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The Many Vulnerabilities of the Roma and the European Legal Framework

TAWHIDA AHMED

I. INTRODUCTION

THIS CHAPTER PROVIDES a brief overview analysis of the protection amongst European institutions of one of Europe's most vulnerable minority groups—the Roma community.¹ The rights of Roma found their way onto European agendas on the premise that peace and security in Europe² was in jeopardy, with the growing discrimination against Roma and the position of Roma in Europe as an impoverished minority group.

The chapter argues that Roma face challenges in European states both in terms of protection of their identity as a minority group and in terms of their social exclusion from society, which results from their position as a vulnerable minority group. Overcoming these challenges requires support for the protection of Roma minority identity, as well as the securing of the economic, social and political development of the group. There is required, therefore, a holistic approach to overcoming the vulnerabilities that Roma face in Europe, both in terms of protection of minority rights and protection from social exclusion.

¹ See generally on Roma in Europe: Yana Kavrova, 'The Roma Issue in the European Multilevel System: Ideas, Interests and Institutions behind the Failure of Inclusion Policies' (2011) 10 *European Yearbook of Minority Issues* 359–80; European Commission, 'The Situation of Roma in an Enlarged Europe' (Luxembourg, European Commission, 2004); G Toggenburg and K McLaughlin, 'The European Union and Minorities in 2011' (2011) 10 *European Yearbook of Minority Issues* 503–21; A Xanthaki, 'Protection of a Specific Minority: the Case of Roma/Gypsies', in P Thornberry and Martin Amor Estebanez (eds), *Minority Rights in Europe* (Strasbourg, Council of Europe, 2004), 169–194; K Henrard 'The Council of Europe and the Rescue of Roma as a Paradigmatic Case of Failed Integration? Abstract Principles versus Protection in Concreto' (2011) 10 *European Yearbook of Minority Issues* 271–316; Mark Dawson and Elise Muir, 'Individual, Institutional and Collective Vigilance in Protecting Fundamental Rights in the EU: Lessons from the Roma' (2011) 48 *Common Market Law Review* 751–75; Helen O'Nions, *Minority Rights Protection in International Law: The Roma of Europe* (Aldershot, Ashgate, 2007); Robert Dunbar, *Comparative Study of the Working Methods and Conclusions of the Committee of Experts of the European Charter for Regional or Minority Languages and the Advisory Committee of the Framework Convention for the Protection of National Minorities* (Strasbourg, Council of Europe, 2005).

² Kavrova (n 1 above) 361–63.

This chapter first sets out the position of Roma in Europe and the multi-faceted vulnerabilities of the group, and identifies the human rights frameworks of action necessary to address these concerns (section I). The chapter then analyses the extent to which the Council of Europe (CoE) and the European Union (EU) address these frameworks, in terms of identity preservation (section II) and social exclusion (section III).

II. WHO ARE THE ROMA? AND IN WHAT WAYS ARE THEY 'VULNERABLE' IN EUROPE?

This chapter adopts the term 'Roma' (meaning 'men' in the Romani language)³ as an umbrella for what is in fact a variety of groups with a multiplicity of identities. The Roma have an intriguing (and, still to some extent, unearthed) history. Roma are present not only in Europe, but also in the United States of America, Australia and the countries of Latin America and Asia. They are thought to have migrated to Europe from northern India⁴ between the ninth and fourteenth centuries. There are up to 12 million Roma in Europe.⁵ Roma are present all over Europe, but the majority are found in Central and Eastern Europe and the Balkans.

There is much by way of stereotyped perceptions of who members of the Roma group are and what their traditional lifestyles entail, which makes them part of a minority group that differs from majority populations in European countries.⁶ In reality, however, very little can be said about Roma culture with any certainty, partly due to inadequate information on Roma culture, and partly also because Roma are not a singular group with a singular culture. In cultural terms, Roma can be typically presented as both nomadic⁷ (usually in Western Europe)

³ Singular 'Rom'. On terminology, see GD Kwiek, 'Afterword: Rom, Roma, Romani, Kale, Gypsies, Travellers, and Sinti ... Pick a name and stick with it, already!', in D Le Bas and T Acton (eds), *All Change! Romani Studies through Romani eyes* (Hatfield, University of Hertfordshire Press, 2010) 79–83; Roma Center for Social Intervention and Studies from Romania, 'Roma and the Council of Europe's Framework Convention for the Protection of National Minorities', www.romanicriss.org/Roma%20and%20the%20Framework%20Convention%20for%20the%20Protection%20of%20National%20Minorities%20ENG.pdf, 9; Yaron Matras, 'Scholarship and the Politics of Roma Identity: Strategic and Conceptual Issues' (2011) 10 *European Yearbook of Minority Issues* 211–47.

⁴ As illustrated by the links found between the language of the Roma (Romani) and the Sanskrit script of other Indian languages. See the Patrin Web Journal 'A Brief History of the Roma', www.reocities.com/Paris/5121/history.htm.

⁵ European Commission, 'EU and Roma', http://ec.europa.eu/justice/discrimination/roma/index_en.htm; Council of Europe Special Representative of the Secretary General of the Council of Europe for Roma Issues, 'Estimates and Official Numbers of Roma in Europe' http://hub.coe.int/c/document_library/get_file?uuid=3f6c4a82-0ca7-4b80-93c1-ef14f56fdf8&groupId=10227.

⁶ See a critical analysis of the ECtHR's 'stereotyped' jurisprudence on this: Doris Farget, 'Defining Roma Identity in the European Court of Human Rights' (2012) *International Journal on Minority and Group Rights* 291–316.

