

Roma, Citizenship, Statelessness and Related Status Issues in Europe

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I. Introduction

A number of large forces in Europe have in recent years weakened the power of the nation-state in Europe and/or given rise to competing trans-national authorities, particularly the European Union. Although extensive efforts have been made to link these practices to fundamental human rights or to the rights of European citizens – and indeed many hundreds of thousands of Europeans have benefited from these developments --, in practice a number of persons with genuine effective links to one or more European states are precluded from full and effective citizenship in all or any European states or polities. Many may even lack the recognized citizenship of any country. This exclusion is frequently on grounds of ethnicity or perceived race. Roma – a stigmatized, pariah minority – are particularly affected.² Exclusion from the polity can and frequently does give rise to expulsion or threat of expulsion from country.

II. Regional Developments in Europe

Space considerations preclude a full treatment of regional developments driving the erosion of state power in Europe as concerns the person vis-à-vis the state or one state, and the rise of the “European citizen”. Some key issues for consideration:

The Article 1 provision of the European Convention on Human Rights that the rights of the Convention shall be guaranteed to all persons on the territory has in practice been of greater significance than similar guarantees under international law³ or regional law elsewhere in the world, as a result of the power of the Council of Europe, and in particular (although not only) its premiere body, the European Court of Human Rights. The decoupling of fundamental rights from citizenship has been particularly strong in Europe. Some noteworthy interventions by the Court in this area have included:

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² Roma arrived from India in Europe in a series of migrations approximately 1000 years ago. Although accurate data is not available, plausible estimates indicate that there are currently well over ten million Roma in Europe. Roma have seen repeated episodes of persecution in Europe. Today they face stigmatisation, widespread stereotyping, and often intense hostility throughout Europe.

³ The rights contained in the core international human rights treaties (including in particular the two Covenants, the Conventions pertaining to discrimination against women and racial discrimination, the Convention on the Rights of the Child, and the new Conventions concerning migrant workers and persons with disabilities) apply universally to all persons including all persons on the territory, regardless of their status.

- Rejecting the effort by France to administratively designate part of in the international zone of a Paris airport as “extra-territorial” for the purposes of reviewing requests for asylum (implicating in particular Article 3 ban on cruel and degrading treatment guarantees);⁴ similarly, rejecting Belgium’s denial of bona fides to applicants for asylum on the territory;⁵
- Rejecting the effort by Austria to provide unemployment benefits solely on the basis of nationality;⁶
- A number of decisions, particularly with respect to Turkey, which have recognised extra-territorial obligations of the State.⁷

The Council of Europe system has also been instrumental in strengthening the rights of citizens of particular other states, in particular States Parties to the European Social Charter, which sets out that the extensive social rights of the Charter are to be enjoyed by citizens of one Charter Party “lawfully resident or working regularly” in another Charter Party. The approach of strengthening the rights of particular non-nationals in European states has also been taken by the European Union in bilateral treaties with a number of countries, in particular Turkey, and is also very evident in frameworks for relations between the European Union, its Member States, and wealthy non-EU States in close proximity, such as Norway and Switzerland.

The European Union’s role in strengthening the rights of persons on the territory of a state of which they do not hold the citizenship has been immense, and primarily with respect to citizens of one European Union Member State present or resident in another. This has been true particularly since European Union integration entered its intensive phases following the Treaty of Maastricht (1992), which initiated among other things the status of “citizenship of the European Union”, conferred upon all persons enjoying the citizenship of a Member State of the European Union. Although achieving even formal equality of status has been fraught, particularly with respect to the citizens of EU Member States of twelve countries which joined the Union in the 2004 and especially the 2007 enlargements, in principle the playing field has been levelled in fast range of areas related to the free movement of persons between EU member States, and their establishment and/or integration in an EU Member State other than the one in which they may hold citizenship.

The foregoing notwithstanding, Europe – East and West -- paradoxically is home to tens if not hundreds of thousands of persons formally excluded from the polity. The domestic legal regime driving the exclusion of certain categories of persons from full belonging in Europe and in particular in the nation-states of Europe is complex and varied and in many cases resists reduction. A rudimentary summary follows below.

III. Overview of Problematic Practice in/by European States

Although statelessness was by no means eradicated in Europe in 1989, the current crisis in Europe dates from the collapse of Communism, and in particular (i) the collapse of the three major Communist federations (Czechoslovakia, Yugoslavia and the Soviet Union); (ii) the conflict in the former Yugoslavia and the large numbers of refugees in Europe that the conflict has given rise to; and (iii) inflamed populist, xenophobic pressure on governments in the West, in turn driving exclusionary practices.

⁴ European Court of Human Rights, Judgment, *Amuur v. France*: “[...] Despite its name, the international zone does not have extraterritorial status. [...]” (25/06/1996, REF0000573)

⁵ European Court of Human Rights, Judgment, *Conka v. Belgium*, On 5 February 2002.

