National Minorities. According to article 5,⁷⁴ “international law is binding upon the Constitution”. The fact that the Albanian constitution has human rights clauses and that Albania is party to different human and minority rights documents does not, mean that minority rights are fully respected. This is, for instance, the case for the Roma minority in Albania.

From the legal point of view, the Albanian government considers this community same as other communities and the Constitution of Albania provides them all the rights which a minority should enjoy. But, on the other hand, just this legal recognition is not enough; more has to be done for the social inclusion of Roma people into the Albanian society. The Albanian government, with the help of the international community, Roma NGO's, and different EU programmes concerning their right, such as ‘The Roma Decade project’, can contribute to the improvement of their situation.

⁷⁴ *Ibid*, article 5.

CHAPTER 3

A Comparative Analysis of the Minority Policies of Romania, Albania and Italy

This chapter will make a comparative analysis between the legal frameworks of the three states. Then I am going to focus on the issue of whether the Roma problems and the legal provisions of the individual states are debated in the EU institutions. Finally, I will focus on the media in order to see in particular how it has been influencing the integration of Roma people. In distinction to the previous chapters, the three countries will be classified according to their accomplishments regarding the protection of the rights of the Roma.

3.1. Romania

Mobilized violence against Roma minority in Romania has decreased during the last years. With the accession of Romania to the EU and the fulfillment of the Copenhagen criteria. Several programs and institutions are created in order to support the social inclusion of Roma in Romania. Compared to the two other states, Italy and Albania, the cooperation between the Romanian government and the EU has been more successful. But it will not be correct to say that Roma in Romania are not facing discrimination at all. The long series of violent attacks addressed to Roma are still present into the Romanian society. These attacks repeatedly were targeting the entire Roma communities. A lot of work by the Romanian government has to be

done. In different EU reports, mentioned in the previous chapter, it was stated that the government of Romania has to do more to protect the Roma rights. Although discrimination still existed in Romania, Romania fulfilled most of the imposed requirements, and on 1 January 2007 became the newest member of the EU. Today anti-discrimination laws are present in the Romanian constitution and also in other legal frameworks. Romania is also member of the COE. It has signed different documents concerning minorities and is party to the FCNM, which is one of the most important documents concerning minorities in Europe.

The media can play a very crucial role in promoting the Roma values and their inclusion into the rest of the society. On the other hand, the anti- Roma news such as: “Two Gypsy Gangs Armed with Baseball Bats Fight near the ‘Tineretului’ Swimming Pool in Bucharest,” or “Two Gypsy Families Turn the Voinesti Village into a Battlefield,”⁷⁵ are present in the Romanian press. They can contribute more to the social exclusion of this minority rather than to their inclusion. Roma in Romania have gained a lot of civil and political rights. They are an officially recognized minority. Romania with its legal framework which was discussed in the previous chapter, is promoting and protecting the minority rights. It is the legal framework, the different programmes and institutions regarding minority rights that place Romania in the first place compared to Albania and Italy.

For the first time in the Romanian history, the head of the state has apologized for the persecution of Roma during the Holocaust: "Forgive us brothers

⁷⁵ Alina Vamanu (June 2008), *Roma Rights and the Production of Scandalous Ethnicity in the Romanian Written Media*, Rutgers University, p.10.

and sisters".⁷⁶ In the Romanian history, this gesture by the leader of the state happened in the past only for the killing of Jews. The leader of Romania, Basescu, continued his speech by saying:

*We must tell our children that six decades ago, children like them had been sent by Romania to die of hunger and cold. We must tell Romanian mothers that the Romanian state killed Roma mothers through slavery and misery.*⁷⁷

An interesting fact about the Basescu's apology is that it was done in the Romani language. This was a very important event because it was the first time that a president of Romania apologized in the Romani language for the persecution of Roma during the Holocaust. This speech can have a big impact on the Romanian society. It can directly affect the population and can significantly lower the racist feelings towards the Roma community. On the other hand, the same head of state, Mr. Basescu, in 2006 was involved in a situation which was called "The Stinky Gypsy" episode⁷⁸. He grabbed the mobile phone of a Roma journalist, Andreea Pana, who was filming him and his wife while shopping in a hypermarket. When the head of state got in his car, he talked with his wife and called the journalist a 'stinky gypsy', without knowing that the phone was still filming. These recordings were erased by the head of state, but the journalist managed to find them and made them public. According to the president, the journalist's action to enter into his private life was illegal. "It is illegal, end of story"⁷⁹, said the President Basescu.