⁷ Travelling communities.

and sedentary (more common in Central and Eastern Europe);⁸ as having tight family and community bonds; using a traditional language;⁹ undertaking traditional activities and occupations such as metalwork or woodwork; and practising traditional music, dancing and folklore. In one Council of Europe report of a roundtable discussion, the fact that such perceptions of Roma are stereotypes is confronted.¹⁰ The roundtable discussed issues such as inadequate knowledge of Roma culture, as well as the false assumption that Roma culture is singular. Moreover, it raised the issue of whether, for the purposes of identifying Roma as a minority group, characteristics currently attributed to Roma reflect the traditional culture of Roma? The question is important because it is difficult to identify which of the characteristics of Roma lifestyle is part of their cultural heritage and which have developed over time in Europe, as a means of necessity. For example, the idea that nomadism is a firm part of Roma cultural lifestyle is challengeable when we take into account that Roma have historically used travelling in Europe as a means of economic and physical survival and as an escape from political oppression—implying therefore that this is not a traditional cultural trait per se. Relatedly, is it part of Roma cultural identity to prefer to live in travelling sites, or has this equally developed as an adaptation response to the discriminatory and poverty-stricken conditions Roma faced in Europe? Whilst some commentators challenge the certainty of these characteristics as traditional to Roma, there are others who argue that, irrespective of the root of the tradition, Roma culture can now legitimately be described as encompassing these traits, as it is a culture of survival and adjustment.¹¹

Given the lack of clarity over what is or is not Roma culture, this chapter favours a default position of self-identification, and one of plurality. Thus, the question of what Roma culture is, is ultimately one that can only be defined by members of the Roma community themselves. It is also something which is likely to differ from country to country and within different Roma groupings themselves. However, whatever the precise nature of Roma cultural traits—which is for members of the Roma themselves to agree upon—it can be broadly agreed that there are differences between the Roma and the majority populations in European states in respect of cultural traditions,¹² language and ethnicity, and also the desire that Roma indicate in preserving their unique identity, and these differences make the Roma a ‘minority’ group within Europe.¹³ The Roma are a ‘minority’

⁸ Roma are presented as both nomadic and sedentary groups in the ECtHR’s jurisprudence: see *Farget* (n 6 above) 302.

⁹ Many Roma still speak Romani, eg Vlach Roma in Romania and Hungary.

¹⁰ Alexander Raykova ‘Report of the Seminar Cultural Identities of Roma, Gypsies, Travellers, and Related Groups in Europe’, 15–16 September 2003, www.coe.int/T/DG3/RomaTravellers/archive/documentation/culture/repseminaronCulturalIdentities_en.asp, accessed on 28/5/2014.

¹¹ *ibid.*

¹² Such as solidarity, respect, purity and honour: *ibid.*

¹³ A minority is defined as ‘a group numerically inferior to the rest of a population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly,

in whichever European country they reside in.¹⁴ The Roma are not a 'majority' in any European state, and have no European kin state.

Despite a long presence in Europe, Roma have failed to integrate or find acceptance in European society. They suffer misunderstanding, discrimination, rejection and even persecution. Roma are a vulnerable minority group in Europe in several ways. One aspect of vulnerability for Roma as a minority group is the inadequate framework in European states for respect for the preservation of their minority identity. The traditional languages, travelling nature and lifestyles of Roma are not supported by the law and policy of European states. For instance, the teaching of Roma languages, provision for alternative schooling arrangements for children of travelling Roma families, access to caravan sites, and the general celebration of Roma cultural identity are not found in strong measure in European states. Instead, situations in European countries have contributed to breaking down Roma cultural identity. Indeed membership of the Roma minority has been a positive cause for discrimination. Many Roma do not declare their identity as Roma,¹⁵ and Romani is not taught adequately in schools, nor is it a language of instruction.¹⁶ France, Italy and other countries have expelled Roma from travelling sites without providing alternative sites, thus presenting obstacles to the travelling lifestyle of Roma.¹⁷ Amnesty reports that French politicians have been expressly negative about Roma identity:

Some French politicians have said Roma live a 'peculiar lifestyle' and are 'unwilling to integrate'. In September 2013, in an interview with Radio France International, Manuel Valls, the Minister of Interior said: 'Those people [Roma migrants] have lifestyles that are extremely different from ours. For this reason, they should return to Romania or Bulgaria.'¹⁸

a sense of solidarity, directed towards preserving their culture, traditions, religion or language': F Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (Geneva, UN, 1991). See also J Deschenes, *Proposal Concerning a Definition of the Term 'Minority'* (1985) UN Doc E/CN4/Sub2/1985/31).

¹⁴ They are resident in most European countries—see Council of Europe, Special Representative of the Secretary General of the Council of Europe for Roma Issues, 'Estimates and Official Numbers of Roma in Europe' http://hub.coe.int/c/document_library/get_file?uuid=3f6c4a82-0ca7-4b80-93c1-ef14f56fdf8&groupId=10227.

¹⁵ ERRC, Written Comments of the European Roma Rights Centre, PRAXIS and Other Partner Organisations, Concerning Serbia, for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (28 April to 23 May 2014), www.errc.org/cms/upload/file/serbia-cescr-20-march-2014.pdf.

¹⁶ See eg Sigrid Lipott, 'The Roma as Protected Minority? Policies and Best Practices in the EU' (2012) 12(4) *Romanian Journal of European Affairs* 78, 87.

¹⁷ See eg ERRC, 'Written Comments by the European Roma Rights Centre, Concerning Italy, to the Human Rights Council, within its Universal Periodic Review, for consideration at the 20th session (27 October to 7 November 2014)', www.errc.org/cms/upload/file/italy-un-upr-submission-20-march-2014.pdf; ERRC, 'On the Eve of the EU Roma Summit, Respect for the Human Rights of Roma is an unfulfilled Promise', www.errc.org/article/on-the-eve-of-the-eu-roma-summit-respect-for-the-human-rights-of-roma-is-an-unfulfilled-promise/4265; Rob Kushen 'Scapegoating will not solve 'Roma Problem'', *The Guardian* www.theguardian.com/commentisfree/libertycentral/2010/aug/03/scapegoating-roma-problem-europe.