⁶ European Court of Human Rights, Judgment, *Gaygusuz v. Austria*, 31 August 1996.

⁷ See for example *Cyprus v. Turkey*, 4 EHRR 482 (1976).

Three large federations dissolved following the end of Communism in 1989: Czechoslovakia, Yugoslavia and the Soviet Union. These events generated many stateless persons, among them many Roma, as successor states refused to recognise as citizens of the new states certain categories of persons, often on an ethnic basis. Other states which did not collapse also have very problematic practices where Roma, non-privileged/non-white migrants and the descendents of migrants, and others are concerned, practices which lead to extreme social exclusion. In some countries, such as the Baltic states, these practices have targeted primarily ethnic Russians, although Roma and others are also affected. A summary of key issues follows.

III.1. Arbitrary Exclusion from Citizenship as a Result of Legal Provisions Reliant Primarily on "Blood"

The laws of European states traditionally place strong emphasis on *jus sanguines*; *jus soli* provisions tend to be strongly qualified. Some countries -- such as Greece and Germany⁸ -- have pursued very blood-based policies on recognition of citizenship, in some cases for long periods of time, and which were, as a result, still recently generating individual cases of stateless persons among persons born on the territory and with long-term family ties to the territory. The German-based NGO Gesellschaft fuer Bedrohte Voelker was still reporting on cases into the late 1990s/2000s of Sinti expellees and/or their children from Sudetenland (1945/1946), who still had no German citizenship. A similar set of countries with no *jus soli* provisions or only weak *jus soli* provisions for allocating citizenship, with large migrant Romani communities, including inter-generational migrant communities. Countries here include in particular Austria, Italy and Switzerland.

In recent months, the situation in Italy has taken on emergency proportions. An extensive campaign -- apparently with the purpose of mobilising racist assumptions about "Gypsies" in the Italian public to active hatred, in order to push the government to curb immigration - - has been carried out by the Italian media since the Spring months of 2007, becoming particularly intense following the deaths of four Romani children from Romania in a settlement in Livorno in August 2007. As a result of the resulting government clampdown, several hundred persons have been expelled from Italy in recent months, and Italian police have destroyed the housing of many thousands of Roma. Many tens of thousands of persons are particularly vulnerable to expulsion from Italy, as a result of the exclusionary practices noted above.⁹

⁸ In Germany, the Act to Amend the Nationality Law of 15 July 1999, the provisions of which came into force on 1 January 2000, marked the achievement of an important objective in the policy of integration. To the existing principle of descent (*jus sanguines* or "right of blood"), in accordance with which only children having at least one German parent acquired German nationality, was added the territorial principle (*jus soli* or "right of soil"). In accordance with that principle, children born in Germany of foreign parents acquire German citizenship at birth if one parent has been legally and ordinarily resident in Germany for eight years and is a citizen of the European Union with a right of freedom of movement, or a citizen having an equivalent status from another country within the European Economic Area, or a citizen of Switzerland, or has an EU right of residence or settlement permit. Citizens of Turkey and other non-EU or EEA states are covered by the alternative "possession of a settlement permit". Children who have acquired German citizenship on the basis of the principle of *jus soli* have to opt for either the German or the foreign citizenship when they come of age. If they opt for German citizenship, they have to give up their foreign citizenship unless it is impossible or unreasonable for them to do so. They have to make this decision before they reach the age of 23. Children under the age of 10 who were born before 1 January 2000 and who would, at birth, have met the requirements of the principle of *jus soli* first introduced by the Act to Amend the Nationality Law were given a special naturalization entitlement which expired on 31 December 2000. Under this interim rule, too, the children have to opt for either German or foreign citizenship upon attaining the age of majority. Many Roma were either not apprised in a timely fashion of the changes, and/or were born in Germany to refugees or persons of other status who fled conflicts in the former Yugoslavia. Such persons have in the main not managed to secure German citizenship.

⁹ Italy has been previously compelled to settle out of Court as a result of practices of forcibly expelling Roma from Italy to the countries of the former Yugoslavia (see European Court of Human Rights, *Case of Sulejmanovic and Sejdovic v. Italy*, Application Numbers 57574/00 & 57575/00, Judgment, Strasbourg, 8 November 2002).

III.2. Arbitrary Preference of Ethnic Kin

In many instances, exclusionary practices in the field of (non)recognition or provision of citizenship on an ethnic basis is coupled with strong preferential treatment of ethnic kin – in law and/or in practice – even where ties to the state at issue are attenuated by many generations, or indeed may have never existed at all. This is the case in countries such as Croatia, Germany, Hungary and Ireland, to name only the most evident and egregious. To some extent, arbitrary ethnic preference in the field of citizenship is a feature all European states, even among the most nominally liberal and open, such as the United Kingdom.¹⁰

III.3. Statelessness in the Context of State Succession

A number of countries adopted extremely restrictive citizenship laws – laws designed to exclude certain ethnic groups -- as the Communist federations collapsed:

