Legal Indicators for Social Inclusion of New Minorities Generated by Immigration – LISI

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Report on Common Issues and Best Practices

Working document for the seminars of Bolzano/Bozen, London and Graz

by Roberta Medda-Windischer
European Academy of Bolzano/Bozen

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Preface

The Report on Common Issues and Best Practices is part of the LISI project (Legal Indicators for Social Inclusion of New Minorities Generated by Immigration) funded by the European Commission (DG Employment and Social Affairs) and the European Academy of Bolzano/Bozen. It collects main common issues and best practices, which emerged from the analysis of three Regional Reports prepared by the LISI partners (Eurac, European Academy of Bolzano/Bozen, the AIRE Centre, Advice on Individual Rights in Europe - London, and ETC, European Training and Research Centre for Human Rights and Democracy – Graz). The areas examined in these Reports were the Province of Bolzano/Bozen (I), Styria (A) and London (UK).

The primary objective of the three Regional Reports was to gain a deeper knowledge and understanding of the extent, characteristics, processes, causes and trends of marginalisation and social exclusion of the members of new minorities originating from immigration and the emergence of new forms of social inequality and social differentiation in the three host communities. The Reports took into consideration various issues related to social integration that members of the target groups are confronted with in the receiving communities. The problems faced by women within the target group was particularly taken into consideration.

Depending on the examined area, the Regional Reports were based on analyses of national, regional and/or local legislation pertaining to the various aspects of the social integration such as employment, social policy, education and training, health and housing policies.

Particular attention was paid to the differences existing in the legal systems and regulatory framework of the three selected areas. Best practices generated in this field in the three examined areas as well as the role of local authorities in combating social exclusion was thoroughly analysed.

In addition, the available National Action Plans on Social Inclusion were taken in due consideration in order to place the local situation in the wider national context.

The three Regional Reports were discussed and critically reviewed by the three partners in a workshop that was held in Bolzano/Bozen on 8 May 2002. The primary objective of this workshop was to lay the basis for the implementation of the following activities of the LISI Project, in particular in the preparation of the Report on Common Issues and Best Practices.

The Report on Common Issues and Best Practices will be used as a basis for discussion in three local workshops, that will be held respectively in Bolzano/Bozen, London and Graz and will be open to a wide range of local stakeholders. The main objective of these activities is to organise a wide-scale local consultation in each selected area with the view to deepening discussion on the various issues emerged in the previous activities of the LISI Project. Participants in the local workshops will be a wide range of actors, including representatives of the target groups, ngos, local government bodies and other relevant civil actors. These actors will evaluate and critically review the results of the LISI Project, so far implemented, in the light of their knowledge and experience in combating and preventing social exclusion.
I. Introduction

In recent decades, most member states of the European Union have experienced a marked increase in the number of foreign nationals residing on their territory. Partly for political and humanitarian reasons, partly as a result of differing economic situations and the freedom of movement entailed by growing economic integration in Europe, an increasing number of people have settled with varying degrees of permanence in countries other than their countries of origin.

This situation raises for the governments and the other public authorities concerned the task of integrating such foreign residents into the community in which they live - a problem which is all the more acute in the light of the phenomena of intolerance which have sometimes appeared.

In this connection the European Commission stated: “The integration of migrants is an imperative dictated by the democratic and humanitarian tradition of the Member States and constitutes a fundamental aspect of any immigration policy. The integration of immigrants is essential to safeguard equilibrium in our societies.” ¹

According to the Presidency Conclusions of the Tampere European Council² on the fair treatment of third country nationals:

“The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia. (...) The legal status of third country nationals should be approximated to that of Member States’ nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.”

The Commission has also recognised on several occasions the links between the treatment of third country nationals and the fight against racism. Combating racism is an essential part of promoting the integration of third country nationals, and conversely, promoting the integration of third country nationals contributes to the fight against racism.

Furthermore, the Parliamentary Assembly of another regional organisation, the Council of Europe, stated³: “The Assembly recognises that immigrant populations whose members are citizens of the state in which they reside constitute special categories of minorities, and recommends that a specific Council of Europe instrument should be applied to them.”

Although members of the new minorities originating from immigration possess ethnic, religious, cultural and/or linguistic characteristics differing from those of the rest of the population of the host communities, they are usually excluded from conventional definitions of “minorities”. The most commonly used definitions of minorities can be divided into two groups: those according to which minorities are exclusively citizens of the country but in a minority situation (the so-called “old” national minorities) and those which assert that citizenship is not a prerequisite for the constitution

1 European Commission “Proposal for a Council Act establishing the Convention on rules for the admission of third country nationals to the Member States”, COM (97) 387, 30.7.97, p. 5.
i. Definition of Minorities: “Old” versus “New” Minorities

Drafters of international instruments have generally been unsuccessful in efforts to define the term "minorities". There is no generally recognized legal definition of the term "national minority", not to speak about ethnic, religious or linguistic minorities in international law, despite several attempts in the past decades to elaborate such concept. A significant amount of energy and time was spent over the past five decades in various international organizations in the quest for a generally acceptable definition of the term minority, mainly for codification purposes, yet no conclusive results can be reported. In the case of the UN Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities as well as the Council of Europe's Framework Convention for the Protection of National Minorities drafters expressly avoided a definition of the term "minorities", leaving this to the courts or to other bodies involved in interpretation.

There are several reasons why these efforts have failed. Firstly, there is no consensus in the United Nations or in regional organisations on this matter. Secondly, the question cannot be settled in the abstract. Some categories of non-citizens should clearly enjoy many of the minority rights listed in particular instruments but not necessarily all of them.

The most quoted definition of minorities is the descriptive definition contained in the 1977 report of Francesco Capotorti, the Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Capotorti prepared a study, in 1977, in which he proposed the following definition of the term minorities, as set out in article 27 of the International Covenant on Civil and Political Rights⁴.

A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - being nationals of the state (emphasis added) - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directing towards preserving their culture, traditions, religion or language.

One of the elements of the definition is, thus, the citizenship or nationality. However, the Human Rights Committee went well beyond this definition, and stated⁵:

“The terms used in article 27 (ICCPR) indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party (emphasis added). (...) A State party may not, therefore, restrict the rights under article 27 to its citizens alone.

⁴ Article 27 of the UN International Covenant on Civil and Political Rights (1966) is the basic provision in international law on minority rights: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” Note that Art. 27 ICCPR speaks of “ethnic, religious and linguistic minorities”, whereas the Council of Europe’s Framework Convention refers to “national minorities”.