¹⁸ Amnesty International, 'France; They said they would have killed us if we stayed', 8 April 2014, www.amnesty.org/en/news/france-they-said-they-would-have-killed-us-if-we-stayed-2014-04-08.

Another aspect of vulnerability is that Roma are an impoverished minority group, and in general this has resulted in their social exclusion from the societies in which they live. As a socially excluded group, Roma are marginalised from the rights, opportunities and resources that are available in society. These rights include, but are not limited to economic, social and political participation in society. Each of these will now be discussed in turn. Each has a preservation of minority identity component, in that economic, social and political participation in society can either further or must take into account Roma identity.

Roma are one of the most economically deprived groups in Europe. For Roma as a vulnerable minority group in Europe, there are two concerns with respect to employment: one concern is access to traditional Roma employment for those Roma who still desire it, and the other concern is access to (mainstream) employment. Some Roma engage in, or wish to engage in traditional employment. These traditional occupations allow Roma to travel freely. Examples of this are horse trading, metalwork, brick-making, wood carving and other crafts, door-to-door selling, involvement in arts, music, dance and fortune telling, seasonal labour, fairground operators and other small-scale trading. However, securing employment in traditional fields is not easy, due to the demise and relevance of these occupations in the modern world and the insufficient income that they are likely to, in any case, produce. Consequently, access for Roma to the mainstream labour market is vital to overcoming their economic vulnerability.

However, Roma face ongoing obstacles to accessing mainstream employment because of discrimination from majority populations and also because state policies and actions are poorly designed to encourage and guarantee Roma employment. In addition, problems in accessing mainstream employment result not only from the attitudes of the majority population and weak government practices: Roma also display reluctance to engage in mainstream employment. This may be due to self-protection tendencies aimed at preserving the identity of the group, or reluctance amongst Roma to integrate into mainstream society.

Roma also face concerns regarding their access to other social rights in society. In this context, issues concern adequate access to housing, health care and education, amongst others. The concerns encompass access to these goods within a mainstream structure, but issues also arise as to how to combine access to these goods with identity preservation. For instance, this may include the teaching of Roma languages, history and culture, within mainstream education systems.

Finally, Roma lack political empowerment in Europe—and this is important in terms of the capacity of the Roma to improve their situation in European states. Not only are Roma underrepresented in the political systems of the states in which they live, public authorities neglect Roma concerns at best, and actively persecute Roma at worst. The active participation of Roma is needed to address these concerns.

Policies and laws aimed at improving the situation of Roma will no doubt fall without the active participation of Roma in the identification and elaboration of programs and

projects, and ultimately, their implementation. This means that ... Roma must enjoy some form of effective participation in political decision making processes.¹⁹

From the discussion undertaken in this section, it can be seen that the Roma are a vulnerable minority group in many ways, without the conditions in Europe necessary for the support of their traditional lifestyles. However, the vulnerabilities of Roma go beyond the framework of preserving their traditional lifestyles, and are intertwined with their general social exclusion from society, including adequate participation in the economic, social and political life of European states.

Addressing these forms of vulnerabilities requires a minority rights and human rights framework to be adopted towards the Roma, enabling policies to focus on the preservation of Roma identity, as well as on increasing the presence of Roma in economic, social and political European society.

Gergely identifies the dual fundamental rights and minority rights concerns of the Roma:

More than any other group, Roma face immediate and pressing problems of systematic exclusion from the societies in which they live, including discrimination in access to education, employment, health care and goods and services, for which legal redress is rarely forthcoming. Yet Roma are targeted in part because they form a separate community—a community which has been historically marginalized and prevented from developing according to its own interests.²⁰

And Mirga and Gheorghe identify that dealing with this is not only a question for the majority society and the public authorities. The Roma themselves have decisions to make and a role to play in determining the course of their future:

The desire of the Roma to maintain their identity and to be different is a basic human right. The problem, however, is how to maintain a traditional identity and culture while facing the challenges of modernity ... The Roma face the basic dilemma of either maintaining traditional differences, which contribute to their different and unequal treatment, or accepting the need for change and modernization, which may help them gain equality but may also alter their identity.²¹

There are thus compromises to be made in addressing Roma concerns in Europe, and these compromises require a balance to be struck between the goals of human rights protection for Roma and integration (including, but not limited to economic, social and political participation in society), and support for the preservation of Roma identity. The next sections examine the role of European international institutions—namely the Council of Europe and the

¹⁹ OSCE High Commissioner on National Minorities, Report on the Situation of Roma and Sinti (2000), p 128.

²⁰ Roma Center for Social Intervention and Studies from Romania, 'Roma and the Council of Europe's Framework Convention for the Protection of National Minorities', www.romanicriss.org/Roma%20and%20the%20Framework%20Convention%20for%20the%20Protection%20of%20National%20Minorities%20ENG.pdf, p 7.

²¹ A Mirga and N Gheorghe, 'The Roma in the Twenty-First Century: A Policy Paper', Project on Ethnic Relations, www.per-usa.org/1997-2007/21st_c.htm, p 23.

European Union—in achieving these goals. Section II begins with examining the preservation of Roma identity and section III analyses social inclusion strategies.