- **Croatia** adopted a citizenship law aimed at excluding Serbs, Roma and others from access to belonging in the new state, and has reinforced this law with extremely restrictive practice in this area, including forced expulsions of Roma from Croatia.
- **The Czech Republic** designed its citizenship law with a number of provisions aimed at forcing Roma in the Czech Republic to go to Slovakia. Key elements of the law were amended in 1999, but certain categories of persons – notably those not in the country for any time between 1993 and 1999, still do not have access to Czech citizenship, other than by naturalisation.
- **Macedonia** implemented an extremely restrictive citizenship law after independence, giving rise to a number of categories of excluded groups, most notably ethnic Albanians and Roma. Widely touted amendments in 2004 failed to remedy the underlying problem that Macedonian officials fail to recognise the legitimate ties of a number of categories of persons to Macedonia.
- **Slovenia** adopted an extremely restrictive citizenship law excluding “undesirables from the south” (Bosnians, ethnic Albanians from Kosovo, Macedonians, Roma, Serbs) and also destroyed the records of many tens of thousands of ex-Yugoslavs living in Slovenia at the time of independence. The Slovene Constitutional Court ruled the act illegal in 1999, but a subsequent public referendum reinforced government intransigence in providing justice to the “erased”.

Other countries with status issues arising as a result of the collapse of the communist federations include **Russia** and a number of the Baltic countries. In Russia, a large number of persons who were previously Soviet citizens and who previously resided legally in the Russian Federation, have since been disenfranchised as a result of the entry into force in 2002 of the Federal Laws on Russian Citizenship and on the Legal Status of Foreign Citizens. A highly charged atmosphere of racial or ethnic exclusion and preference has resulted additionally in systematic racially selective inspections and identity checks by law enforcement officials, targeting (negatively) people from specific minorities and/or of certain appearance, particularly Roma and persons perceived to be from the Caucasus and Central Asia. Also there are numerous reports that residence registration is used as a means of excluding, on discriminatory grounds, persons belonging to certain ethnic groups.¹¹ The European Court of Human Rights has found Russia in contravention of

¹⁰ In a 1970s case at the now-defunct European Commission for Human Rights – *East African Asians v. the United Kingdom* -- the UK was found to have subjected categories of persons to racial discrimination rising to the level of degrading treatment, in violation of Convention Article 3, as a result of allowing only white UK citizens to immigrate to Britain from Angola and elsewhere, while blocking immigration possibilities for Britons of Asian descent from those countries.

¹¹ UN Committee on the Elimination of Racial Discrimination Concluding Observations CERD/C/62/CO/7, March 2003

Convention provisions as a result of the denial or seizure of personal documents,¹² as well as for reasons in which the link between personal documents issues and racial discrimination gave rise to Convention violations.¹³

III.4. Other Examples of Extremely Problematic Practice in the Area of Personal Status

Some states are systematically failing to integrate persons who have been in the country for long periods of time, developed real ties to country-of-exile, but have yet to have been provided with any status providing for the possibility of durable integration. Since the early 1990s, Germany has applied the status of “tolerated” to several hundreds of thousands of persons, many of whom are Roma from the former Yugoslavia (see below). Persons with the “tolerated” status may have been in Germany for well over a decade, and developed extensive ties to the country, but have not yet been provided with a status recognising any form of right of stay in Germany. Macedonia has been emulating this bad model: 2000 Romani refugees from Kosovo in Macedonia since 1999 have never been provided with any status other than temporary stop on expulsion.¹⁴ Serbia also has tens of thousands of Romani displaced persons from Kosovo, whom it refuses to issue with even identity cards. As such, they are excluded from basic public services.

III.5. Persons Whose Ties to their State Have Not Yet Been Adequately Recognised

The Council of Europe approach to the foregoing issue has been to require that, in the context of state succession, statelessness shall be avoided and those persons with “genuine and effective links” to the new state shall be recognised as citizens. The 1995 European Convention on Nationality provides a 4-point test of assessing these links under a chapter explicitly devoted to “state succession and nationality”. In 2006, adopted a new Convention devoted explicitly and solely to the avoidance of statelessness in the context of state succession. These standards have not yet made serious impact yet on existing problems. For example, Macedonia has strenuously resisted providing citizenship to 2000 remaining

¹² European Court of Human Rights, Judgment, *Smirnova v. Russia*, 24 October 2003. In the Court’s assessment, denial of key personal documents, such as, in the instant case, the Russian “internal passport” could give rise to a denial of private and family life in the sense of Convention Article 8. The Court’s assessed these issues as follows:

“95. The Court has a number of times ruled that private life is a broad term not susceptible to exhaustive definition (see, as a recent authority, *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-...). It has nevertheless been outlined that it protects the moral and physical integrity of the individual (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, §§ 22-27), including the right to live privately, away from unwanted attention. It also secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his personality (see *Brüggegan and Scheuten v. Germany*, no. 6959/75, Commission’s report of 12 July 1977, Decisions and Reports (DR) 10, p. 115, § 55).