⁷⁶ *Roma urges Romania to end discrimination*, <http://www.reuters.com/article/idUSL25820759>, (25.October.2007).

⁷⁷ *Ibid.*

⁷⁸ *Basescu chided for 'gypsy' remark*, <http://news.bbc.co.uk/2/hi/europe/6684261.stm> , (23 May 2007).

⁷⁹ *Basescu: I regret the "stinky gypsy" episode, but* , http://www.divers.ro/focus_en?func=viewSubmission&sid=8722&wid=37645.

According to the National Council for Combating Discrimination (CNCD), the “stinky gipsy” expression said by the head of state is considered as discrimination. Consequently it decided to apply a sanction to him with a warning. The CNCD president, Csaba Asztalos, concerned about the statement of the head of state, stated as below:

When 70 per cent of Romania’s population hold that Roma should not travel abroad, when 70 per cent of the people in this country say they would not have Roma people as their neighbours, and when a person with Traian Basescu’s status made such statement (‘stinking gypsy’), who should be held accountable, the person who made the statement or the person to whom it was addressed?⁸⁰

The president was justified by saying that his expression was due to the pressure that the media imposed and not due the Gypsy community. If we look at the first example, we can ask the question: If the speech in the Romani language can be called favoritism that president Basescu did toward the Roma in his country, then we could reasonably doubt his sincerity when the same president offended a Roma reporter by calling her a stinky gypsy. Are these simply formalities toward the Roma community or is the government promoting their social inclusion? Both situations of the Romanian president seem contradictory to one another. These examples indicate that the racist statements toward the Roma are still present in the Romanian society and media.

Courts are the most important institutions of a democratic state and for the respect of individual rights. The discrimination of the rights of Roma people in

⁸⁰ Ioana Micu, *Persecution of Gypsies Still Alive and Well in Romania*, <http://miaschildren.org/2008/05/16/persecution-of-gypsies-still-alive-and-well-in-romania/>, (16 May 2008).

national courts is a Romanian, Italian and Albanian phenomenon. Many Roma, with the support of the European Roma Center, have succeeded to take their issues to the European Court of Human Rights. *There are some cases of Roma people who went to the European Court of Human Rights in Strasburg. One of them is the case “Cobzaru vs. Romania”*⁸¹. Belmondo Cobzaru was an ethnic Roma Romanian citizen who applied to the ECHR. The applicant and his father were beaten by some policemen. Because of the injuries inflicted by the policemen, he received medical treatment. A criminal complaint against the policemen was made. The complaints of Mr. Cobzaru were not accepted. They were known in the city as negative people. This case was brought to the ECHR by the help of the European Roma Center. The Romanian authorities did not make an impartial investigation. Mr. Cobzaru was a victim of discrimination by the policemen and also by the national authorities. He relied on Article 3, Article 13, Article 14 and Article 6(1) (right to a fair hearing) of the Convention.⁸² The Court considered that the degree of bruising found by the doctors who examined Mr. Cobzaru indicated that his injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3.⁸³ The Court decided that it had been a violation of Article 6(1) and according to the applicant’s complaint of not having a civil remedy, decided to examine the case according to Article 13.⁸⁴ Article 14 of the European Convention was breached. This article holds that:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex,

⁸¹ *Cobzaru vs. Romania*, <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/2422ec00f1ace923c1256681002b47f1/a2970450e4b92eedc1257321003a0ff4?OpenDocument>.

⁸² *Ibid.*

⁸³ *Id.*

⁸⁴ European Convention on Human Rights(1953), article 13.

*race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*⁸⁵.

Article condemns discrimination based on grounds such as sex, race, colour, language, religion etc, and in the Cobzaru case, it was decided that discrimination was based on his ethnic origin. We can find many issues in which the rights of the Roma in Romania have been disrespected by the police, courts etc. But on the other hand, there exists many cases in which their rights have been respected.

If we compare the legal legislation of the Roma in Italy and Albania, with regard to the minority protection, we come out with the result that Romania protects and promotes most of the rights of minorities. It is certain that Romania discriminates against the Roma community the least compared to the other two states and tries harder for their social inclusion.