⁵ Human Rights Committee (50th session, 1994), General Comment 23, paras. 5.1-5.2.
community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, or assembly and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”

In light of the views expressed by the Human Rights Committee, it can be said that persons who are not (yet) citizens of the country in which they reside can form part or belong to a minority in that country.

In this connection, the Chairman of the UN Working Group on Minorities, Asbjorn Eide, stated: “The best approach appears to be to avoid making an absolute distinction between “new” and “old” minorities by excluding the former and including the latter, but to recognize that in the application of the UN Declaration (on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) the “old” minorities have stronger entitlements than the “new”.

He continues, by saying that “While citizenship as such should not be a distinguishing criterion which excludes some persons or groups from enjoying minority rights under the UN Declaration, other factors can be relevant in distinguishing between the rights that can be demanded by different minorities. Those who live compactly together in a part of the State territory may be entitled to rights regarding the use of language, and street and place names which are different from those who are dispersed, and may in some circumstances be entitled to some kind of autonomy. Those who have been established for a long time on the territory may have stronger rights than those who have recently arrived.”

It is worth mentioning that at its 5th session in 1999, the UN Working Group on Minorities discussed the proposal that it should begin on a definition of the concept of “minority” which, rather than being all-encompassing and covering all criteria and characteristics, should be concise and acceptable to all States. This, was suggested, should be the first step towards the development of a worldwide convention on the protection of persons belonging to minorities. The opinions on this subject were divided, both among the members and the observers. It was argued that there was little prospect of arriving at a definition, taking into account that it had been possible neither at the global nor at the regional level for the last 50 years. Observers and scholars said that there was no specific need to categorize or define minorities in order to progress in the field of minority protection.

In addition to general considerations of legal nature, in discussing the issue of the definition of minorities, practical political aspects should be taken into account. At the moment, different European States apply different working definitions of minority, ranging from very inclusive and generous to extremely restrictive ones. Introduction of a commonly accepted definition would inevitably mean alignment by the lower common denominator.

If in international law there is no common definition of the term “minority”, the same can be said for the term “new minorities” and “migrants”. According to the UN Special Rapporteur on the Human Rights of Migrants, Gabriela Rodríguez Pizarro, since the general term “migrant” has not

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7 At its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/44, by which it decided to appoint, for a three-year period, a Special Rapporteur on the Human Rights of Migrants with the task of examining ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation. The Special Rapporteur should formulate strategies and recommendations for the promotion and implementation of policies to protect the human rights of migrants, and establish the criteria on which those policies should be based.
yet been specifically defined in international law or politics, a working definition has to be established that will make it possible to recognise and deal with situations in which the human rights of these individuals are protected by a legal, social or political framework.

She suggested that a preliminary proposal for a basic definition of migrants, taking into account their human rights, might include the following elements:

(a) persons who are outside the territory of their state of nationality or citizenship and not subject to its legal protection, and are in the territory of another state;
(b) persons who do not enjoy general legal recognition of the rights inherent in the status of refugee, permanent resident, naturalized citizen or other similar status granted by the host state;
(c) persons who likewise do not enjoy general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other accords.

For the purpose of the LISI project, the partners agreed upon the following working definition of New Minorities originating from immigration. This definition includes: third-country nationals legally present on the territory of an EU Member State having a temporary or permanent right of residence for economic, family reunion, political and/or humanitarian reasons, on a short or long-term working contract, seasonal workers, professional workers, citizens of applicant countries and individuals from countries where an EEC Co-operation and/or Association Agreement exist. In light of the special status and legislation applying to refugees and asylum seekers, this special category of individuals will be taken into consideration insofar as their problems of social integration are analogous to those of the above-mentioned categories and/or when the analysis of their situation is relevant to gain a deeper knowledge and understanding of the subject-matter of the LISI Project and to test and revise the results of its activities. Throughout the implementation of the Project, special emphasis is given to women falling within the above-mentioned categories.

iii. Models for the analysis of integration policies

Before analysing common issues and best practices pertaining to social inclusion of members of new minorities stemming from immigration, it is worth mentioning the main models for the analysis of integration policies.

There are at least three basic models of coming into terms with cultural difference: the guest workers model, the ethnic minorities model and the assimilation model.

According to the first model immigration is determined by the needs of the labour market and the presence of immigrants is seen as temporary; there is no need to reinforce their legal status, nor to reflect on the consequences of increased cultural heterogeneity (this model is deemed to be applied in the past by Germany and Austria). For the second approach immigrants are defined as members of their new society, but primarily in terms of their ethnic or national origins. The “ethnic minorities model” considers immigrants new communities, culturally different from the existing communities (this model inspired the immigration policies of the UK, Netherlands and Nordic countries). Finally, for the assimilation model immigrants are expected to assimilate to their host. Emphasis is on the individual relationship between the citizen and the state, without intermediaries. Immigrants

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are seen as individuals in the first place and the notion of immigrant or minority communities is alien to this model (France).

Other integration models based on immigrants’ participation in political decision-making are the following:

- Individual rights model: immigrants, like all other residents, are seen as individuals who directly interact with the states. The granting of individual rights to immigrants is seen as the major instrument for inclusion (France; Portugal and Italy also have certain elements of this approach in their policies);
- Multi-cultural model: the individual immigrant, rather than the migrant group, is seen as the primary target of incorporation. In contrast to the individual rights model, however, it is acknowledged that immigration has also led to the development of new communities in society, that may distinguish in cultural terms from those that already existed (UK, Norway);
- Corporatist model: membership is organised around corporate groups and their functions. In this model, immigrants are defined in terms of group membership, rather than as individuals (model applied by the Netherlands in the past).
III. Common Issues

A. Civil and Political Rights

1) Effective Participation in Public and Political Life

An important element of integration of members of new minorities is the right to participate in aspects of the life of the larger national society. This right is essential both in order for persons belonging to new minorities to promote their interests and values and to create an integrated but pluralist society based on tolerance and dialogue. Included in ‘public life’ are, among others, rights related to election and to be elected, the holding of public office, and other political and administrative domains. Participation can be ensured in many ways, including the use of migrants’ associations and membership in other associations.