“96. The Court notes that Y.S.’s passport was seized on 26 August 1995 and returned on 6 October 1999. Y.S. has not substantiated any concrete event which happened after 5 May 1998 – the day when the Convention became effective in respect of Russia – and which would as such constitute, at least arguably, a disrespect of her private life. However, the interference with Y.S.’s private life is peculiar in that it allegedly flows not from an instantaneous act, but from a number of everyday inconveniences taken in their entirety which lasted till 6 October 1999. ...

“97. The Court finds it established that in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant’s private life (see, *mutatis mutandis*, *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 77, ECHR 2002-VI).”

¹³ See for example European Court of Human Rights, judgement, *Timishev v. Russia*, 13 December 2005.

¹⁴ During 1999, ethnic Albanians ethnically cleansed the greater part of the Romani population from Kosovo. The Macedonian government has not, however, provided Roma from Kosovo with refugee status under the 1951 Geneva Convention and has repeatedly set deadlines for the entire group to leave Macedonia. As of recently, Macedonian authorities had only recognised 28 of these persons as refugees, and very few have secured Macedonian citizenship. The others have generally been declared to be persons under subsidiary protection, under recent amendments to Macedonian law.

Roma excluded from access to citizenship as a result of Macedonia's very restrictive citizenship law. Recent amendments to Macedonia's law on citizenship, although brought about to incorporate the European Convention on Nationality provisions on citizenship in the context of state succession into the domestic legal order have in practice not yet done so. Also, as noted above, Slovenia has done nothing to rectify the bureaucratic purge of tens of thousands of persons in the early 1990s. Similar issues remain in Croatia.

III.6. Continuing Effects of Bad Law

Sufficient pressure was brought upon the Czech Republic to amend its exclusionary citizenship law in 1999. Nevertheless, as noted above, certain categories of persons – most notably anyone who left the country for any period of time between 1993 and 1999 – is still excluded from access to citizenship other than via naturalization procedures. This group includes persons who went to Slovakia for medical treatment or to give birth among relatives because at that time they had no access to any citizenship, or only to Slovak citizenship. In addition, those Roma who were forced to become "Slovaks" as a result of the Czech citizenship law may today face systematic discrimination as a result, for example, of local rules denying families social housing where one member of the family is a "foreigner" or similar. The Czech government has never undertaken any serious study of the situation of persons forced to be "Slovaks" as a result of the 1993 citizenship law and the current situations of exclusion they may be facing now, and so no policy measures exist to address these problems.

III.7. Lack of Personal Documents and/or Other Documents

In addition to the issues noted above, many Roma in Europe lack one or more personal documents, creating conditions for exclusion from services, as well as systematic frustration of fundamental human rights. In some situations, birth at home gives rise to a failure to secure a birth certificate, leading to non-recognition as a legal person, as guaranteed *inter alia* under Article 16 of the International Covenant on Civil and Political Rights (ICCPR). In some areas, lack of documents is such a severe issue that it becomes inter-generational. Documents lacking may include, in addition to birth certificates, personal identification cards, documents related to the provision of health insurance and social aid, and passports. Barriers arising from a lack of documents can be daunting, and the lack of one document can lead to the inability of a person to access further documents. The lack of access to personal documents and citizenship threatens the ability of Roma to gain access to services crucial to the realisation of a number of 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 the highest attainable standards of health. Countries and regions with particularly extreme problems in this area include Bosnia and Herzegovina, Croatia, Italy, Greece, Kosovo, Macedonia, Romania, Russia, Serbia and Ukraine, although this list is by no means exhaustive.

IV. Germany: Particular Case or Illustrative of General European Trends?

Exclusionary practices among all of the successor states to the former Yugoslavia, combined with restrictive practices toward migrants and refugees in other European states, have given rise to status problems among emigrant diaspora populations of Roma from these countries in Austria, Germany, Italy, the United Kingdom and elsewhere, as well as indeed in other former Yugoslav countries (as for example the thousands of Kosovo Romani refugees in Bosnia, Croatia, Macedonia, and Serbia). This section will look briefly at issues in one country – Germany – although these issues are present to a greater or lesser degree in many countries in Europe.

There is a high degree of anti-Romani sentiment in Germany.¹⁵ A poll conducted in 1992 by the Allensbach Demoscopic Institute indicated that 64 percent of Germans had an unfavourable opinion of Roma – a higher percentage than for any other racial, ethnic or religious groups.¹⁶ A survey conducted in 1994 by the EMNID Institute indicated that some 68 percent of Germans did not wish to have Sinti and Roma as neighbours.¹⁷ A 1995 poll conducted in German schools indicated the presence of strong anti-Romani attitudes even among the younger generation: 38 percent of students in Western and 60.4 percent in Eastern Germany expressed negative attitudes toward Sinti and Roma.¹⁸ There is no indication that attitudes toward Sinti and Roma have improved in recent years.