III. THE PRESERVATION OF ROMA IDENTITY

A. The Council of Europe

The Council of Europe's primary vehicle for human rights protection is the European Convention on Human Rights (ECHR). The Convention does not, however, contain a provision on minority identity protection. It has therefore been unable to adequately or explicitly secure minority identity preservation (although there is some related case law, discussed below). Nonetheless, as an expression of the importance that the Council of Europe gives to minority identity protection, in 1995 it adopted the Framework Convention for the Protection of National Minorities (FCNM).²²

The Advisory Committee to the FCNM firmly extends the scope of the FCNM to Roma by actively addressing Roma issues within its jurisdiction,²³ and many states willingly accept Roma as falling within the minorities protected by the instrument.²⁴ The FCNM has a number of provisions explicitly concerning the preservation of identity and the Advisory Committee to the FCNM has also placed pressure on states to ensure that due regard is given to the wishes of Roma to maintain their cultural identity. Under Article 3, members of national minority groups are permitted the right to freely choose to be treated or not to be treated as such and under Article 5 states are required to undertake to promote the conditions necessary for the maintenance and development of cultural identity, and to avoid measures of assimilation against the will of the minority. Other provisions pertain to, for instance, freedom of religion (Article 8); language preservation (Articles 9, 10, 11, 14); minority education institutions (Article 13).

The Advisory Committee also addresses explicitly the issue of identity preservation of Roma. For instance, in its Opinion on Romania's first State Report, it asks Romania to 'emphasise the cultural identity of the Roma, particularly in the

²² Generally on the FCNM, see Charlotte Altenhoener, 'Review of the Monitoring Process of the Council of Europe Framework Convention for the Protection of National Minorities' (2011) 10 *European Yearbook of Minority Issues* 461–68.

²³ See for example, Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, Strasbourg, 2 March 2006, ACFC/25DOC(2006)002; Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, Adopted on 27 February 2008, ACFC/31DOC(2008)001, Strasbourg 5 May 2008. See also Roma Center for Social Intervention and Studies from Romania (n 20 above).

²⁴ Eg, UK, Hungary, Czech, Slovakia, Moldova. See Roma Center for Social Intervention and Studies from Romania (n 20 above).

educational field, and support their traditional crafts²⁵ and asks the government to devise new initiatives for the promotion of inter-cultural dialogue (paragraph 33). The Committee praises a law which permits use of a minority language in dealings with local authorities in areas where more than 20 per cent of the population constitute a minority group (paragraph 49) but notes that there is no provision in the education system for instruction in Romani, despite the size of the Roma population in Romania (paragraph 63). In its Opinion on Italy's first State Report,²⁶ the Advisory Committee raises concerns about the shortcomings of the existing statutory provisions in Italy for safeguarding the identity and culture of Roma²⁷ and takes particular care to ensure that Roma ought to come within the confines of the FCNM, despite having no association with a given territory in Italy (paragraph 16). It highlights the lack of broadcasting in Romani (paragraph 47) and the need to accentuate the language and culture of Roma in the education system (paragraph 55).²⁸

The importance of discussing explicitly the need for identity preservation should not be underestimated. The Opinions of the Advisory Committee are supported by the mechanism of state visits that the Committee undertakes when drafting its Opinion. Dunbar notes that the Advisory Committee has been particularly proactive in its role.²⁹ However, at the same time, the FCNM lacks a strong judicial enforcement mechanism to place any real pressure on states.

The European Charter for the Protection of Regional and Minority Languages (ECRML) is another relevant instrument falling within the bracket of 'specific identity preservation' tools. Examples of relevant provisions of the Charter concern the promotion of the use, maintenance and development of minority languages (Article 7), eg through use of the language in education (Article 8), before the judiciary (Article 9), before public authorities and in other public services (Article 10) and the creation or functioning of media outlets in the language (Article 11), as well as facilitating the language in cultural activities and facilities, such as libraries (Article 13), and not limiting the use of the language in economic and social life (Article 13) and finally to promoting the language in transfrontier exchanges (Article 14).

The Romani language falls within the parameters of the Charter, as it is a language which has been spoken over a long period of time in European states,³⁰ but having no territorial base, only some parts of the Charter (not connected to

²⁵ Advisory Committee Opinion on Romania, Adopted on 6 April 2001, para 31.

²⁶ Advisory Committee Opinion on Italy, Adopted on 14 September 2001.

²⁷ Executive summary, p 2.

²⁸ See further on comments made by the Advisory Committee: Roma Center for Social Intervention and Studies from Romania (n 20 above).

²⁹ Robert Dunbar, *Comparative Study of the Working Methods and Conclusions of the Committee of Experts of the European Charter for Regional or Minority Languages and the Advisory Committee of the Framework Convention for the Protection of National Minorities* (Strasbourg, Council of Europe, 2005).

³⁰ It thus corresponds to the explanations given to the Charter, Explanations to the Charter, para 31.

a territorial base) will be relevant to it.³¹ On top of this, it is not clear what the content of the protection for the Romani language will be, because although states parties are bound by Part II of the Charter, they select which of the obligations in Part III they wish to commit to. Romania for example applies Part II obligations only to Romani.³² Dunbar highlights the shortcomings of the ECRML in this respect, where the focus of Part II measures has been the elimination of discrimination, and not the preservation of a language per se³³ and moreover, the protection of Roma extended only to those Roma who spoke a language protected by Part II of the Charter.³⁴

Thus, measures aimed at preserving languages are the focal point of the Charter, and hence it is a targeted instrument for identity preservation for Roma. Examples of this focus in the Romania report include the Committee noting the existence of the National Centre for the Culture of the Roma, which has a central objective of preserving and promoting the Roma culture and language (paragraph 46); noting the use of Romani language in administration and the police (paragraph 58) and in education (paragraph 77) and requests that Romania provides further information on how they promote Romani in economic and social life, and to what extent Romani can be used before judicial authorities. All of these points are identity preservation points.³⁵

Outside of the system of the FCNM and ECRML, the Council of Europe undertakes little in terms of activities specifically targeting Roma identity preservation. The case of *Munoz Dias* does directly concern the preservation of an aspect of Roma identity. In *Munoz Diaz v Spain*³⁶ the Court held that not granting a survivor's pension to the spouse of a Roma man, where their marriage was valid within their own traditions (although there was no marriage according to Spanish law) was a breach of Article 14 ECHR together with Article 1 of Protocol 1 concerning the right to possession. This case relates to identity preservation in that it recognises a particular aspect of Roma identity—marriage according to Roma cultural traditions.