As the European legislation is concerned, it is important to refer to the Council of Europe Convention on the Participation of Foreigners in the Public Life at Local Level. The Convention aims to improve integration of foreign residents into the life of the host community. It applies to all persons who are not nationals of the Party and who are lawfully resident on its territory. The Convention provides that, in addition to guarantee to foreign residents, on the same terms as to its own nationals, the “classical rights” of freedom of expression, assembly and association, including the right to form trade unions, the Parties will make efforts to involve foreign residents in processes of consultation on local matters. The Convention opens the possibility of creating consultative bodies at local level elected by the foreign residents in the local authority area or appointed by individual associations of foreign residents.

The preamble of the Convention states that foreign residents participate economically and culturally in the life of the local community and generally have the same duties as citizens at local level. These considerations justify a common commitment to enhance the possibilities of participation in local public life which are open to foreign residents.

The Convention is divided into three chapters: the first deals with freedom of opinion and assembly and the right to join associations, as well as with the involvement of foreign residents in procedures for the consultation of local citizens; the second chapter concerns the creation at local level of consultative bodies to represent foreign residents; and the third chapter concerns the right of foreign residents to vote and stand for election at the local level.

The Convention left open to the Parties the option of not applying the provisions included in the second and third chapters, or to postpone their ratification. Italy, for example, has ratified only the first two chapters, excluding the provisions on voting rights.

i. Political rights

Political integration of ‘new minorities’ refers both to recognition of their specific problems, needs and interests by public authorities and fellow citizens, and to their participation in public institutions.

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9 As of 18.05.02, the Convention was ratified by 6 states (Denmark, Finland, Italy, Netherlands, Norway and Sweden). Note, however, that Finland, Italy and Netherlands introduced in their instruments of ratification limiting declarations.
The granting of voting rights to non-citizens has been addressed as an essential way to contribute to the integration of members of new minorities.

In this context it has been elaborated the notion of "denizens". It includes all those who in a formal sense are foreign citizens or aliens, but who after many years have all sorts of ties to the country of immigration, by way of family, job, property etc. They are domiciled in the country, entitled to settle permanently, and they have extensive social and economic rights, although not full political rights.

The following have been identified as main areas of concern:

- Requirements, such as citizenship versus number of years of residence, for active and passive voting rights in national, provincial/regional and local elections;
- Especially voting rights at the local level have been identified as particularly important element of integration;
- Right to vote in referenda and petitions.

**ii. Participation in Public Life**

Forms of representation are necessary especially in the first phases of integration, when the integration process of foreigners within host societies and institutions has not yet completed. Through this process, it is possible to overcome the status of “Gastarbeiter”, that still characterises the image of immigrant in our society and narrow the gap between foreign citizens and local community. This distance, on one hand, humiliates the immigrants and prevent their integration, and on the other, it does not support the civil and democratic development of the host society.

The variety in composition, needs and aspirations of different types of new minority groups require identification and adoption of the most appropriate ways to create conditions for effective participation in each case. The mechanisms chosen have to take into account whether the persons belonging to the minority in question live dispersed or in compactly settled groups and whether the minority is small or large.

With regard to civil service, the Lund Recommendations on the Effective Participation of National Minorities in Public Life provide that: “States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, among the others, depending upon the circumstances: (...) special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.” According to the Explanatory Report to these Recommendations, meaningful opportunities to exercise all minority rights require specific steps to be taken in the public service, including ensuring "equal access to public service" as articulated in Article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination.

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12 Article 5 (c) of the UN International Convention on the Elimination of All Forms of Racial Discrimination: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to
The following are issues of common concern:

- Access to public service and limitations related with the use of public powers, i.e. access in the police forces;
- Specific contracts for foreign civil servants, such as short term, temporary vacancies, etc.

### iii. Rights to freedom of association

The process leading to the setting up of immigrants’ associations is not uniform, but reflects the characteristics of each group. The initial forms of aggregation among immigrants arise spontaneously to respond to the need for mutual recognition and to set up a natural network of mutual support. The passage from a spontaneous aggregation to an association takes place when the need is felt to give the group continuity and an organization to better respond to the growing complexity of the needs and interests of its members.

On the political level, the passage from the network of personal relations to the association, but above all from the informal to the formal association, is of great importance in the political representation of immigrants. In effect, external relations of the group, especially with the local population and its institutions, are reinforced by this progression. It therefore becomes necessary on the one hand to gain an understanding of local political and institutional dynamics and on the other hand a legitimisation, which is to say an interlocutor capable of ensuring the group a minimum of representation.

Trade unions, in comparison to the associations of immigrants, are considered to be the organizations, that best and more effectively represent immigrants. The presence of immigrants in working positions opened new possibilities for the trade unions to better represent them through membership in the trade unions or involvement in their, both at workplace or as employed within the trade union itself.

According to international law the right to form or join associations can be limited only by law, and the limitations can only be those which apply to associations of majorities: limitations must be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms.

Main common concerns in the field of freedom of assembly and association are:

- Limitations based on public interest, for instance, in the UK limitations can be imposed under the guise of the “anti-terrorism” legislation; the implementation of the limitations cited above by public authorities is a thorny issue as it can give rise to forms of discrimination among associations, especially those of immigrants;
- Participation through bodies, such as consultative assemblies, councils, associations at various levels;
- Advisory versus decision making power of these bodies or of individual immigrant members;

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"... prohibits and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (…) (c) Political rights, in particular the right to participate in elections to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service"."
- Political parties: limitations might be imposed to foreigners; reference is made to Art. 16 of the European Convention on Human Rights on restrictions on political activity of aliens.
2) Justice

The principles of equality, on the one hand, and protection of special groups, such as minorities, women, etc., on the other, are distinct concepts because equality and non-discrimination imply a formal guarantee of uniform treatment for all individuals, whereas the concept of the protection of special groups implies special measures in favour of a given group.

The Human Rights Committee\(^{13}\) made it clear that: “Positive measures by States may be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant on Civil and Political Rights\(^{14}\) both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27 (ICCPR), they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.”

Furthermore, the UN Convention of the Elimination of Racial Discrimination permits, in the public interest, “positive discrimination”, namely different treatment in favour of a racial group with the aim to redress the consequences of a discriminatory treatment from which members of a certain group have been subjected and have suffered, provided these measures do not disproportionately affect the rights of others.\(^{15}\) The same principle can be found in the EC Council Directive 2000/43 (the Racial Equality Directive) implementing the principle of equal treatment between person irrespective of racial or ethnic origin\(^{16}\). Article 5 of this Directive states: “With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin”.