Media and others frequently propagate anti-Romani sentiment, often through coded references to Roma. The Council of Europe's European Commission Against Racism and Intolerance (ECRI) noted in its Second Report on Germany: "Stigmatising prejudices about Roma and Sinti are reportedly perpetuated by some media, particularly by naming alleged perpetrators of crimes as Roma or Sinti without such mention being required for understanding the reported incident."¹⁹ During the years 1997 to 2000 the Central Council of German Sinti and Roma²⁰ yearly lodged about 30 to 45 complaints on defamatory and offensive reporting about Roma in the media. In 2003, the number of such complaints came to more than 50.²¹ Media frequently use coded references to Roma such as "Landfahrer" ("vagrants") and "mobile ethnische Minderheit" ("mobile ethnic minority"), apparently in order to circumvent criminal code bans on incitement to hatred of groups.

Anti-Romani sentiment has a long history in Germany. Official policies of persecution and expulsion began soon after the arrival of the first Romani groups on the territory of today's Germany in the late Middle Ages. These policies continued in the succeeding centuries²² and anti-Romani policies were pursued to the extreme during the Nazi era, when Sinti and Roma were targeted for extermination under racial policies.²³ Sinti and Roma activists note that hundreds of thousands of Sinti and Roma were killed throughout Europe during the Holocaust, as a direct result of the policies of the Hitler government. Those who survived the genocide were subjected to continued harassment and humiliation at the hands of the police and other authorities, as a number of pre-war anti-Gypsy laws and institutions

¹⁵ On anti-Romani sentiment in Germany, see especially Tebbutt, Susan, ed., *Sinti and Roma: Gypsies in German-Speaking Society and Literature*, New York and Oxford: Berghahn Books, 1998.

¹⁶ Seventeen percent had an unfavourable opinion of Muslims; of Indians, 14 percent; of guest workers, 12 percent; of dark-skinned persons, 8 percent, and of Jews, 7 percent. Cited in G. Margalit, "Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?". Accessed on the web at <<http://sicsa.huji.ac.il/9gilad.htm>>, (last accessed on 9 April 2002).

¹⁷ Cited in D. Strauss, "Anti-Gypsyism in German Society and Literature" in Tebbutt, S., p. 89.

¹⁸ Information from Sebastijan Kurtisi of the Roma Union Grenzland, OSI Roundtable Meeting, Hamburg 8 April 2002. See also B. Orthmeyer, E. Peters, D. Strauss, *Antiziganismus – Geschichte und Gegenwart deutscher Sinti und Roma*, Wiesbaden: HeLP, 1998.

¹⁹ ECRI Second Report on Germany, para. 30, p.13.

²⁰ The Central Council of German Sinti and Roma (Zentralrat deutscher Sinti und Roma) is an umbrella organisation of a number of Sinti and Romani organisations in Germany.

²¹ Open Society Institute, EU Monitoring and Advocacy Program (EUMAP), Minority Protection, Report on the Situation of Sinti and Roma in Germany, Budapest 2002 (hereinafter referred to as "EUMAP Germany Report"), available at: http://www.eumap.org/reports/2002/content/09/276/2002_m_germany.pdf, p. 153; see also Deutsche Presseagentur (dpa), 5 December 2003.

²² On the persecution of Sinti and Roma in Germany from the 15th century, see, I. Hancock, "Gypsy History in Germany and Neighbouring Lands: A Chronology Leading to the Holocaust and Beyond," in D. M. Crowe, and J. Kolsti, eds., *The Gypsies of Eastern Europe*, Armonk, NY: M.E. Sharpe, 1991, pp. 395-396; Over 120 specific "anti-Gypsy" laws were passed between 1551 and 1751; see S. Tebbutt, ed., *Roma and Sinti: Gypsies in German-Speaking Society and Literature*, Oxford: Berghahn Books, 1998, p. 2.

²³ On the Holocaust of Roma and Sinti, see I. Hancock in Crowe and Kolsti, above; D. Kenrick and G. Puxton, *Gypsies under Swastika*, Hatfield: University of Hertfordshire Press, 1995; R. Rose, ed., *The Nazi Genocide of the Roma and Sinti*, Heidelberg: Documentation and Cultural Centre, 1995; S. Milton, "Holocaust: The Gypsies" in W. S. Parsons, I. Charny and S. Totten, eds. *Genocide in the Twentieth Century*, New York, London: Garland Publishing, 1995, pp. 209-264.

remained in force.²⁴ The genocide of Sinti and Roma was only acknowledged officially in 1982.²⁵

There are no reliable figures regarding the total size of the Sinti and Roma population in Germany and estimates vary widely. The Government has provided an estimate of up to 70,000 German Sinti and Roma.²⁶ Some Sinti and Roma leaders put the number between 150,000 and 200,000. Roma and Sinti live in all of the German states (*Länder*), with many Romani individuals living in larger western German cities as well as in Berlin. Estimates indicate that during the 1990s, up to 100,000 of the Roma in Germany.