Aside from this, a greater proportion of CoE jurisprudence and activities is actually geared towards the social inclusion of Roma and thus will be addressed in section III below.

³¹ Explanations to the Charter, paras 36–37.

³² Application of the Charter in Romania, 1st Monitoring Cycle, Report of the Committee of Experts on the Charter, 19 June 2012, ECRML (2012) 3, para 7.

³³ See for eg in relation to Hungary, Dunbar, *Comparative Study* (n 29 above), 27.

³⁴ Dunbar quotes that this was the case for only 30 per cent of the Roma community in Hungary: Dunbar, *Comparative Study* (n 29 above), 28.

³⁵ For more detailed analysis of the ECRML and the Romani language, see Vesna Crnic-Grotic, 'Developments in the Field of the European Charter for Regional or Minority Languages in 2011' (2011) 10 *European Yearbook of Minority Issues* 469–85.

³⁶ *Munoz Diaz v Spain* (1982) Series A no 44, 4 EHRR 34.

B. The European Union

Preservation of minority identity in the EU is, by comparison with the CoE, more limited. The EU is the more disadvantaged institution because it has no minority identity protection instrument and no power which provides it with the competence to act in the field.

The most significant provision relating to minority protection in the EU is Article 2 TEU. According to this provision, the EU is declared to be founded on 'respect for ... the rights of persons belonging to minorities.' Although this is not a competence provision, it acknowledges the fundamental and distinguished role of minority protection in EU identity, according to it the status of a founding value. A breach of Article 2 values by EU member states may lead to the potential investigation of an EU member state's actions under Article 7 TEU and may, *inter alia*, lead to the suspension of that state from the Union (in reality, Article 7 TEU will rarely be invoked). Article 2 TEU is also supported by new Article 49 TEU, which for the first time moves the achievement of minority protection as a condition of accession to the EU from a political to a legal obligation. Thus, Article 2 TEU, with its supporting provisions, arguably demonstrates the explicit importance given to minority protection as a key aspect of the EU project. Nonetheless, as a declaration of a value, it does not provide the EU with the authority to act for the preservation of Roma identity.

A limited form of competence is found in the field of EU cultural diversity. Article 166 TEU enables the EU to support and supplement the actions of the member states in the field of education, whilst respecting their cultural and linguistic diversity. Article 167 TEU enables the EU to contribute to the flowering of the cultures of the member states. Article 22 EUCFR also proclaims that 'The Union shall respect cultural, religious and linguistic diversity'. The competences within the Treaty provide the basis for the EU's funding programmes which supported cultural and linguistic diversity in the EU, including Culture 2000 and Culture 2007–13,³⁷ and an Intercultural Dialogue since 2007,³⁸ which are programmes which fund projects on the ground of promoting cultural diversity and cultural dialogue in the EU. These schemes have conducted some activities which can contribute to the preservation of Roma identity. For instance, the Khamoro Festival is an annual week-long festival in Prague which celebrates Roma culture;³⁹ another project sought to revive the interest of young Roma in

³⁷ European Parliament and Council (2000) Decision 508/2000/EC 00 establishing the Culture 2000 programme, [2000] OJ L63/1; European Parliament and Council (2008) Decision 1352/2008/EC amending Decision 1855/2006/EC establishing the Culture Programme (2007 to 2013) [2008] OJ L348/128.

³⁸ European Commission, 'Creative Europe', http://ec.europa.eu/culture/policy/strategic-framework/intercultural-dialogue_en.htm. Promotion of intercultural dialogue is also a key priority of the European agenda on culture (COM (2007) 242).

³⁹ See further www.khamoro.cz; European Commission, *EU Projects in Favour of the Roma Community*, Exhibition Catalogue (Brussels, European Commission, 2010) 20.

their own traditions and cultures;⁴⁰ and RomFashion trained Romani women to design, sew and market traditional Roma clothing.⁴¹ In recent years, the EU has developed a European Summit and Roma platform for addressing the EU-wide hardship Roma face, with a focus on Roma inclusion and integration.⁴² However, in this section of the chapter, it is important to note that the Platform is not intended to focus on issues of preservation of Roma identity.

IV. SOCIAL EXCLUSION OF ROMA

A. The Council of Europe

The ECHR does not include provisions relating to rights to economic participation in society. Its European Social Charter 1961 (ESC), which was revised in 1996, however, concerns, amongst others, employment rights in Europe, in the majority of provisions from Articles 1 to 31. It also harbours a general provision on non-discrimination on grounds of, inter alia, race, colour, national extraction or social origin, and association with a national minority.⁴³ Whilst the ECHR does not mention employment explicitly, the ESC provides quite detailed employment rights such as the right to work (Article 1); just conditions of work (Article 2); safe and healthy work conditions (Article 3); fair remuneration (Article 4); vocational training (Article 10); social security (Article 12); and rights relating to migrant workers (Articles 18 and 19).

The ESC also provides social rights, such as the right to health, social security, social and medical assistance, social welfare services, the social legal and economic protection of the family and children and young persons, protection against poverty and social exclusion, and housing.⁴⁴ Adding to this, the ECHR provides protection for the private, home and family life of individuals (Article 8 ECHR) and Article 3 prohibits inhumane and degrading treatment. Political rights are covered both by the ECHR (Article 10 on freedom of expression, Article 11 on freedom of association and assembly) and its Protocol 3, Article 1 on the right to vote.

Between the provisions of the ECHR, ESC and Protocol 3, the CoE therefore covers the rights to economic, social and political participation in society. With respect to the Roma, it has been most active in the field of social participation and this has taken place mainly through the ESC, with limited coverage through the ECHR. The ESC, which operates a collective complaints mechanism, has enabled activist groups to bring several complaints on behalf of Roma. The ESC has taken

⁴⁰ 'Cultural Heritage from People to a United Europe', in *ibid* 26–27.