What seems to be required is, thus, that the distinction be, in some sense, justifiable. However, it is relevant to note that the drafters of the UN International Covenant on Civil and Political Rights provide examples of what they regard as justifiable distinctions, and among the others, they mentioned the distinctions based on citizenship or nationality with regard to immigration, extradition, access to public office or acquisition of property. In the mind of the drafters, such distinction does not constitute discrimination.

At the regional level, EC law includes the principle of non-discrimination by ensuring equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 12 of the EC Treaty (former Article 6) outlaws any discrimination on the grounds of nationality.\(^{17}\) However, the Governments of Member States accepted that the interpretation of this clause refers only to nationality of one Member State. Even after the entry into force of the Amsterdam Treaty, which amended the Treaty establishing the EC and the Treaty on the EU, it is unclear whether Article 12 includes also issues related to admission, residence and equal treatment of third-country nationals. Bearing in mind that Article 12 only

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\(^{13}\) Human Rights Committee (50th session, 1994), General Comment 23, para 6.2.

\(^{14}\) Article 2 provides for each Contracting States to respect and ensure to all individuals the rights recognised in the Covenant without distinction of any kind such as race, colour, sex, language, religion, political opinion, any other kind of opinion, national or social origin, property, birth and other status. Article 26 provides for equality before the law and equal protection of the law; it provides for prohibition of discrimination and guarantees to all persons equal and effective protection against discrimination on the grounds listed in article 2.


\(^{16}\) Article 12 (1) of the EC Treaty : “Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”.

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extends its applicability to the EC Treaty rights, it would seem to mean at least that discrimination between the various groups of third-country nationals is prohibited and that those who are treated less favourably will be granted equal treatment with those third-country national who are treated more favourably.\textsuperscript{18}

Under the Treaty of Amsterdam a new Article 13 has been written into the EC Treaty to reinforce the guarantee of non-discrimination laid down in the Treaties. Article 13 of the EC Treaty empowers the European institutions to take appropriate action to combat discrimination on the basis of sex, racial or ethnic origin, religion and belief, disability, age or sexual orientation. However, Article 13 does not include nationality as a ground for discrimination. In other words, third-country nationals may not be discriminated against on the basis of their racial or ethnic origin or religion and beliefs, but can be discriminated against on the basis of their nationality.\textsuperscript{19}

The Racial Equality Directive\textsuperscript{20}, cited above, prohibits direct and indirect discrimination based on racial or ethnic origin as regards various areas, such as employment and training, social security and healthcare, education, housing, etc. However, Article 3 (2) of this Directive clearly states that “This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry and residence of third-country nationals and stateless persons on the territory of Members States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.” This provision intends to protect Members State’s immigration law instruments which regulate access to employment by third-country national and, in particular, it protects differences in treatment in law which are linked to citizenship/residential status from allegations of unlawful discrimination.\textsuperscript{21}

The Racial Equality Directive legally entered into force on 19 July 2000 and all Members States of the EU have to complete its implementation in their national legal systems no later than 19 July 2003.\textsuperscript{22} This Directive has since been complemented by the Equality in Employment Directive combating discrimination in employment on the grounds of religion or belief, disability, age or sexual orientation.\textsuperscript{23}

Listed below are main common issues related to the field of justice. 

\textbf{Detention:}

- Preventive detention and alternative and substitutive measures to detention: in Italy it has been noted a greater use of preventive detention in cases involving non-EU citizens and smaller possibility they have of availing themselves of alternative and substitutive measures to detention because of lack of necessary requisites to obtain them, such as the ownership of a house, a job, family and parental ties. Allegedly, the higher rate of preventive incarceration with regard to foreigners is also due to the higher risk of their absconding; 

\textsuperscript{19} Ibidem, p. 10.
\textsuperscript{22} See Article 16 of the Council Racial Equality Directive.
• Open prison regime: in the UK this type of regime is excluded for foreigners who may be subject to expulsion decisions in the future;
• Concerns have been expressed regarding the possibility for non-EU detainees to be provided with the opportunity to work. In Italy, problems have been raised with regard to the possibility to work outside prison, as an alternative measure, without residence permit. Another issue is related to the difficulties faced by foreign detainees in receiving their own money upon release in case they go back to their country of origin or move to a third country. Often they do not have an address where the prison authorities can transfer these sums, and/or the consulate or the lawyer’s address is not a feasible solution.
• Respect for the religious beliefs of detainees: the principle of impartiality of treatment and of non-discrimination in relation to religious beliefs is a factor of great relevancy in the instances where detainees profess a religious faith which calls for the observance of specific duties;
• Free legal aid: obstacles, such as language knowledge and guidance, hinder access to this mechanism;
• Expulsion coupled with exclusion order: (double punishment): lower risk to be expelled for those with strong family ties in the hosting country according to Art 8 of the European Convention of Human Rights. According to the Austrian legislation on Aliens, a criminal sentence, especially for those without family ties, can be the basis for expulsion. In Italy, the Government Bill n. 795, which has been presented to the Senate on 28 February 2002 and which is now being examined by the Constitutional Affairs Committee of that body, provides that in case of expulsion, the person concerned is forbidden from re-entering in the Italian territory for a period of 10 years; this period can be reduced to 5 years in light of the overall attitude of the person concerned during his/her stay in Italy;

With regard to expulsions of non-EC nationals, it is worth mentioning the EC Council Directive on the mutual recognition of decisions on the expulsion of third country nationals. The purpose of this Directive is to make possible the recognition of an expulsion decision issued by a competent authority in one Member State, against a third country national present within the territory of another Member State. The expulsion referred to in the Directive applies to third country nationals subject of an expulsion decision based on failure to comply with national rules on the entry or residence of aliens or based on a serious and present threat to public order or to national security and safety (i.e. conviction for an offence punishable by a penalty involving deprivation of liberty of at least one year or the existence of serious grounds for believing that he/she has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences within the territory of a Member State). This Directive must be implemented into national laws by December 2002.

