

# Demystifying the Collection of Ethnic Data and the Child Protection System

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**T**HE situation of Romani communities in Europe is complex and does not allow the approach of 'one size fits all'. Discrimination against Roma as individuals or as a community in access to education or in child protection systems are phenomena that the human rights community regularly observes. However, it would be foolhardy if activists, researchers or responsible governments would claim to fully know and understand the scope and quantity of these phenomena targeting Roma. Over the past years, many studies have been conducted that investigated the reasons for and the background of exclusion; however, stakeholders concerned about this matter have not succeeded in achieving far-reaching tangible change. This is more than regrettable.

Tensions between majority populations and Romani communities around issues of marginalisation, discrimination and assimilation do not contribute to a social cohesion which is required for countries to attain stability and progress.

It is high time to examine why the situation is not improving. The overall political will of most European countries<sup>2</sup> does not necessarily seem to be the obstacle to embark upon the above mentioned issues. However, if the political will is there, where is the problem?

So far, it can be said that plans and activities targeting the Romani community with the aim of reducing discrimination and exclusion were based on assumptions rather than on fundamental knowledge of what, why and how.

While many things should be said and made for, with and by Romani communities, this article will solely elaborate on matters related to the information required to properly understand the situation we are facing and to act appropriately.

The argumentation in this article is based on the following understanding: In order to achieve change, stakeholders need to be aware of facts and figures. The full scope of a situation needs to be understood in order to create targeted policies. Based on this understanding, political strategies can be developed outlining concrete activities, financial needs, precise target groups, timelines as well as responsibilities for the implementation of these strategies.

## **We know what we do not know**

How can policies be properly targeted when governments do not even know how big the Romani communities in their countries are? How can educational strategies be helpful when school authorities do not know how many students of Romani origin are finishing primary schools and under which circumstances they leave school at an early stage? How can programmes for the integration of Roma into the labour market be successful if employers do not know the ethnic composition of their work force? How can child protection authorities target programmes towards Romani families if they can only suppose (based on the individual assumption of the social worker) that the respective families have ties with the Romani community?

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<sup>2</sup> European Union countries as well as the non-EU countries that have joined the Decade for Roma Inclusion have on many occasions confirmed their political will to tackle the rather miserable circumstances prevailing in Romani communities and have committed themselves to action in various plans and strategies.

If the basic constellation is not understood, how could targeted policies be developed? How could required funding be allocated if the scope of the problem is not precisely known? How could, if so wished, positive action measures be implemented if the framework in which it should be placed is not described?

This list could be endlessly prolonged and indicates that there are too many question marks, which constitute a major obstacle to achieve change for Roma.

### The legal framework to collect ethnic data

Activists working on Roma rights matters, far too often, are told that the collection of ethnic data is prohibited by international law. It is worth taking a deeper look into this matter before assumptions are made.

Europe, during the ‘Third Reich’, witnessed the extensive misuse of personal, and specifically ethnic, data collected on groups such as Jews and Roma, which facilitated the extermination of millions of people belonging to ethnic/religious minority communities. Since the 1980s, with the increased use of electronic storage facilities, data protection has become an issue in societies where computerised information is intensively circulated. The European Union<sup>3</sup> and the Council of Europe<sup>4</sup> were therefore concerned about respect for personal privacy.

EU Directive 95/46/EC “on the protection of individuals with regard to the processing of

personal data and on the free movement of such data” defines personal data as, “any information relating to an identified or identifiable natural person.”<sup>5</sup> However, when data is collected on an anonymous basis or once they are made anonymous they do not constitute “personal data”. At the various stages of collecting information, data can change from being personal to being non-personal. We need to bear in mind that the above mentioned EU Directive applies only in the case of personal data. Particularly personal data, as ruled by the Directive 95/46/EC, must be collected for specified, explicit and legitimate purposes, and cannot be used in a way incompatible with those purposes.<sup>6</sup> States have to ensure that appropriate security measures are taken to protect personal data against unlawful forms of processing.<sup>7</sup> On the basis of these general rules for collecting personal data, EU and Council of Europe legal instruments single out “special categories” of data which should be considered “sensitive”. This list of “sensitive data” includes data revealing racial and ethnic origin, political opinion, and religion, amongst others. Because of the understanding of the legislator that this information can potentially be the basis of discrimination, the following special regime was introduced:

Sensitive data can only be collected when:

- The data subject<sup>8</sup> has given his/her explicit consent to the processing of the data;<sup>9</sup> and
- This consent is understood as “a freely given specific and informed indication of his/her wishes by which s/he signifies his/her agreement to personal data relating to him/her being processed”.<sup>10</sup>