⁴¹ In *ibid* 34.

⁴² Started in 2008: European Commission, 'Roma Summits', http://ec.europa.eu/justice/discrimination/roma/roma-summits/index_en.htm and European Commission, 'Roma Platform', http://ec.europa.eu/justice/discrimination/roma/roma-platform/index_en.htm.

⁴³ Art E.

⁴⁴ Arts 11–17; 30–31.

a favourable approach to Roma, finding violations of the ESC in almost all cases, concerning issues such as expulsion of Roma from France, inadequacy of Roma traveller sites, unacceptable living conditions on these sites, inadequate access to housing and other social benefits, inadequate access to education for Roma children and access to healthcare, and use of racist propaganda which contributes to the social exclusion of Roma.⁴⁵

Despite these successes, the ESC does not have access to the strong judicial enforcement mechanism of the ECHR. Nonetheless, there have been some cases under the ECHR which have helped Roma by requiring that the implementation of ECHR rights take into account the vulnerability of Roma as a minority group in Europe. In *Connors*, the ECtHR held that in enforcing policies on the use of travelling sites, the state must take into account the needs and different lifestyles of Roma as a minority group.⁴⁶ In addition, deplorable living conditions that Roma were forced to endure following the burning of their villages, was held to amount to degrading treatment.⁴⁷ In *Nachova v Bulgaria*, the Court held that allegations of discrimination by the police needed to be investigated where the Roma are concerned.⁴⁸ In *DH and Others v Czech Republic*, the Court recognised indirect discrimination as a concept and applied this to Roma children who were automatically placed in schools for low achievers.⁴⁹ The Court found that the number of Roma in these schools raised a concern of indirect discrimination. The *Orsus* case⁵⁰ built on this, when it held that Roma children who had been placed in Roma-only classes had been discriminated against, because the state failed to take into account the background of the children as Roma. In this regard, the state was at fault in not providing language support, and in relying on parents' consent to separate classrooms, where Roma parents are generally unable to weigh up all the relevant factors before giving their consent. The same concern was also applied in *Mizigarova*⁵¹ to criticise the permanent sterilisation of a Roma women who was in labour—the Court took into account that there are shortcomings in

⁴⁵ Complaint No 64/2011 *European and Travellers Forum v France*, Decision on merits 24/1/2012; Complaint No 62/2010 *International Federation of Human Rights (FIDH) v Belgium*, Decision on Merits 21/3/2012; Complaint No 67/2011 *Medecins du Monde-International v France*, Decision on Merits 11/9/2012; Complaint No 46/2007 *ERRC v Bulgaria*, Decision on Merits 3/12/2008; Complaint No 58/2009 *Centre for Housing Rights and Evictions (COHRE) v Croatia*, Decision on Merits 25/6/2010; Complaint No 63/2010 *European Council of Police Trade Unions (ESP) v COHRE (Portugal)*, Decision on Merits 28/6/2011; Complaint No 61/2010 *ERRC v Portugal*, Decision on Merits 23/4/2010.

⁴⁶ *Connors v United Kingdom* (2005) 40 EHRR 189. For analysis, see Farget (n 6 above).

⁴⁷ *Moldovan et al and others v Romania* (2005) 44 EHRR 16.

⁴⁸ *Nachova and Others v Bulgaria* (2006) 42 EHRR 43. See also *Cobzaru v Romania* (2005) 47 EHRR 10. In *Nachova* and *Cobzaru*, previous incidents indicating anti-Roma attitudes by state officials were sufficient to trigger this investigation duty. However, in subsequent cases, the Court narrowed its protection by requiring that incidents related to the specific case at hand, *Soare et al and others v Romania* App no 24329/02 (ECtHR, 22 February 2011); *Carabulea v Romania* App no 45661/99 (ECtHR, 13 July 2010); *Mizigarova v Slovakia* App no 74832/01 (ECtHR, 14 December 2010).

⁴⁹ *DH and Others v Czech Republic* (2008) 47 EHRR 3.

⁵⁰ *Oršuš and Others v Croatia* (2011) 52 EHRR 7, ECtHR (Grand Chamber).

⁵¹ *Mizigarova v Slovakia* App no 74832/01 (ECtHR, 14 December 2010).

relation to sterilisation legislation and that Roma as a vulnerable group are liable to be particularly affected.⁵² In *Aksu v Turkey*, the Court recognises negative stereotyping as a human rights issue (although ultimately finding no breach of the ECHR).⁵³

A final strand of the CoE contribution to tackling the social exclusion of Roma—adding to ESC and ECHR jurisprudence—is the CoE’s activities. The Committee of Experts on Roma and Travellers was appointed in 1995 as the first CoE body to review the situation of Roma in Europe and to assist the CoE member states in this respect. There is also a Special Representative of the Secretary General for Roma issues, which was created in 2011. Through these and other mechanisms, the CoE, inter alia, celebrates international Roma day (8 April); runs the ROMED programme, which trains Roma to act as mediators between the Roma and public authorities); holds an international Roma Women’s day conference; and runs ROMACT which helps governments—through peer learning, guidance, coaching and mentoring—to develop policies towards Roma inclusion.