**Anti-discrimination legislation:**

• Reversal of the burden of proof in case of *prima facie* case of discrimination: the Italian legislation provides that in case of discrimination at the workplace, based on race, religion, language, and ethnic or national origin, the judge has the possibility of forcing the person under accusation to provide proof that he/she has not committed the “discrimination” (the so-called reversal of the burden of proof). However, this is only used after the plaintiff has proved a series of facts (including statistical information concerning employment, contributions, the assignment of tasks and qualifications, transfers, promotion and dismissal) which support the belief that discrimination has been committed on the grounds of a person's race, ethnic or linguistic community etc. In this case, if the judge considers these assumptions are “serious, precise and

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consistent” the burden of proof will lie with the accused party. Therefore, this provision does not allow for the burden of proof to be shifted to the respondent unless the complainant has provided proof of a *prima facie* case of discrimination;

- In the UK certain categories of foreigners are excluded from the application of the anti-discriminatory law. The Race Relations (Amendment) Act specifically provides for the possibility for the Government to authorise discrimination on grounds of ethnicity or nationality in immigration control.
3) Right to Citizenship

We already pointed out that non-citizens cannot be excluded from minority rights protection simply on a basis of definition of ‘minorities’. From the inception of United Nation’s debates over minority protection, views have diverged strongly on the question whether or not minorities by definition should include only citizens.

As regard to the rights of citizens and non-citizens, the European Convention on Human Rights, in line with modern international human rights law, provides that States are under the obligation to ensure the protection of the rights of all individuals within their jurisdiction, whatever is their nationality. The same principle applies to the UN International Covenant on Civil and Political Rights. Therefore, the rights included in these international instruments have to be secured to everyone in the territory and subject to the jurisdiction of the State. The EU Charter of Fundamental Rights adopted in December 2000, sets out a number of principles which, because of the universality of certain rights, apply also to third country nationals. This is particularly important with respect to a number of social rights such as protection against unjustified dismissal and the application of national and Community laws concerning working conditions. The Charter also includes the possibility, on the conditions set out in the Amsterdam Treaty, of free movement and stay for third country nationals legally resident in a Member State.

If faithfully implemented, human rights law would significantly reduce the difference between the rights of citizens and non-citizens. In national practice, however, human rights protection is often limited to citizens, although this is hardly in conformity with international human rights law. The enjoyment of certain human rights is precarious when the person does not have the citizenship of her or his country of residence. As already noted, among these categories of limited rights are political rights. Another example is the right to return, that is more precarious for resident non-citizens than for citizens. While citizens normally cannot be expelled from her or his country, non-citizens are at greater risk, although there is no absolute freedom of States to expel non-citizens, and persons who have obtained some form of permanent or lasting residence can be expelled only where there a pressing social needs to do so.

It is clear that the ideas, practices, rights and institutions associated with the mechanisms to acquire citizenship constitute the framework for the integration of immigrants. Citizenship is, however, a vague ideal and cannot function as a ‘guiding principle’ for integration policy, but it can and should function as an important point of reference and as a motivating force in the process of policymaking and implementation in matters concerning immigration.

The main differences in citizenship are based on the so-called *ius soli* and *ius sanguinis* principles. This difference is fundamental in the analysis of immigration and integration, since it defines ways individuals can accede to membership of a new state system.

Many States practice the principle of *jus soli*, which means that children born on the territory as a general rule obtain citizenship of that country even if their parents were not citizens. Others restrict themselves to *jus sanguinis*, meaning that only children born of parents who already are citizens automatically (*ex lege*) obtain citizenship.

As a consequence of the evolution of human rights law, even those states, that otherwise apply the *jus sanguinis* principle have to apply the principle of *jus soli* to children born on their territory who would otherwise be stateless. Most of the immigrants, however, have another pre-existing citizenship in their country of departure, and their children can therefore not demand citizenship on
the basis of statelessness. In this connection, dual nationality is considered a factor favouring integration while avoiding the risk of unnecessary loss or degradation of migrants’ culture.

With reference to citizenship, some interesting guidelines can be found in the European Convention on Nationality opened for signature within the Council of Europe in 1997 and entered into force on 1 March 2000.25

This Convention reflects the demographic and democratic changes, in particular migration and state succession which have occurred in central and eastern Europe since 1989. The text is based on two essential principles: firstly, non-discrimination, whereby States in regulating questions of nationality must avoid all discrimination on grounds of sex, religion, race, colour, national or ethnic origin, etc. and, secondly, respect for the rights of persons habitually resident on the territories concerned.

The Convention on Nationality embodies principles and rules applying to all aspects of nationality. It is designed to make acquisition of a new nationality and recovery of a former one easier, to ensure that nationality is lost only for good reason and cannot be arbitrarily withdrawn, to guarantee that the procedures governing applications for nationality are just, fair and open to appeal.

On the issue of the desirability of multiple nationality, the Convention is neutral because it reflects the fact that multiple nationality is accepted by a number of States in Europe, while other European States tend to exclude it. According to the Convention26, the question of allowing persons, who voluntarily acquire another nationality, to retain their previous nationality will, thus, depend upon the individual situation in States. In some States, especially when a large proportion of persons wish to acquire or have acquired their nationality, it may be considered that the retention of another nationality could hinder the full integration of such persons. However other States may consider it preferable to facilitate the acquisition of their nationality by allowing persons to retain their nationality of origin and thus further their integration in the receiving State (e.g. to enable such persons to retain the nationality of other members of the family or to facilitate their return to their country of origin if they so wish). Consequently, States should remain free to take into account their own particular circumstances in determining the extent to which multiple nationality is allowed by them.

It is worth mentioning that the Convention, in spite of the above, recommends multiple nationality in two cases which are normally accepted even by States which wish to avoid multiple nationality27. They indeed occur automatically owing to the concurrent application of the law of two or more States. The first case concerns the marriage of nationals of different States, whereby the principle of equality of spouses in relation to the transmission of the respective nationality to their children, must be applied. The second case refers to children having different nationalities acquired automatically at birth. However, in this case, after children have reached full age, it remains applicable the provision on loss of nationality due to the lack of a genuine link with the State Party for persons living abroad.28

25 Among EC countries that have ratified the Convention are : Austria, Netherlands, Portugal and Sweden. With the exception of Portugal, the other three countries included in the instrument of ratification either a reservation or a declaration. Other countries, such as Italy, France and Germany have only signed it.
27 See Article 14 - Cases of multiple nationality ex lege - CoE European Convention on Nationality.
28 See Article 7 (1) (e) Loss of nationality ex lege or at the initiative of a State Party - CoE European Convention on Nationality.
Furthermore, the Convention provides that a person should not be prevented from obtaining or holding a nationality on the ground that it is not possible or is difficult to lose another nationality\textsuperscript{29}. The existence of unreasonable, factual or legal requirements is to be assessed in each particular case by the national authorities of the State Party whose nationality the person is seeking to acquire. For example, refugees cannot generally be expected to return to their country of origin or to request their diplomatic or consular representation to renounce or to obtain the release from their nationality.