Among Roma who are foreigners in Germany, the majority are Roma from southeastern Europe. Included in this group are a number of persons who may be refugees in the sense of the 1951 Convention relating to the status of refugees, but the majority of whom have not been actually recognised as refugees, owing primarily to restrictive practices by German authorities in the application of refugee law. A large number of Roma in Germany do not possess German citizenship, or even a durable or meaningful residence status. Taken as a whole, the Sinti and Romani community is an immensely diverse group of people, including persons with links to German culture as long as 600 years, persons who fled slavery in Romania during the 19th century, and recent migrants and refugees from Central and Eastern Europe, arriving after World War II or at various times since. Some Sinti and Roma in Germany are itinerant or nomadic. The Romani community includes German citizens, nationals of other European Union States (who as a result of European Union rules have a more privileged legal status than persons coming from non-EU States), recognised refugees and long-term residents.

Several types of administrative status prevalent among Sinti and Roma in Germany are of particular cause for concern. In addition to instances of statelessness, noted above, reported among Sinti and Roma in Germany from after World War II until recent years,²⁷ many factually long-term and very long-term resident Roma in Germany hold only a temporary status called "tolerated" ("duldung"). A "duldung" is not a residence permit -- it is merely a stop on expulsion, and it must be renewed at very frequent intervals, in some instances after only several weeks.²⁸ Members of the same family are often provided with

²⁴ EUMAP Germany Report p.149.

²⁵ See Reemtsma, Katrin, *Sinti und Roma. Geschichte, Kultur, Gegenwart*, Munich 1996, p. 124-136; see also Kuder, Renate, *Recent Trends in German Ethnic Politics: the Sinti*, MA thesis presented to the International Studies programme of the Graduate School of the University of Oregon, June 2000, p. 24.

²⁶ First Report submitted by the Federal Republic of Germany under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, 1999 ACFC/SR (2000)001 (hereafter "State FCNM Report"), p. 10. Accessed on the web at: [http://www.coe.int/T/e/human%5Frights/Minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29%2E%5FMonitoring%5Fmechanism/3%2E%5FState%5Freports/ACFC_SR\(2000\)001%20E%20state%20report%20Germany.asp#TopOfPage](http://www.coe.int/T/e/human%5Frights/Minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29%2E%5FMonitoring%5Fmechanism/3%2E%5FState%5Freports/ACFC_SR(2000)001%20E%20state%20report%20Germany.asp#TopOfPage)

²⁷ Citizenship laws in Germany were until 1999, based solely on descent and included no provision for the acquisition of citizenship through birth on German territory and cases of statelessness were reported regularly. For example, *Pogrom*, the periodical of the Göttingen-based human rights organization *Gesellschaft für bedrohte Völker (GfbV)*, recently reported the case of Ms Kraus, a Romani woman born in the Sudetenland, in today's Czech Republic, in the early 1940s. At the end of World War II, she and her family were expelled from Sudetenland by the Czechoslovakian authorities, along with millions of ethnic Germans. According to the *GfbV*, Ms Kraus received German citizenship after World War II. In the 1980s, however, she was ordered by the German authorities to give up her German papers and was instead issued a document certifying her as stateless. Her possession of a German passport was, according to the *GfbV*, not considered sufficient evidence of her German citizenship.

²⁸ A number of international monitoring bodies have expressed concerns at the treatment of non-citizens in Germany. For example, the UN Committee against Elimination of Racial Discrimination has expressed concerns about absence of any protection accorded to populous *de facto* minority groups resident in Germany for longer periods of time (see CERD/C/338/Add.14, 10 August 2000). The Council of Europe's European Commission against Racism and Intolerance (ECRI) noted that around nine percent of the entire population (c. 7,000,000 persons) do not have German citizenship and called for regularisation of status of long-term foreign residents (see Council of Europe's European Commission against Racism and Intolerance, Second Report on Germany, adopted on 15 December 2000 and made public on 3 July 2001 (Hereinafter "ECRI Second Report on Germany"), p. 9).

"duldung" status different periods of time, meaning that a head of household may be almost constantly queuing for renewal of the status for various members of family.²⁹ The "duldung" status frequently includes restrictions on freedom of movement, access to employment and various forms of social and health protection,³⁰ although provisions vary from state to state within the Federal Republic of Germany. Numerous Romani individuals have had no administrative status in Germany other than a "duldung" for periods sometimes longer than ten years.

There are no publically available figures on the total number of Roma who are in possession of the "tolerated" status in Germany. The total number of "tolerated" persons is, however, growing overall: in 2001, the number of persons with "tolerated" status was approximately 233,000. In 2002, the number rose to around 227,000, of whom 146,838 had been living in Germany for at least five years and 78,487 for more than ten years respectively.³¹ The repeated provision of extremely short-term "duldung" status has effectively prevented tens of thousands of third-country national Roma in Germany from integration in Germany, although such persons may have given birth to children in Germany (and those children may be enrolled in and regularly attending German schools) and have formed extensive real and factual ties to Germany.