With respect to political participation, the CoE has had less of an impact than it has in respect of economic and social participation, although it has also been active in this field. In particular, it supports organisations which seek to promote or represent Roma. This includes the European Roma and Travellers Forum (ERTF) which was set up in 2004 and brings together national Roma federations and international Roma organisations to promote Roma rights and monitor respect for them; the Forum for European Roma Young People (Feryp) which is an international NGO supporting the representation of Roma young people; and the International Roma Women’s Network (IRWN), set up in 2003 to tackle specific concerns of Roma women.⁵⁴ The CoE has been less involved in adjudicating on Roma political rights. The ECtHR has adjudicated one case relating to the political rights of Roma. In this case, the Roma applicant successfully contested a rule in Bosnia and Herzegovina which only entitled ethnic Bosniaks, Serbs and Croats to be elected members of the Presidency and House of Peoples of Bosnia and Herzegovina.⁵⁵ Finally, the FCNM has issued a commentary on political participation of minorities.⁵⁶

⁵² For further discussion of many of these cases, see Bill Bowring, ‘Protecting Minority Rights through an Individual Rights Mechanism: The Strasbourg Court and some Significant Developments to June 2012’, (2011) 9 *European Yearbook of Minority Issues* 437–60 and K Henrard, ‘The Council of Europe and the Rescue of Roma as a Paradigmatic Case of Failed Integration? Abstract Principles versus Protection in Concreto’ (2011) 10 *European Yearbook of Minority Issues* 271–316.

⁵³ *Aksu v Turkey* App nos 4149/04, 41029/04 (ECtHR, 15 March 2012).

⁵⁴ The Council of Europe: Protecting the rights of Roma, file:///G:/RESEARCH/EU%20Roma%20chapter/CoE/roms_en.pdf.

⁵⁵ *Sejdic and Finci v Bosnia and Herzegovina* (2009) ECHR 2122, ECtHR (Grand Chamber).

⁵⁶ Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic life and in Public Affairs, SCFC/31DOC(2008)001.

B. The European Union

Just as the CoE has prioritised economic participation through the ESC, the EU first and foremost also acts in the field of economic participation, given the internal market focus of the EU project. Under EU law, every EU citizen has the right to work in another EU member state without facing discrimination on grounds of nationality. This includes members of Roma who are EU citizens.⁵⁷ The EU strengthens this provision by requiring that such persons may also not be denied opportunities because of their race or ethnic origin (Race Directive)⁵⁸ or because of their membership of a national minority group (Article 21 EU Charter of Fundamental Rights (CFR)). Under the Race Directive, Roma may not be discriminated against in relation to conditions for access to employment, vocational training, employment and working conditions or membership of work-related organisations.⁵⁹ These legally binding sources of law provide a robust form of protection for Roma in seeking employment opportunities. The Race Directive and the CFR also apply to Roma who seek work within their own member states, and thus Roma need not move between EU member states in order to obtain these benefits.

The EU complements these provisions with strategies to promote the employment opportunities of Roma. Articles 145–50 TFEU govern the EU's activities in the promotion of employment. On the authority of these articles, the EU may, in various ways, support the member states in achieving high employment rates domestically and therefore across the EU. The legal basis (establishing a non-harmonising coordinating role for the EU) led to the development of the European Employment Strategy⁶⁰ and endorses a soft law mechanism that takes the best practices of the various member states and uses them as benchmarks in order to enhance the performance of all member states in reaching certain goals (the open method of coordination). This method does not impose legal obligations on member states.⁶¹ However, where Roma are concerned, it combines usefully with the EU's goals in the field of non-discrimination. In this regard, the EU has placed significant emphasis on the Roma. Evident of this is the dedicated programmes and funding for Roma, which is not the case with other vulnerable groups in Europe. The strategy consists of both policy guidance and funding for national bodies involved in increasing employment levels in their country.⁶²

⁵⁷ Art 45 TFEU; Directive 2004/38 EU Citizens Directive.

⁵⁸ Directive 2000/43/EC.

⁵⁹ Art 3 Race Directive.

⁶⁰ There are four features of the European Employment Strategy, as found in Art 128 ECT: 1) The employment guidelines outline a general set of objectives for all the member states. 2) National Action Plans are formulated for each member state. Funding is provided to assist in meeting those aims. 3) The Joint Employment Report of the EU and each member state is issued. 4) The Council may issue country-specific recommendations, as additional guidelines.

⁶¹ Lisbon European Council, 23/24 March 2000.

⁶² European Commission, Report on the Implementation of National Roma Integration Strategies, SWD (2014) 121 final p 5.

On the policy guidance side, in 2011, the European Commission adopted an EU Framework for National Roma Integration Strategies,⁶³ focusing on four key areas: education, employment, housing and healthcare. The policy requires member states to outline how each state intends to progress in the four areas up to 2020. National contact points have been set up in each country and the Commission oversees member states' strategies and overall progress in the key areas. In its 2014 report on the implementation of the strategy, the Commission assessed all four areas and provided its recommendations for further progress. In relation to employment, the Commission was quite critical, noting that the expected outcomes were not reached from the initiatives implemented to date and that there still lacked systematic national measures in place to tackle Roma employment difficulties.

As well as policy guidance, the European Commission provides financial assistance to the member states in order to enable them to accomplish the aims of EU employment policy. Examples include TRAVELCOM, which provided skills to Roma to enter the employment market; a project to promote the vocational training of Roma; Youngbusiness.net, which offers business support to young Roma; and Acceder, which links Roma jobseekers directly with employment service providers.⁶⁴

Due to the generally poor economic situation of minorities like the Roma, the possibilities within EU law for inclusion of Roma within the mainstream labour market are extremely important. Any EU action which offers Roma the chance of economic participation, contributes towards that right. The proviso is that, where Roma wish to preserve their identities, EU action on economic participation is conducted within a framework which allows for such. In this latter regard, the EU does not fare so well. Despite the regard it shows for minority protection in Article 2 TEU, it does very little to promote traditional Roma occupations in the field of employment.⁶⁵ Thus, Roma vulnerability in employment is addressed by the EU, but Roma vulnerabilities with regard to their identity preservation in employment is not.