Among the common issues identified in the field of citizenship are:

- Acquisition of citizenship: \textit{ex lege} or through discretionary procedure or both criteria;
- Possibility and requirements to transfer citizenship to relatives, esp. spouses and children;
- Fees for processing the application; in Austria these fees, that are different in each region, are often high and can constitute obstacles for applicants;
- Length of procedures relating to acquisition, retention, loss, recovery or certification of citizenship; Obligation or favourable requirement to know the language and tradition/culture of the host country;
- Possibility to retain multiple citizenships;
- Repercussions of convictions (type, length of imprisonment, criminal or administrative offences) on the acquisition of citizenship.

\textsuperscript{29} See Article 16 - \textit{Conservation of previous nationality} - CoE European Convention on Nationality.
4) Residence

Common issues identified under this item are:

- Link between residence permit and work contract (type, duration and sector);

The fact that residence permits are linked to the duration of the work contract leads to immigrants’ being considered almost exclusively as manpower: the result of this is that exploitation may tend to increase since renewal of their residence permits would be dependent on the work contract and this would place workers in an extremely weak position from which to defend his/her rights in case of their violation.

In Italy, this system applies already to seasonal workers, but the Government’s Bill n. 795, cited above, intends to generalise this approach to all categories of foreigner workers. Under the proposed system, the duration of the residence permit for reasons of employment will be the same as the duration of the relative labour contract.

In Austria, a long period of unemployment can have implications on the residence permit: however, after five years of residence a foreigner can no longer be expelled due to lack of means of subsistence and after eight years expulsion is only possible following a criminal sentence.

- Time limits for issuing necessary documents;
- Discretionary power of the authorities in issuing residence permits;
- Necessary requirements, such as accommodation, income, etc.;
- Number of years necessary to convert temporary residence permits into permanent ones; in the UK, for instance, categories of foreigners can regularize their positions only upon evidence of continuous residence in the UK for 4 years and in Austria after five years.
5) Right to family life

An important role in the future of immigration and integration is obviously played by family reunification. Since the entry into force of the Treaty of Amsterdam the first initiative of the Commission has been a Directive on the right to family reunification. This is justified for several reasons: firstly, family reunification is not simply regulated by national laws since many international and regional instruments lay down rules or principles on this issue; secondly, family reunification has been one of the main vectors of immigration over the last twenty years; thirdly, it is an essential element in the integration of persons already admitted and finally, this subject has been a priority for the Council since 1991. This reflects the Commission's view that successful integration of third country nationals to maintain economic and social cohesion is one of the major challenges which the EU faces with respect to immigration policy. The establishment of stable family communities ensures that migrants are able to contribute fully to their new societies.

In this connection it is also worth mentioning the adoption in 1990 by the General Assembly of the United Nations of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention is an attempt to reaffirm and establish basic human rights norms and to embody them in an instrument applicable to migrant workers and their families as it was recognized that this group of people is often in a vulnerable and unprotected position.

Main common areas of concerns have been identified as follows:

- Categories of relatives who can be included in family reunification procedures; in Italy, the Government’s Bill n. 795 will limit family reunification by eliminating the possibility of foreigners to extend family reunification to third-degree relatives;
- Specific quota system for family reunification; in Austria a quota is set every year by the Federal government;
- Age limit for children;
- Link between type of residence permit and right to family reunification;
- Requirements, such as income and accommodation, their level of adequacy and evidence;
- Different regimes depending on a prompt or late request for family reunification upon arrival in the host country;
- Possibility to work for family members allowed to enter in the host country; in Austria, they are generally not allowed to work for the first 4 years upon arrival; note that this restriction is particularly harsh for women;
- Bogus marriages: formal or factual investigations; in the UK factual investigations in this field are quite pernicious and potentially in breach of the right to family and private life of the persons concerned; it would be probably more fair to introduce the reversal of the burden of proof or the need of reasonable suspicious to initiate investigations. Furthermore, even where accepted as genuine marriages, spouses initially only obtain one years’ residence and then it is renewed for permanent residence in the UK.

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31 See more details in the paragraph on Employment.
6) Right to identity

An important requirement for the protection of both “old” and “new” minorities is the principle of non-assimilation and its corollary, which is to protect and promote conditions for the group identity of minorities. Many recent international instruments use the term ‘identity’, which expresses a clear trend towards the protection and promotion of cultural diversity both internationally and internally to states.

The right to identity can be defined as “…the essential cultural patrimony of the individual, made up by a multiplicity of varied aspects – such as, inter alia, identity of origin, family identity, and intellectual, political, religious, social and professional identity of each person [which] is not to be argued, distorted, cut short, or denied…”32

Identity requires not only tolerance but also a positive attitude of cultural pluralism by the state and the larger society. Required is not only acceptance but also respect for the distinctive characteristics and contribution of minorities in the life of the national society as a whole. Protection of the identity means not only that the state shall abstain from policies which have the purpose or effect of assimilating the minorities into the dominant culture, but also that it shall protect them against activities by third parties which have assimilatory effect.

Crucial in these regards are the language and educational policies of the state concerned. Denying minorities the possibility to learn their own language or instruction in their own language, or excluding from the education of minorities transmission of knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity. These issues will be analysed in more details in the section on education.

The common issues pertaining to identity rights and new minorities are the following:

- Possibility to declare or not to declare membership of a certain minority group in census and other statistical data;
- Legal provisions recognising immigrants as a special group deserving specific treatment; risk of “labelling” connected with this practice.

32 Bonasso, Alejandro: The right to an identity, at the „Permanent Seminar on Human Rights Education“ held at the School of Law of the University of the Republic of Uruguay, June 20, 2001; see: http://www.iin.org.uy/ponencia_derecho_a_la_identidad_ingles.htm.
B. Economic, Social and Cultural Rights

1) Employment

In the economic sphere there are two significant international legal instruments intended to ensure that the rights of “new minorities” are protected and respected: the Council of Europe’s 1977 Convention on the Legal Status of Migrant Workers, which came into force in 1983 and has been ratified by only eight countries, and the United Nations’ 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which has not come into force and has been ratified by only 3 members States of the Council of Europe. These two conventions are intended primarily to integrate the members of foreign communities into the countries where they live and work. These instruments reflect an attempt by the international community to establish minimum standards for the treatment of migrant workers and their families, as it is acknowledged that these persons are often subject to discrimination and have problems of integration.