3.2. Albania

A large number of Roma live in racially segregated ghettos which are in contrast with the other areas of Albania. While the Albanian population lives in better conditions or close to the standard, most of the Roma population lives in inhuman conditions, without appropriate housing and pure water. The racial discrimination denies Roma the enjoyment of some fundamental human rights. The Romani settlements are often targets of abuse by police. Many of the Romani families became homeless because of the forced evictions. Ghetto life condemns Roma in

⁸⁵ *Ibid*, article 14.

every aspect of their lives. Most of them cannot go to schools, nor have access to health care and other public services that are important for our lives. The continuous discrimination of the Romani minority, without any effort from the Albanian government, has caused the deepening of the social exclusion of this minority from the rest of the society. The most important problem of Roma all over Europe is the citizenship. Most of the Roma have not been provided with the fundamental recognition of citizenship. Some of them are even stateless. This is not only the case for Roma in Albania.

The Roma in Italy and Romania also lack personal documents and citizenship. Roma have encountered difficulties in accessing documents including birth certificates, personal identification cards, documents related to the provision of health insurance and social aid, and passports. A lot of barriers are arising from the lack of these crucial documents. The lack of these crucial documents threatens the ability of Roma to gain access to some fundamental rights and freedoms, such as the right to vote, the right to adequate housing, the right to social assistance, the right to education and the right to health care. The Albanian government has done little to stop violence against Roma. The unpunished cases coming from the government have contributed to further violence. A census has never been conducted for the Roma population in Albania. Official statistics is still not available. Roma in Albania have been officially recognized as a linguistic minority. They have gained different civil and political rights. Several Roma NGO's in Albania have obtained judicial status. They work for the promotion of their culture and social integration into the society. We can say that some improvements to their social inclusion and rights have been done. The Albanian legislation pays special attention to the guaranteeing of

fundamental human and minority rights because fundamental human rights and freedoms are the main pillars of a democratic society. As I have mentioned, before the dominant society and the ethnic minorities in Albania have a harmonious and peaceful co-existence with each other. This is the work of every minority in Albania which has demonstrated its contribution to this peaceful environment. In the previous chapter, I mentioned about the different provisions concerning minority rights. Some articles of these provisions are mentioned in the Albanian Constitution, the Criminal Code and in some normative acts of the Council of Ministers ratified by the Parliament.

Albania is also member of different international organizations which are dealing with minority rights. In Albania the Law against Discrimination was absent for a long time. The Law against Discrimination⁸⁶ is very important law for the Albanian society; it is also one of the important requirements for the EU accession. In February 2010, the Albanian government passed the Law against Discrimination. According to statement of the Alliance Against Discrimination, an Albanian gay rights group said:

This law is not simply a fulfillment of requirements that Albania has undertaken for European Union integration and visa liberalization. Above all, it is a victory for democracy and for the human rights of all Albanians⁸⁷

⁸⁶ Rex Wockner, *Albania passes model law against discrimination*, 8 February 2010, <http://news.pinkpaper.com/NewsStory.aspx?id=2370>.

⁸⁷ *Albania adopts Anti-Discrimination law*, [http://oneworldsee.org/node/19819,\(08/02/2010\)](http://oneworldsee.org/node/19819,(08/02/2010)) .

The protection of ethnic minorities is not only mentioned in the Albanian legislation but also in different international documents which Albania is part of. Although the Albanian government has a legislation that combats discrimination and it is party to different document for the protection of minorities, the situation of Roma has not changed.

Media has a key role to play in the change of stereotypes and the creation of a realistic picture of this minority group. It is important to mention that the media in Albania plays a very positive role in promoting the Roma rights. It highlights their problems and informs the government so that the state pays more attention to them. The problem of racism, discrimination and segregation of the Roma children in schools and elsewhere is also mentioned and discussed in the media. The Roma children in Albania come from families in extreme poverties and this places them in a great social disadvantage in relation to the other children, and, as a consequence, they feel themselves inferior. Although different reports emphasize once more to the Albanian government and society that more has to be done, the situation of Roma in Albania needs to change and to be improved. The Roma minority in Albania continues to face very difficult living conditions and discrimination. This report discovered a true point of view of the Roma situation and the work that the government must do in order to protect this minority in its territory. Although discrimination still exists, different programs and anti-discriminatory laws of the EU have contributed to the improvement of the Roma situation.