In addition, persons provided with the "duldung" status and their children may labour under extreme conditions of stress due both to the ever-present threat of expulsion from Germany, as well as very frequent interaction with the often hostile public officials responsible for allocation of the "duldung".³² As such, long term use of the "duldung" may itself constitute a form of cruel and degrading treatment as banned under a number of international human rights instruments.³³ In addition, there are widespread and plausible allegations that Roma are more likely to be provided with a "duldung" (rather than a more durable status including the progressive accrual of rights) than non-Romani third country nationals, in violation of Germany's commitments banning racial discrimination, including but not limited to the International Convention on All Forms of Racial Discrimination (ICERD).³⁴

According to a number of pronouncements by high-level officials, Germany by policy expels non-citizen Roma and other persons it regards as undesirable. In mid-April 2003, for example, Ms Jelena Markovic, Deputy Minister on Human and Minority Rights of Serbia and Montenegro, told an OSCE Human Dimension Meeting on Roma and Sinti:

²⁹ Mihok, Brigitte, *Zurück nach Nirgendwo. Bosnische Romaflüchtlinge in Berlin*, Berlin 2001, p. 76.

³⁰ All insured persons in the Federal Republic of Germany enjoy equal access to the benefits of statutory health insurance, irrespective of their nationality or origin. The legislation governing the statutory health insurance scheme contains no restrictions on benefit based on the nationality of the claimant. In the case of asylum seekers and persons facing deportation, however, protections available however are limited, as a general rule, to the treatment of acute illnesses and pain. Other health care benefits may be granted on a discretionary basis. Medical care is provided outside the statutory health insurance scheme. Persons in such situations, including persons possibly traumatized by war and ethnic conflict, may have health insurance limited only to cases of acute illness.

³¹ Migrationsbericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration im Auftrag der Bundesregierung, December 2003, p.51, available at: http://www.integrationsbeauftragte.de/download/Migrationsbericht_2003.pdf.

³² Many Roma in Germany report that officials responsible for prolonging the "duldung" are frequently very rude, and that generally a component of the process includes sharp discussions with officials including questions such as "Why haven't you left yet?" and "What are you still doing in Germany?"

³³ Germany is bound by a number of international law provisions banning cruel and inhuman or degrading treatment or punishment, including but not limited to those provided under Article 7 of the International Covenant on Civil and Political Rights, Article 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 3 of the European Convention on Human Rights.

³⁴ The CERD has explicitly instructed States Parties to the ICERD "to take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin." (CERD, Discrimination against Roma: 16/08/2000, General Recommendation 27, article 1, para 5).

"Germany will send back more than 50,000 of our citizens. More than 80% of the persons to be sent back from Germany are Roma."

Forcible expulsions of Romani foreigners from Germany are currently on-going. The overwhelming majority of foreign Roma currently being systematically expelled from the Federal Republic of Germany come from the former Yugoslavia (or one of its successor states), or were born in Germany to Roma from ex-Yugoslavia.³⁵ These include persons from Kosovo, who may face very extreme levels of exclusion in Kosovo as a result of the ethnic cleansing of Roma, Ashkalis, Egyptians and others regarded as "Gypsies", which took place beginning June 1999. Current expulsions of Roma are the latest in a series of expulsions from Germany of Romani foreign nationals taking place since 1989.³⁶

Apart from issues such as expulsion and threat of expulsion, however, it is difficult to clearly separate the problems faced by Roma and Sinti citizens on the one hand and foreign Roma on the other, given the prevalence of anti-Romani sentiment in Germany and the tendency of German officials and members of the public at large to treat citizen and non-citizen Sinti and Roma as "Gypsies", regardless of citizenship.

Sinti and Roma who possess German citizenship are recognised as a national minority by the German government. However, the German government has repeatedly stated that where Sinti and Roma are concerned, it regards minority protections in Germany -- including those secured under Article 27 of the International Covenant on Civil and Political Rights -- as applying only to those Sinti and Roma who are citizens of Germany. This limitation is at odds with the UN Human Rights Committee's position as to the scope of the Article 27 protections. In General Comment 23, the Committee states: "[...] the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, [...]. A State party may not, therefore, restrict the rights under article 27 to its citizens alone."³⁷

German hysteria with respect to Romani migrants and refugees from the former Yugoslavia -- and particularly with respect to Roma from Serbia and Kosovo -- played out in particular during the period 2003-2005. Episodes of mass exclusionary public mobilisation of this kind have played out in a number of Western European states in recent years, including France, Spain, the United Kingdom, Ireland, Belgium, the Netherlands, Spain, Finland, Austria and elsewhere. Most recently, since the summer months of 2007, Italy has been in the throes of a media driven effort to systematically expel Romanians, in particular Romani Romanians. This effort has involved mobilised state measures, particularly since November 2007, as well as an Italian government-led effort to amend European Union law in order to facilitate more smoothly the expulsion of citizens of other European Union Member states.³⁸ The fact

³⁵ According to an October 25, 2003 article in the Belgrade daily newspaper *Politika*, more than 4000 Roma were expelled from Germany during one month in 2003, and in total 12,000 Roma had been expelled from a number of Western European states, the overwhelming majority expelled from the Federal Republic of Germany.