<sup>3</sup> *EU Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Adopted 24 October 1995.*

<sup>4</sup> *Council of Europe Convention ETS 108 for the protection of individuals with regards to automatic processing of personal data.*

<sup>5</sup> *Directive 95/46/EC, Article 2(a).*

<sup>6</sup> *Directive 95/46/EC, Article 6(1)(b).*

<sup>7</sup> *Directive 95/46/EC, Article 17(1).*

<sup>8</sup> *Meaning the individual revealing the information*

<sup>9</sup> *Directive 95/46/EC, Article 8(2)(a).*

<sup>10</sup> *Directive 95/46/EC, Article 2(h).*

Under the given legal framework, there are major safeguards set which provide a narrow avenue for collecting ethnic data. Given the harsh experience of the past, such strict safeguards should be seen as a welcome measure. Furthermore, the narrow opportunity to collect ethnic data based on consent provides policy-makers with sufficient means to undertake ethnic data collection. This, however, leads us to an aspect that some human rights activists and policy-makers tend to ignore.

### **No ethnic data collection without informed consent**

A debate on ethnic data collection in Europe over the past 5 years has to a large extent focused on the legal and technical framework. The data subject was mainly ignored. While an increasing number of stakeholders in the governmental and intergovernmental sector are revising their strict rejection of collecting ethnic data or are ready to, at least, debate the option of collecting ethnic data, while at the same time retaining a strong sentiment that such data collection is dangerous, communities with an ethnic identity such as Roma are hardly involved in such discussions. With a large portion of optimism, we might face the situation in a few years time that an increasing support for ethnic data collection from the side of governmental stakeholders, being an indispensable tool for progressing with integration and non-discrimination policies, might be witnessed. However, not debating the added value of this with the Romani community (as much as with other ethnic communities) might lead to the failure to gain support for this because the objectives and aims of data collection may not be understood by the target itself. Human rights activists and governments need to prevent this from happening. An intense debate with and within the communities (Roma and any other ethnic communities) is required to ensure that ethnic communities, government actors, researchers and human rights activists fully understand how and for which purpose ethnic data collection can bring added value.

### **The added value of ethnic data collection**

The following arguments intend to present some indications of the benefits of collecting ethnic data and why it constitutes one of the few promising instruments for the future.

#### *a) Undertaking research to understand the problem*

There seems to be no doubt that research in the broader social science area and in some cases census data is important to understand the nature and extent of exclusion of Romani communities. However, so far such research has hardly been able to scratch deeper than the surface. Some studies have revealed that Romani unemployment in some countries is up to 65%,<sup>11</sup> or, for example, that Romani children are 28 times more likely than non-Romani children to be transferred to special schools in the Slovak education system.<sup>12</sup> This information is important and useful but is required on a constant basis to assess if measures taken, as outlined below, are having the intended effect.

So far, data samples, in many areas though in a very patchy manner, look at the situation of Roma but only in being able to see the full picture and the complexity and inter-linkages of one area with the other (just to mention one example, the socioeconomic impact of long-term unemployment on a family and on educational patterns concerning secondary school attendance) can comprehensive and potentially promising measures be taken.

#### *b) Targeted policies*

In distinction to a decade ago when the majority of European governments bluntly neglected the situation of Romani communities, over recent years an increasing number of more or less specific

<sup>11</sup> *European Roma Rights Centre. 2007. The Glass Box: Exclusion of Roma from Employment. Available online at: <http://www.errc.org/cikk.php?cikk=2727>, p. 15.*

<sup>12</sup> *Vasecka, M. M. Juraskova and T. Nicholson (eds.). 2003. A Global Report on Roma in Slovakia. Institute for Public Affairs. Bratislava: IVO.*

action plans and policies have been formulated,<sup>13</sup> which can be interpreted as a formulation of the political will of governments to pay attention to the inclusion of Romani communities. This is a positive step; however, it requires some further steps to be taken. Action plans and policies need to be informed by the findings of research and data in specific situations in a given country and an analysis how ethnicity factors into this situation needs to be reflected upon. Only in considering such aspects can policies be targeted towards groups in need and situations requiring action.

In concrete, this means that if a country, let's name it Czech Republic, investigates country wide the number of referrals of Romani children into special schools and analyzes the tests used for assessing the maturity of each child for attending primary school, crosschecks the number of Romani children attending kindergarten and is aware of how many Romani children are early school leavers and realises that treatment of Romani children by teachers is to a smaller or larger extent driven by prejudice, decision-makers in the education system might develop other strategies and action plans than those already developed. Should all this (and more) be investigated, and the dynamics and influences of one aspect on the other be understood, the benefit of collecting data as indicated will clarify if targeted policies have an impact over time and achieve results. However some complementary instruments might be needed.