There are few countries in Europe in which human rights are as richly guaranteed by law as they are in Romania and Albania. When comparing the

legislation of the three different countries, Albania would come after Romania and would thus be placed in the second place. The Constitutions of Romania and Albania, which embrace non-discrimination provisions and other human rights provisions, give priority to European human rights law over all other laws.

3.3. Italy

The situation of Roma in Italy is quite drastic and full of human right abuses. The physical separation of Roma from the rest of the society has contributed to the exclusion of this minority. The extreme segregation of Roma in Italy was present since the settlement of this minority in the Italian territory. The heart of this issue is very clear: it is racism and discrimination on ethnic grounds. Anti-Romani stereotypes are whispered in Italy today. In Italian language there are a lot of anti-Roma idioms and phrases. Italian people usually refer to Roma with the negative word 'Zingari' or 'Gypsies'. For example, it is common to say 'sei proprio un zingaro' ('you are such a gypsy').⁸⁸ This phrase is used to accuse someone of stealing, being untrustworthy or dirty. It is clear that discrimination is present in Italy. Is Italy, then, different from all the other European states? Does it deserve harsh criticisms? The answer should be 'No', as the segregation of Roma throughout Europe is almost the same. By comparing the situation of Roma in the three states, we easily come up with the result that the Romanian and Albanian governments are

⁸⁸ European Roma Rights Center, *AntiGypsyism in Italy*, Central and Eastern European Online Library, p. 3, www.ceeol.com.

the ones which pay more attention to promote the rights of and respect for minorities. But, on the other hand, we can easily point out that the discrimination of Roma in Italy is the same as in other European states. The states of Europe are not too much different from Italy. Where Italy departs from many countries in Europe is that while other governments in the region at least pay lip service to protecting human rights and promoting the inclusion of Roma, the Italian Government at the highest levels has encouraged racial animosity and exclusion.⁸⁹ This has resulted with Italy taking the third place in the list after an analysis of all three countries.

The Italian government and the media often promote bad behavior against the Roma. Roma for them are a threat to the national security. The hate speech in the Italian media, the anti-Roma measures by the Italian authorities, and the forced evictions provide violations of human rights, while affecting directly the persons of Romani origin. There are plenty of examples in which Roma minority are discriminated by the Italian government and media. The Italian media is playing a negative role in the inclusion of Roma into the Italian society. In other words, the media is not contributing to the social inclusion of Roma minority. Most of the times, the media is describing them as criminals, dirty, uneducated etc.

The Italian society is being intolerant toward this minority. In may 2008 a terrible event that happened in Italy was discussed by all the international medias:

Its emblem is the shocking picture published by many international newspapers of two Roma girls drowned in the sea near Naples in the summer of 2008. Their dead bodies were taken on the beach and covered with a towel while waiting for an ambulance. And then something stunning happened. Normal beach life simply went on as if nothing noteworthy had occurred. In the picture, a couple nonchalantly

⁸⁹ R. Kushen (2008), ‘*Exclusion as State Policy*’, *Roma Rights Journal*, p. 2.

*ate a picnic while looking on at the scene. Another threw a frisbee just a few meters away from the two corpses.*⁹⁰

This event emphasizes more the racists feeling of the Italian society. This shocking event shocked the whole world because it was discussed in a lot of international medias, but it didn't shock the Italian people who continued life as usual, as if nothing had happened. A lot of new discriminatory laws directed against migrants have been passed by the parliament in Italy. The government has also announced its intention to close down all "illegal" settlements and replace them with other camps that will be further from the city centers.⁹¹

The creation of camps have some positive and negative aspects: On one hand, these camps can provide better living conditions, but, on the other hand, they can exclude the Roma from the rest of Italian society. It is obvious that the camps will be the best places to control better this population. As these thesis demonstrate, Italy with its anti-immigrant policies is violating basic human rights and remains a very inhospitable place for Roma as well as for migrants generally. Roma minority are in need of protection of their social rights, such as adequate housing and the right to education. This xenophobic policy has created a climate of intolerance and racism, encouraging violence against Romani people which have been present for many years, but it has increased a lot since 2007. Although Italy is one of the initiators of the EU and European law, discrimination of Roma still exists.