In addition, the rights of migrant workers have been specifically enumerated in various ILO (International Labour Organisation) instruments. The principle instruments are the Migration for Employment Convention 1949 (No. 97), the Migration for Employment Recommendation 1949 (No. 86) and the Migrant Workers Convention 1975 (No. 143). The former convention focuses upon recruitment and working conditions of migrant workers and establishes the equality of treatment principle. This is a fundamental principle underlying the ILO’s work in the field of promoting standards for migrant workers. Namely, that in certain enumerated domains, migrant workers will receive equal treatment with nationals. The second convention is aimed at the elimination of illegal migration and illegal employment.

Within EC law, in addition to the Racial Equality Directive, reference is made to the Equality in Employment Directive establishing a general framework for combating discrimination as regards employment and occupation, but only on the grounds of religion or belief, disability, age or sexual orientation. This Directive does not, thus, apply to discrimination on the grounds of race, ethnicity and gender. Furthermore, as the Racial Equality Directive, it clearly states that it does not cover differences in treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment, which arises from the legal status of the third-country nationals and stateless persons concerned.

With regard to employment, the following common issues have been identified. These concern mainly the following areas and categories of workers: positive action, access to employment and working conditions, trainings, self-employment, seasonal workers and unemployment.

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33 As of 18.05.02, this Convention was ratified by France, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Turkey. Note that France, Netherlands and Norway introduced in their instruments of ratification either a reservation or a limiting declaration.
34 These states are Azerbaijan, Bosnia and Herzegovina and Turkey. See also paragraph on Family Reunification.
35 See paragraph above on Justice.


**i. Positive action and employment**

With reference to employment, it is worth mentioning two types of positive action: those which seek to offer additional support to ethnic minorities up to, but not including, the point of employment selection (at which stage the decision is made on the basis of 'merit'); and those forms of positive action which provide specific advantages at the point of selection. An example of the latter would be an employment quota, where a specific number of positions are reserved for minorities. Such policies have been deployed in the USA, but are less familiar to European labour law. Where positive action schemes have been put in place, such as those followed by a number of German Länder, they have normally been confined to redressing discrimination between women and men.

An important example is given by the policy applied by the Autonomous Province of South Tyrol, whereby the distribution of public posts is made on the basis of an ethnic-linguistic declaration of membership or affiliation to one of the three official recognised linguistic groups (Italian, German and Ladin). However, this system is not meant to be applied to non-EU citizens and aims at protecting the linguistic national minorities existing in the territory of the Province.

One of the few examples of statutory requirements for positive action for “new” minorities was the Dutch law on the equal participation of foreigners in the labour market. However, in 1997, it was reported that the Dutch government had decided to remove the requirement to employ a certain number of foreigners to reflect the area where the firm was established.

A complicating factor in the provision and implementation of positive action has been the uncertainty concerning the legality of such measures under EU law. The decision of the European Court of Justice in *Kalanke* 38 confirmed that automatic quota schemes are contrary to the principles of existing EU equality legislation, but equally the decision in *Marschall* 39 indicates that many other forms of positive action are quite acceptable under EU law.

The following have been identified as main common issues:

**ii. Access to employment and working conditions**

- Quota system: general issue on whether quota system hinders or fosters integration of migrant workers by selecting and limiting number and categories of newcomers. In this connection it has to be addressed the potential discriminatory policy of including in the quotas a preference for certain nationalities. For instance, the local authorities in the Province of Bolzano/Bozen, when submitting the 2002 quota list of seasonal workers, clearly expressed preference for citizens originating from Eastern Europe on the ground that they have allegedly better chances of integration.
- Types and characteristics of working permits, whether they are linked to a specific contract, duration, etc.;
- Recognition of qualifications;
- Penalties imposed on employers for hiring illegal migrant workers; these penalties, coupled with the complexity of the laws, often act as a disincentive to employers for hiring legal migrants or conversely, lead to exploitation of migrant workers by unscrupulous employers;
- Discrimination in wages, including issues concerning minimum wage legislation and its implementation, and percentages of overqualified foreign workers;

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Flexibility of working conditions, esp. working hours/shifts, holidays and difficulties in reconciling working hours and shifts with religious practices;

Possibility and requirements to obtain refund or recalculation of social security payments; in Italy, it is possible for foreigners who return to their countries of origin permanently after working in Italy to obtain reimbursement of social security payments made, but only if they come from a state that has not signed a social security reciprocity agreement with Italy. In other cases they may have such funds transferred to the social security administration of their country of origin. Should the worker return to Italy at a later date the worker’s social security position will be recalculated;

Bureaucratic requirements and delays in processing working documents; these delays often constitute a major obstacle to integration because lack of documentation means that employers are unwilling to employ even where migrants have the right to seek employment.

### iii. Trainings

- Conditions and requirements for access to training; in Austria there are specific conditions for access to training funded by Austrian labour market services; in Italy the Government’s Bill n. 795 provides that foreign workers who attended professional trainings in their country of origin enjoy a right to precedence with respect to other foreign workers;
- Special training for women: the situation of women is particularly difficult, especially for those coming to the host country under family reunification scheme. In Austria, for instance, the provisions on family reunification exclude family members from the labour market for a period of 4 years. In general, religious, cultural and traditional beliefs coupled with the lack of support services, in particular, language support, are often responsible for a certain isolation of women;
- Incentives for employers and immigrant workers for investing in training, especially as language support; however, for foreign workers there is the problem of the uncertainty of the length of their stay in the host country.

### iv. Self-employment

- Access to financial means;
- Administrative requirements: in Austria, foreigners need – in addition to all other permissions generally required – a certificate issued by local authorities confirming that the planned business is of public and macroeconomic interest; in the UK there is the problem of employers entering into disguised self-employment contracts in order to avoid tax and national insurance burdens, to avoid responsibility for proper working conditions and to avoid being subject to the minimum wage legislation (a system of factual investigation should be introduced to tackle this problem).