#### *c) Positive action measures*

While the principles of positive action in fact deserves a much more extensive elaboration, for the purpose of this line of argumentation, it is here only mentioned to illustrate a concrete instrument at the disposal of governments and/or of employers (public and private) to concretise policies. Article 5 of EU Directive 2000/43/EC on "Implementing

the principle of equal treatment between persons irrespective of racial or ethnic origin" enables EU Member States to permit positive measures to overcome past and current disadvantages of ethnic communities. Again, in order to target positive measures in a meaningful manner the size of the community, the extent of discrimination/exclusion, the size of the concrete target group for such positive action, the capacities of absorbing positive measures in the community, etc. need to be known to design positive measure policies in a way that they can positively impact a given community. This will not be possible without ethnic data.

#### *d) Targeted funding*

Given the limited financial capacities of most European states, it should be of the utmost interest to governments or regional stakeholders to target funding in the most efficient way possible. At times of limited funding, no government or private stakeholder can afford to invest funding without having achieved the envisaged results. In order to be able to target funding, the situation needs to be investigated and understood (through data collection, and at some point in time ethnic data might be required), appropriate policies need to be designed, the situation needs to be monitored on a regular basis (where again ethnicity data might need to be assessed) and policies need to be adjusted if success cannot be booked within a set timeframe.

#### *e) Proving indirect discrimination*

Ethnic data collection can serve an additional purpose, which falls outside the scope outlined so far. While the benefits mentioned thus far of ethnic data collection have targeted mainly governmental stakeholders, they should also be seen by non-governmental actors as a strong tool to detect indirect discrimination.<sup>14</sup> The recent

<sup>13</sup> See for example: <http://www.romadecade.org/index.php?content=70>.

<sup>14</sup> Chapter I/Article 2/2/b of Directive 2000/43/EC defines the indirect discrimination as follows: "Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary." The full text of the Directive is available online at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legisln/2000\\_43\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf).

judgment by the European Court of Human Rights in the case *D.H. and others v. The Czech Republic*, a case brought by the European Roma Rights Centre, outlines and strengthens the role of ethnic data in proving indirect discrimination.<sup>15</sup> The Court stated that it “[...] considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce.”<sup>16</sup> Furthermore, “Despite being couched in neutral terms, the relevant statutory provisions therefore had considerably more impact in practice on Roma children than on non-Roma children and resulted in statistically disproportionate numbers of placements of the former in special schools.”<sup>17</sup>

Furthermore, in parallel Directive 2000/43/EC allows “statistical evidence” as proof of indirect discrimination in the EU legal framework.<sup>18</sup> It is hoped that this option will mutually reinforce action of governments to undertake the collection of ethnic data. It might not be required but still should be said that such data collection should be done within the existing legal framework and where required with the consent of the data target.

### Difficulties in collecting ethnic data

While the argumentation so far aimed to encourage stakeholders to see the constructive side of ethnic data collection we should not be blind to the difficulties we may face. Even assuming that consent to collecting ethnic information is possible, a large number of data

targets might remain suspicious and not declare their ethnic affiliation, as is currently the case in most European countries because of expected discriminatory practices by others. Therefore, in certain situations self-identification might be problematic. Another obstacle is the divergence between the self-identity of the individual and the perception of others. For example, consider the potential impacts on the adoption of a child living in state care, whose parents did not make a declaration of his/her ethnicity, but who social workers and guardians believe to be Romani due to outwards characteristics, given their role in the adoption process. A further complexity lies in the contrast between the technocratic rationality that requires clear-cut, consistent and stable categories in order to produce workable statistics, and the reality of personal identity feelings, which can be multiple, overlapping, hazy, and fluctuating.<sup>19</sup>

We need to acknowledge that most European countries have very limited experience in collecting and handling ethnic data. However it can be assumed that in the progression of the debate and practice of ethnic data collection, as experienced by countries such as the US and UK, practicable solutions can be identified over time. We might need to adapt to the understanding that statistics (including ethnic data) do not require an individual to reveal the full truth but at least a good part of it.

### Ethnic data collection in the child protection system

It was necessary to discuss ethnic data collection in a rather lengthy way before we can now look at ethnic data collection in the child care and protection system.

<sup>15</sup> The full text of the Grand Chamber ruling in *D.H. and others v. The Czech Republic* can be found online at: <http://www.errc.org/db/02/86/m00000286.pdf>.

<sup>16</sup> Paragraph 188.

<sup>17</sup> Paragraph 193.

<sup>18</sup> Article 15 of the Preamble establishes, “The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.”