Italy has become a party to a lot of international organizations concerning human and minority rights. It is party to the European Charter of Fundamental Rights

⁹⁰ D. McDougall (17.08.2008), "Why do Italians hate us?", *The Guardian*.

⁹¹ R. Kushen (*op.cit*).

and the Framework Convention on National Minorities.⁹² According to international law, the rights and freedoms of humans must be in accordance with the international treaties which Italy is part of. On the other hand, the anti – Roma measures are in contradiction with international law. The conditions of Roma within the Italian territory are looked at with absolute indifference. Compared to Romania and Albania, in Italy, the living conditions of Roma are the worst. It seems impossible to make the Italian government respect the rights of the Roma people.

The discriminatory legal measures taken by the Italian government targeting directly the Roma minority concerned a lot of international human rights organizations. Civil societies as well as churches try to oppose these laws, but the power of the right wing coalition is too strong and the political opposition in the Parliament is too weak for the government to face real challenge.⁹³

Generally the international community and specifically the European Parliament and European Commission have also criticized some of these discriminatory actions taken by the Berlusconi government; but again the situation is the same. On 10 July 2008, the European Parliament adopted a Resolution on the census of the Roma on the basis of ethnicity in Italy.⁹⁴ This resolution's aim was to stop the Italian government to collect the fingerprint of the Roma people and not to use those already collected. The taking of fingerprints is against the fundamental freedom of individuals.

⁹² *Framework Convention for the Protection of National Minorities (FCNM)*, http://www.coe.int/t/dghl/monitoring/minorities/default_en.asp.

⁹³ *The Roma and Sinti Minority in Italy: A Violation of Fundamental Rights?*, <http://www.euroalter.com/2009/the-roma-and-sinti-minority-in-italy-a-violation-of-fundamental-rights/>.

⁹⁴ *European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy*, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0361&language=EN>.

Firstly, the Italian government was harshly criticized for this action. The European Parliament suggested to the Italian government to launch infringement proceedings. The Italian government justified the fingerprint proceeding by saying that the aim was just to identify the Romani persons because there is no other way to identify them. After making some investigations, the European Parliament decided that: ‘‘Italy’s plan to fingerprint Roma people has received a green light from the European Commission, with Brussels’ experts suggesting that the controversial measures are not discriminatory or in breach of EU standards.’’⁹⁵ Reacting to the Italian plan for the taking of fingerprints, the Hungarian Roma liberal MEP Viktoria Mohacsi said:

*I find it most strange that, contrary to the commission statement claiming compliance with the EU law, the fingerprinting procedure seemed to be applied exclusively to Roma, which I cannot interpret otherwise than a discriminatory treatment targeting one specific ethnic group.*⁹⁶

In spite of the attempts of different NGOs, Italian civil society, trade unions and European Parliament to prevent the taking of fingerprints, Berlusconi government went ahead with its plan. The UN Refugee Agency also criticized Italy for its discriminatory measures on migration. As a response to this criticism, the Senator Maurizio Gasparri of the People of Freedom Coalition responded: ‘‘*We don’t give a damn!*’’⁹⁷ *This statement says a lot to us. It points to the endurance of the government’s xenophobic and racist approach toward the protection of minorities.*

⁹⁵ Lucia Kubosova, ‘‘EU gives blessing for Italy’s Roma fingerprint scheme’’, <http://euobserver.com/9/26691>, (05.09.2008).

⁹⁶ *Ibid.*

⁹⁷ ‘‘Migranti, Frattini frena La Russa L’Onu sbaglia ma va rispettato’’ (17.05.2009), *La Repubblica*.

On the judicial level, some cases have been brought before civil and administrative courts, but only some of them came out with positive results.

All the discriminatory laws and actions committed by the Italian government are so far from the article 21 of the Charter of Fundamental Rights of the European Union, which holds:

“Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.⁹⁸

Italy is not only far from respecting article 21 of the Charter of Fundamental Rights, but it is also far from respecting other international treaties concerning minority rights. The Roma in Italy live in miserable conditions. At the international and national level, something immediately has to be done to improve the situation of the Roma in Italy. Roma people need the help of national and international actors. According to Senator Terry Leyden, an Irish politician, the Roma people with their culture can contribute a lot to the European civilization:

*There is a persistent need for information and campaigning in order to highlight the right to live a life free of discrimination, but also to underline the richness which Roma contribute to European civilisation.*⁹⁹

⁹⁸ Charter of Fundamental Rights(2000), article 21.