Participation for Roma in the social life of society has also been emphasised within the EU's policies and activities. The EU's Race Directive requires that Roma are not discriminated against on grounds of race or ethnic origin, in relation to social protection, including social security and healthcare; social advantages; education; and access to and supply of goods and services which are available to the public, including housing.⁶⁶ In addition to the context of non-discrimination,

⁶³ COM (2011) 173 final [2011] OJ L76/68; followed by Council Recommendation of 9 December 2013 on effective Roma integration measures in the member states [2013] OJ C378/01.

⁶⁴ See European Commission, *EU Projects in Favour of the Roma Community* (n 39 above); and European Commission, Report on the Implementation of National Roma Integration Strategies, SWD (2014) 121 final.

⁶⁵ Nonetheless it has done so on ad-hoc occasions, such as a project teaching Roma women how to sew traditional Roma clothing. Above, n 32.

⁶⁶ Art 3 Race Directive.

the Treaty provides the EU with competence on social policy per se, including to combat social exclusion.⁶⁷ The EU's employment strategy is thus now complemented by the social inclusion strategy. Originally a feature of the European employment strategy, the latter strategy has developed in its own right. The areas of education, housing and healthcare feature within the Roma-specific strands of EU policy, namely within the European Commission's 2011 framework on Roma integration, noted earlier.⁶⁸ In 2014, the Commission reported that member states' initiatives on the ground had led to an improvement in access to early childhood education for Roma, but calls for education systems to be more inclusive and tailored to the needs of Roma, to tackle segregated schooling and reduce the number of Roma early school leavers.⁶⁹ The Commission highlights that very little progress has been made in the area of health,⁷⁰ and that housing interventions have often been the weakest area of member states' national integration strategies.⁷¹ Where discriminatory treatment is not being sufficiently reduced, the Commission has opined that this is due to lack of implementation of legislation and policy, rather than gaps in legislation.⁷² The Commission accordingly calls for better implementation.

In terms of improvement in the situation of the political participation of Roma in society, the EU, like the CoE, is again weakest in this field. EU law guarantees EU citizens political rights when they move to other member states.⁷³ However, what Roma require is political representation. There is no defined EU law and policy in this field, and just like the CoE, the EU has promoted this field to a minimum degree. It does however, recognise the need for the political mobility of Roma by acknowledging that effective impact of policies on Roma depends upon Roma involvement at all stages of the process.⁷⁴

V. CONCLUSION

This chapter has analysed the engagement of the European international legal framework with the position of Roma as a vulnerable minority group on the European territory. It has been seen that Roma face challenges both in terms of requiring minority-specific identity preservation, and also measures to tackle their economic, social and political exclusion from European society. In summary, although framing Roma as a 'minority group' in relevant documents and policies,

⁶⁷ Art 153(1)(j) TFEU.

⁶⁸ European Commission, *EU Projects in Favour of the Roma Community* (n 39 above).

⁶⁹ European Commission, Report on the implementation of the EU Framework for National Roma Integration Strategies COM (2014) 2009 final p 3.

⁷⁰ *ibid* p 6.

⁷¹ *ibid* p 8.

⁷² *ibid* p 9.

⁷³ Eg the right to vote and stand in elections, Arts 20 and 22 TFEU.

⁷⁴ European Commission (n 1 above), p 47.

both the CoE and the EU have sought to tackle the social exclusion of Roma within an inclusion, human rights or discrimination framework, rather than a preservation of identity framework. Policies or activities relating to the preservation of identity have been established, but these have not been the predominant focus of these European organisations.

As a result, neither of the European organisations analysed here have adequate frameworks for the protection of Roma identity. The CoE is the most developed in standard-setting, through the FCNM and the ECRML. Both of the monitoring mechanisms of these instruments have addressed Roma identity, although these mechanisms remain generally weak forms of enforcement. The EU fares less well in standard-setting, but has been more active in project funding relating to the celebration and promotion of Roma cultural identity. It may therefore be viewed as complementing the standard-setting activities of the CoE. However, even if one takes the activities of these two organisations together, the European framework for identity preservation for Roma is inadequate. Both organisations are more active in attempts to integrate the Roma into society, by tackling social exclusion. This was the focus of section III.

Section III indicated that activities for ‘inclusion’ of Roma are more numerous in the CoE and the EU than activities for Roma identity preservation. Both the CoE and the EU focus first and foremost on the field of economic integration of Roma. Much activity has been conducted, and reports drafted on the employability of Roma. In addition, both organisations have been vocal in condemning, and attempting to cater for, the exclusion of Roma in education, housing, and other social areas. In this regard, the CoE has generally provided better access to judicial enforcement mechanisms for many of these cases, through the European Court of Human Rights (ECHR) and the collective complaints mechanism of the European Social Charter. The EU has been less active in terms of adjudication, although it has legally binding rules which prohibit discrimination, most pertinently in the EU Race Directive. The area of protection with the least progress in terms of legislation, activity and progress on the ground is that of the political inclusion of Roma in European societies. Both the CoE and the EU have neglected this field, when compared to the fields of economic and social participation.

Having said this, for over a decade, the Roma problem has been a targeted feature of the CoE agenda and has received dedicated support in the EU for a number of years too. This is encouraging and was a much anticipated and required action. However, despite the dedication amongst both of the European institutions, Roma remain as vulnerable as ever, with commentators remarking on ‘The discrepancy between Europe-wide multilevel efforts for Roma inclusion and the entirely inadequate results of these initiatives.’⁷⁵

⁷⁵ Kavroková (n 1 above).

It is argued that greater improvements require better engagement by states in the domestic arena,⁷⁶ because European international measures—no matter how targeted they attempt to be—are insufficient to drive through significant reforms on the ground at national level.

⁷⁶ *ibid.*, 377; and Lilla Farkas 'A Good Way to Equality: Roma seeking judicial protection against discrimination in Europe' (2006) 3 *European Anti-Discrimination Law Review* 21–29 (in relation to the EU Race Directive).