<sup>19</sup> See, Ringelheim, J. and Oliver De Schutter. November 007. *The processing of racial and ethnic data in anti-discrimination policies*. Unpublished paper, p. 50.

As argued above, ethnic data collection is a rather new terrain with limited experience in most parts of Europe, even more so for ethnic data collection specifically in the child protection system. Based on a study carried out by the European Roma Rights Centre in late 2007 in Hungary,<sup>20</sup> extensive over-representation of Romani children in the Hungarian child protection system is apparent. However, given the reluctance of the Hungarian state to embark upon ethnic data collection, concrete figures are not available and any assessment needs to be based on anecdotal evidence. While the ERRC is clear that a comprehensive data collection system cannot be established over night, it rather has to count on the political will that over time, systems allowing the full understanding of the ethnic constellation in society and in specific in the child protection system will be established, which will consider the aforementioned safeguards. Adjustments might be required and should subsequently be implemented when experience is gained. For the moment it appears obvious that we need to start at a much earlier stage.

*a) Ethnic data collection shedding light on the current situation*

While our main argumentation goes for collection of data on the basis of ethnicity, the collection of data on other grounds such as disability are equally important within the child protection system. Having this information at hand we would be able to cross reference ethnicity with the health status of children when they enter or leave the child protection system. Pedagogical strategies could and would need to reflect upon such additional knowledge.

Knowing the specific ethnic background of a child, but also of all children, would empower the people responsible in state care and social workers to work with the child in a culturally sensitive way; an obstacle the ERRC has extensively identified in its current research. As outlined in numerous international human

rights standards, children as much as adults have the right to practise their culture, traditions and language. In a setting wherein the family is not able to provide the framework to do so, state care institutions equally need to be able to provide such a background. However, in not considering the ethnicity of the child as part of an identity, state care institutions will not be able to support children living apart from their parents to develop an identity corresponding to their background.

Children not being able to return to their families might have the option to be adopted. While it appears that children in Hungary are not officially identified as Romani or non-Romani in adoption processes, informally the adoption rate of Romani children is very low according to anecdotal evidence. Potential adoptive parents, out of pressure from their environment or sometimes even outright racism, often do not consider adopting a child with darker skin or other characteristics commonly associated with Roma. Adoptive parents should have the possibility for choice in adopting a child, and ethnicity, as an intrinsic part of the child when it belongs to a minority, should be handled up front and not be a factor dealt with in a hidden fashion. However, this requires strong anti-discrimination training of potential adopters and adoption workers to ensure such a process is handled carefully. It would be equally helpful for children to be adopted, where their age allows so, to be informed about the background of future adoptive parents.

*b) Ethnic data collection reviewing change*

As already mentioned, ethnic data collection does not only serve the purpose to understand a given situation but also to verify change. It needs to be acknowledged that exclusion and discrimination are prevalent phenomena and any measure taken should aim to improve such a situation. Ethnic data collection specifically will empower authorities to measure change in this regard.

Based on the ERRC study in Hungary, a disproportionate number of Romani families are

<sup>20</sup> European Roma Rights Centre. December 2007. *Dis-interest of the Child: Romani Children in the Hungarian Child Protection System*. Available online at: <http://www.errc.org/db/02/91/m00000291.pdf>.

targeted by the child protection system. Different factors such as low income or precarious housing situations have an impact on the ability of families to take care of their children. If it is, and it seems to be, the case that Roma are more in need of support from social systems, accompanying support mechanisms like child allowances or social benefit payments would be required to go hand in hand. A comprehensive approach is the answer to such problems with the objective to alleviate the situation. However any successes of such approaches can only be verified if relevant authorities check, over time, if an improvement has occurred.

Local or regional solutions seem to be the most promising. Ethnicity, as one factor, in assessing change can establish evidence for authorities, whose interest it should be to serve its community. To achieve this, objectives need to be set (such as to achieve the proportionate representation of Roma in the group of beneficiaries of the child protection system, which otherwise if not achieved can be a marker for exclusion and/or

discrimination). Benchmarks and indicators to assess change would be required to identify the steps towards meeting the objective. Individual children's homes should be empowered to assess how many children of Romani background are in their institution to check, in the case the number is retained, where the implemented policies have shortcomings. A continuous assessment and evaluation will bring to light if programmes and policies are meeting their goal.

However if the result of such evaluation is that change cannot be accomplished, an analysis is required if the policies are properly designed, if relevant child care staff might jeopardise the principles of such policies or if surrounding factors are not supporting that goals are met.

Even though it needs to be fully acknowledged that '*social engineering*' is a long-term and complex process, it is worth working on it for the sake of fairness, inclusion, equal treatment and cohesive societies. Societal tension, violence or exclusion is not the alternative.