⁹⁹ Senator Terry Leyden, *Eleventh Report, The position of Minority Groups in Europe - an examination of Roma policies in the European Union* , Houses of the Oireachtas, Joint Committee on European Affairs, p. 32.

CONCLUSION

The minority situation is a very sensitive and complicated issue and only a long-term commitment on the part of both international and national organizations, may the government and society improve the situation. These problems stem from centuries-old discrimination and from the poor relations of the Roma community with other communities. Poor relations with the majority of the society in which they live have led to a situation where the Roma people who wish to improve their living conditions, find that they face a lot of barriers, which do not allow them to integrate into the societies in which they live. Consequently, they continue to be poor and disadvantaged. Recognition of rights by the law may be seen as the first step, or, one step towards their protection.¹⁰⁰ Prejudice against the Roma is something normal in Europe. All over Europe they suffer from the same problems, which are; poverty, unemployment, illiteracy, segregation in the educational system, lack of housing, etc.

Today the majority of the Roma people suffer greatly from poverty and deprivation. Racism and racially motivated attacks have in recent years increased at an alarming rate. Both governments and society have failed to ensure the security of Roma citizens. For the purposes of reducing discrimination in everyday life, it is necessary to create a sense of solidarity with the Roma population too. Valuable help in this connection can be contributed by the media which can give an invaluable contribution in winning over the public opinion. In addition, efforts should be made to prevent incidences of domestic violence, trafficking of Roma women, girls and

¹⁰⁰ Anastasia Spiliopoulou Akermark (1997), *Justifications of minority protection in international law*, The Netherlands: Martinus Nijhoff Publishers, p. 52.

children, petty criminality, etc, through early detection and intervention. Today the government seeks to include and integrate Roma, rather than try to assimilate them. Not only national governments but also different international organizations, such as the EU, are working hard for the promotion of the Roma rights. Being citizens of the European Union, the Roma people should have equal rights. They should be equal before the law.

Other international organizations such as the UN, OSCE and the Council of Europe have a broad range of activities on the issue of ethnic minorities. The EU is much less engaged. One of the first major efforts to raise international concern for the Roma in the 1990s took shape within the framework of the OSCE.¹⁰¹ The second international actor actively involved in promoting the Romani issue is the Council of Europe. The activities of this organization have centered mainly on the promotion of the European identity and the protection of human rights in Europe.¹⁰² The minority protection is a new objective for the EU. This is mainly due to the fact that the integration process has been first of all, an economic project, associated at the same time with political project. The direct role of the European Union in the minority right is still very limited. The protection of minorities is still considered as a national matter. Also the lack of appropriate minority policies has contributed to this idea.

The European Union has adopted two approaches regarding minority protection and policies in Europe. On the one hand, the EU is playing an insignificant role regarding minorities in its own member states and, on the other

¹⁰¹ Peter Vermeersch (*op.cit.*), p.187.

¹⁰² The Council of Europe: 'Europeanizing the Rom (*op.cit.*), p.191.

hand, it is imposing political criteria on candidate countries; as a condition for the accession candidate states, with the aim to directly influence their domestic policies.

This fact poses the question: Does this practice of the EU constitute a double-standard? Is the EU, by adopting minority policies for member states, as is the case with Italy, contributing to the social inclusion or exclusion of the Roma population? Nevertheless, some reforms were adopted by governments of different accession countries, but the implementation process has been slow.

By double standard we refer to the fact that the same set of principles is not equally applied to different actors. There exist special rules for favored actors and unfair ones for others. The principle of impartiality is violated. Theoretically the relation of the EU with these states may be seen as a double standard; but in reality there is not too much difference, because even though some countries have been admitted to the EU, minority problems still exist. We have the case of Romania. Even though it was admitted to the EU, the Roma minority in Romania are still facing discrimination. History has shown that although the right of minorities has not been respected, negotiations for EU membership have neither come to a halt nor have they been suspended. In the future Albania may have the same fate. On one hand we have the example of Italy, for which the EU has done nothing to improve the Roma situation. The only difference between Italy and other countries is that; Italy unlike other countries (Romania and Albania) is supporting social exclusion of the Roma population, rather than their inclusion into the Italian society.