³⁶ Very high-profile expulsions of large numbers of Roma took place in the early 1990s to Romania and Macedonia. These expulsions generated such significant debate domestically and were of such questionable legality that they were both accompanied by large sums of development aid to Romania and Macedonia. More recently, in the late 1990s and early 2000s, German authorities have expelled Bosnian Roma, following the cessation of hostilities in Bosnia as a result of the Dayton Peace Agreement.

³⁷ United Nations Human Rights Committee, General Comment 23. The rights of minorities (Article 27), 8 April 1994, para. 5.1.

³⁸ Following a sustained campaign carried out in a number of prominent media since the summer months of 2007, inciting panic about crimes purportedly committed by Romanians -- and in particular Romanian Roma -- the Italian government has passed an emergency decree facilitating the expulsion of Romanian citizens, with only limited procedural protections.

that these and similar mass expulsions are race-based, and that they are coupled also with extensive racial profiling, means that Europe is increasingly "black" in the East and "white" in the West.³⁹

V. Conclusion

Despite remarkable efforts by pan-European bodies at both supplementing and ameliorating the powerful links between social, political and civic inclusion on the one hand, and the nation-state on the other – efforts supplementing international law and in principle opening unique possibilities for new forms of integration -- Europe in fact remains a place in which hundreds of thousands of persons are formally excluded from the polities of the places where they live, or indeed in many cases from any polity. The post-1989 period has seen these exclusionary dynamics re-invigorated through the forces of ethnic war, ethnic cleansing, the disintegration of three major multinational federations, as well as through repeated powerful xenophobic mobilisations throughout the continent.

Anti-Romani sentiment has been a feature of the Italian and Romanian media since at least the late 1990s and has never been checked adequately by any public authority. An intense campaign - apparently with the purpose of mobilising racist assumptions about "Gypsies" in the Italian public to active hatred, in order to push the government to clamp down on immigration -- has been carried out by the Italian media since the Summer months of 2007, particularly following the deaths of several Romani children from Romania in a settlement in Livorno. Features of this campaign have included highly sensationalized accounts of crimes in Italy, as well as imputing blame to "Romanians" or "nomads" for all unclarified violent or petty crime in Italy.

In early November 2007, following a brutal killing in Rome, in which the prime suspect is a Romani man from Romania, the government capitalized on this wave of mobilized hate by adopting an emergency decree which would enable the expulsion of Romanian citizens with only limited procedural protections. Statements by government officials indicate that this decree is aimed primarily at "delinquent Romanians". The decree appears set to enable systemic violations of both the spirit and the letter of the European Convention on Human Rights ban on the collective expulsion of aliens.

Following publication of this emergency decree during the week of October 29-November 2, it became apparent that, as used by the municipalities of Rome, Milan and elsewhere, this decree is entirely or predominantly anti-Romani in character; whole Romani settlements have been dismantled, and Romani-looking persons throughout Italy have been subjected to rigorous document checks - apparently for the purposes of determining whether they should be expelled from Italy. Racial profiling of this kind violates a number of norms of Italian domestic and European law. In recent days, there has however been no apparent effort by Italian authorities to apply relevant anti-discrimination law provisions against Italian police actively searching for "Gypsies to expel". As of 29 November 2007, reportedly more than 250 Romanian citizens had been expelled from Italy, and at least five Romani settlements had been summarily knocked to the ground by Italian authorities, forcibly evicting the inhabitants.

The response from the European level has been inadequate in the extreme. On 3 November 2007, Commissioner for Justice and Civil Liberties Mr. Franco Frattini, himself of Italian origin and with high-level links to Italian party politics, purportedly stated: "What has to be done is simple. Go into a nomad camp in Rome for example, and ask them: 'Can you tell me where you live?' If they say they do not know, take them and send them home to Romania. That is how the European directive works. It is simple and safe. Romania cannot say they will not take them back, because it is an obligation that is part of being a member state of the EU." He also reportedly urged Italy to pull down the camps to prevent any Romanians from returning. Mr. Frattini's statements came less than two weeks after Council of Europe Commissioner for Human Rights Thomas Hammarberg noted, "It is regrettable that the actions of many public authorities ... have been to acquiesce in this intensification of anti-Romani hatred" and urged that "European legal standards on anti-discrimination law should be rigorously enforced to ensure an end to arbitrary treatment based on racial animus against Roma."

³⁹ See Cahn, Claude, "Racial Preference, Racial Exclusion: Administrative Efforts to Enforce the Separation of Roma and Non-Roma in Europe through Migration Controls", *European Journal of Migration and Law*, 5 (4): 479-490.