On the other hand, we need to mention that the EU, with its minority policies and funding, has contributed to the improvement of the situation of Roma in Europe. Most governments, both European and non-European, have adopted different

policies to help the social integration of this minority. They have also adopted the European legal framework, minority policies and anti-discrimination laws. In addition, the number of Roma activists and NGO's is increasing continuously, but their social and economic situation remains the same. No significant efforts have been made. The European Union, with its reforms, programmes, minority policies and its conditionality, has played an important role in bringing attention to this community. It remains to be seen whether the Roma people will integrate into the societies in which they live.

In this thesis, the comparison of EU minority policies in these three countries would provide us with a background with EU minority policies in the entire Europe, while referring to the minority as well. Italy, Romania and Albania are parties to the primary international and European human rights treaties. These treaties prohibit racial discrimination as well as racial segregation and commit states parties to ensure access to equal rights for everyone. Moreover, constitutional provisions and the legal framework in each of these countries incorporate such treaty obligations into domestic laws, while they indicate that such obligations have precedence over domestic laws where international and domestic laws contradict each other. Italy and Romania are members of the EU and are obliged to respect human rights.

Although Albania is a future candidate state, it is also obliged as a condition of EU membership to respect human rights. The respect of human and minority rights is part of the political criteria established by the Copenhagen European Council¹⁰³ The candidate states are also obliged to adopt the EU anti-discrimination

¹⁰³ *Accession criteria (Copenhagen criteria)*, http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm.

acquis. Racial segregation of Roma in every aspect of their lives is a breach of international human rights law and documents. Racial segregation of Roma in housing, education, social life and employment is a different form of discrimination which contravenes a number of international human rights law instruments. As has already been mentioned in the previous chapters, the Roma population in Italy, Romania and Albania suffer racial discrimination.

While comparing the legislations of the three countries, I came down to the conclusion that, in Romania, the Roma population enjoys the greatest degree of political, social, cultural rights, etc. Albania comes second in this regard. Through various EU programmes, it is trying hard to integrate the Roma population. Italy comes third. We could easily say that Italy is really an exception because it does not protect their rights at all; rather it adopts laws which lead to social exclusion of the Roma population. All the case studies in these countries have largely been subject to debate in the European Parliament and international institutions. However, the European Union has entirely neglected the Italian case and has not taken any measures whatsoever. Racial segregation is unequivocally banned by different treaties and legislation of the EU: The Charter of Fundamental Rights “The Framework Convention for the protection of National Minorities”, the Copenhagen document, Directive 2000/43/EC and Directive 2000/78/EC.

The purpose of these frameworks for combating discrimination is very important, and it is the duty of the State parties to eliminate all forms of segregation and other racial discrimination forms on ethnic ground and to adopt them in their national legislation.

More commonly, each of the three governments deny racially-based segregation of the Roma population in their territories. Some encouraging steps towards the social inclusion of Roma have been taken in Romania and Albania which are more obvious and more concrete compared to Italy. The situation in Italy is completely opposite to the one in Romania and Albania, because of the discriminatory laws adopted by the Berlusconi's government regarding this issue. In addition, the EU is offering governments financial aid and Phare Programme funds to improve the quality of their services and make their programmes for pro-integration of Roma into the societies they live more attractive. At the first ever EU Roma Summit in 2008, the President of the European Commission Barosso declared,

*The Commission strongly rejects any stigmatization of the Roma population. In the European Union every man, woman and child has the right to live a life free from discrimination and persecution. This is an issue of European and universal values, as well as an issue of fairness, social solidarity and democracy.*¹⁰⁴

At the international level, major donors have contributed to the situation of the Roma population in Europe. In July 2003, the Open Society Institute and the World Bank, supported by the EU, launched an initiative for a Roma Inclusion Decade.

This initiative is important because it will integrate the Roma population in the societies where they live and support the effort the governments to adopt different policies. Two of the states that take part in this project are: Romania and Albania. Both of them are working hard to address adequate reforms in different areas: education, employment, health and housing with gender, and discrimination. This initiative will take place at the country level with the help of the EU. Whether these

¹⁰⁴ José Manuel Durão Barroso, *European Roma Summit, (speech, European Roma Summit, Brussels, Belgium, (16 September 2008), <http://www.romadecade.org/portal/downloads/General%20Resources/Barroso%20Roma%20Summit%20Speech.pdf>*.

initiatives, involving international donors, will have any impact depends on the determination of governments to achieve the main aim of these programs and to adopt adequate policies concerning the Roma minority. Without a clear government commitment both in terms of providing co-funding and establishing the relevant legal and policy framework, these initiatives are unlikely to be successful and the improvement of the situation will be either slow or absent.

However positive these measures for Romani inclusion may be, they are clearly necessary but not sufficient to guarantee the right to equal treatment in Italy, Romania and Albania, or better all over Europe. The authorities of the three states have failed to fulfill their fundamental duty of pursuing justice for the Roma victims of human right abuses. EU has failed with its minority policies in Europe. It did not establish a body of experts, including Romani individuals, with the mandate to monitor the implementation of the different policies and it did not launch public awareness campaigns to ensure that the integration of the Roma population should not be prejudiced on the part of the non-Roma population. The EU has not developed a specific, legally-binding instrument on ‘minority rights’, but treaty references to culture, education and European cultural and linguistic diversity are significant.¹⁰⁵

The human rights of the Roma population have been frequently violated in Italy, Romania, and Albania, where national authorities do not demonstrate proper commitment to stop discrimination and stop the Roma to have a fair trial.

As a consequence they have failed to guarantee the Roma equal rights. Often when Roma are victims of violence and abuse by both the state and the non-state actors,

¹⁰⁵ Patrick Thornberry et al (*op.cit*), p. 19.

the violations have not been addressed in a legal way and no proper court decisions have been in place.

Abuses of the Roma by the civilians have mostly taken place on an individual basis. There are just few cases of the Roma individuals who went to the ECHR because they have not been accepted in the national court. The state authorities have failed to respond to the anti-Romani crimes. Moreover, the Roma population in these three states presumes that they cannot rely on the national authorities, because of the previous unpunished cases.

As a conclusion, in order to intimidate Roma population, the Italian authorities seem to apply double standards when implementing the law, because of racial discrimination and prejudices. We observe intense anti-Roma propaganda by the Italian community and the media, which is at the same time supported by the politicians. The question is: What about the EU? Is it punishing discriminatory actions or just closing one eye, thus justifying these anti-discriminatory actions? The European Parliament has adopted numerous resolutions condemning anti-Romani racism. These have been argued in the European Parliament and by the EMP, but at the end the actions of the Italian government were justified.

Only a strong, coordinated international movement of democratic forces could produce the pressure that is needed to change the situation. This could be done by a more continuous and organised pressure of the EU institutions and of the Council of Europe.¹⁰⁶

¹⁰⁶ The Roma and Sinti Minority in Italy: A Violation of Fundamental Rights?, (*op.cit.*).

In Europe, the anti-Romani attitudes are historically deeply rooted in the mentality of the societies they live. Although discrimination is mentioned in the legal framework of the EU, there is nothing specific about the Roma people. In the entire EU minority documents, there still exists the unclear meaning of the word minority. It neither talks about their origin as nomadic people nor their way of life.

We have the Roma people in Europe which immediately need the involvement of international organizations. And in order for this involvement to be successful, it is important to value and recognize their culture and traditions. This could be one of the ways to change the current situation regarding this issue.

Member States have the responsibility to respect, protect and fulfill human rights. They have to use all levels of governance in order to ensure better implementation of human rights. By “all level of governance” I mean the European, national and local levels of governance. In this context, member states must address the situation of Roma from different angles: Legislation, sanctions, education, awareness raising, compensation of victims, adequate housing, creating real equal opportunities for all and fair trials. The Roma population faces discrimination in almost all aspects of lives, from birth – unable to obtain a birth certificate – until they die – without possession of any documents to prove their existence. Racial discrimination against the Roma population is a common and persistent problem in Italy, Romania and Albania. It is part of their everyday life. This continuous form of discrimination creates significant obstacles to enjoy the rights guaranteed by domestic and international human rights laws. As a result of the historical and continuous discrimination against the Roma people, today, most of them are uneducated, unemployed and live in extreme poverty. Being aware of the fact that

discrimination on the grounds of race and ethnicity is still a big problem in Europe, the European Union has adopted anti-discrimination legislation to combat it. Even though significant advances have been made with regard to the adoption of anti-discrimination framework at the European level, and even though most European countries have adopted anti-discrimination laws, discrimination of the Roma population still exists. More has to be done by the EU and the national governments.

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