### v. Seasonal workers

- Possibility and, when provided for, requirements and conditions to exercise the right to precedence for seasonal workers compared with workers residing abroad; in Italy, this right is guaranteed by law, but in order to exercise this right, immigrant workers employed seasonally have to inform in writing the labour office and the employer of their availability for rehiring in the following season. Often workers are not informed of this rule (or are informed only if they have joined a union) and by not exploiting this opportunity do not enjoy precedence compared with workers residing abroad even when unemployed.
Regulations pertaining to the rights and benefits of seasonal workers; in Italy, in light of the special and short nature of their contracts, seasonal workers do not have a right to family allowance or involuntary unemployment insurance. The employer must pay to the Social Security Institute a contribution equal to and in substitution for these benefits. Such contributions will go to the National Fund for Migratory Policies in order to finance various kind of assistance to workers, such as schooling and trainings for foreigners, intercultural education, first reception and housing, measures for social integration of foreigners and assistance for exceptional events (conflicts, natural disasters, etc) occurred in non-EU countries.

vi. Unemployment

Link between unemployment and residence permit (see also paras above on residence); unemployment can have serious consequences for foreigners, because they can loose a better type of permit to work, that has been previously obtained, and in certain cases a long-term unemployment may have implications on their residence permit as well; in Austria, for instance, there is a link between periods of unemployment and renewal of residence permits. In general, it is deemed to be much more difficult to find a new job for migrants than it is for citizens of the host community, because the labour offices have usually the duty to place nationals with priority, and existing programmes for those who are long-term unemployed are often not accessible for foreigners.

Requirements to obtain unemployment benefits; in Austria, the requirements to obtain unemployment benefits are, in principle, not discriminatory. However, difficulties for foreign workers can be found regarding transfer of benefits to other countries and the assessment of working periods abroad. For instance, unemployment benefits are not paid in case the beneficiary resided abroad for more than two months a year (though, exceptions can be made);

Provision and implementation by labour services of legislation providing nationals priority in working positions.
2) Housing

In the process of integration, housing policies play an important role. The role of housing in improving self-esteem and dignity of immigrants is evident, especially, in view of another important element of integration: family reunification. These two aspects are also closely intertwined from a legal point of view, because usually family reunification procedures are based, in addition to wages, on housing requirements.

Access to accommodations for immigrants is conditioned not only by their uncertain legal status and weak social network, but also to ethnical, cultural and racial barriers. In this connection forms of exploitation, overcrowding, difficult cohabitations and instability leading to a double model of exclusion come to light: on the one hand, these situations hinder a real process of integration and, on the other hand, they prevent immigrants from obtaining a real “social” citizenship, even though they are well integrated in the labour market and have full “economic” citizenship.

Particularly relevant in the context of social integration is the type of accommodation. The availability of autonomous housing is indeed deemed to facilitate, to a large extent, the integration in the host community.

Usually, access to various forms of housing benefits and public housing is not prohibited by law, but it is often difficult for immigrants to have the necessary requisites, first and foremost the duration of residence, on the basis of which such benefits and accommodations are generally assigned. This leads immigrants to resort to private housing, which are often not available to them due to diffidence, and/or discrimination, of proprietors in renting to immigrants.

Below are the common issues identified:

- Requirements for access to council housing and to housing benefits to rent or buy an accommodation;
- Lack of advice and information from public authorities on requirements for access to council housing and housing benefits;
- Problems of type, quality and location of accommodations allocated to foreigners; in the UK, in particular there is a lack of regulation on quality of private accommodations allocated to asylum seekers by local authorities and problems created by compulsory dispersal scheme;
- Employers’ obligation to guarantee an accommodation for foreign workers; in Italy, the Government’s Bill n. 795 will introduce the pledge by employers to provide suitable housing for foreign workers.
3) Social Security

With regard to social security and third-country nationals, it is relevant to note that the EU legislation currently in force,\(^{40}\) on the application of social security schemes to employed persons and their families moving within the Community, which is the basis for the coordination of the social security schemes of the different Member States, applies only to certain third country nationals.\(^{41}\)

In order to encourage mobility of non-EU workers and to foster their integration in the host communities, the European Commission has recently adopted a proposal for a Council Regulation\(^{42}\) to correct some forms of discrimination against third-country nationals who are currently unable to maintain their social security rights when they move within the Community. According to this proposal, nationals of third countries legally resident on the territory of a Member State and having a temporary or permanent right of residence, can maintain their social security rights also when they move within different EU Members States.

Common issues of concern in this field are:

i. Health

- Requirements for registration at the National Health Service or equivalent public insurance system;
- Access to health services: Lack of cultural mediators, esp. in the health sector; sometimes this gap is filled by NGOs; in Italy, there is the figure of the “cultural mediator” with the task of facilitating the relations between the public administration and foreigners in various areas, including the health sector (see more details in the chapter on best practices); women are particularly affected by this lack of cultural mediation, especially in the field of family planning, pregnancy, children care, etc.;
- Obligation for GPs or equivalent to accept patients or possibility to refuse the registration of a patient.

ii. Social Assistance

- Requirements and number of years to obtain equal treatment as the citizens of the host country;
- Type of assistance foreigners receive before attaining equal treatment;
- Requirements to obtain income support;
- Discretionary power of the authorities in providing social assistance; in Austria, benefits available at the provincial level are aid to ensure the most basic needs, aid for emergency situations and social services; usually, however, a legal claim exists only for the first-mentioned kind of benefits, the others are provided by discretionary power or according to private law;
- Requirements to obtain family and child allowances; in Austria, prerequisites for child allowance payments are legal employment for at least 3 months or legal residence of at least 5

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\(^{41}\) They are stateless persons, refugees and members of families and survivors of Community nationals as defined by this Regulation.

years; foreign unemployed women who have not been to Austria for 5 years are, thus, excluded from this benefit; in Italy, the requirements to obtain family allowance are the income and the permit to stay.
4) Education

Within the framework of social integration of foreigners in the local communities, special attention is given to the school. The school may in fact be considered the best place for “integration” in that it not only ensures reception and inclusion of the foreign children, but necessarily represents a place where immigrant families and members of the society welcoming them can come together to discuss various aspects of daily life as well as the cultural specificities of the different lands of provenance.

The following areas of common concerns have been identified:

- Obligation for school authorities to enrol foreign minors; in Italy, the law in force provides that foreign minors present in Italy have the right to education “whether they are or are not legal residents” and that enrolment may be applied for at any time during the school year;

- Requirements and conditions of the enrolment of foreign minors in given classes upon discretionary procedure or by law; scholastic delay caused by enrolment in a class at a lower level than the one attended by children in their country of origin obviously represents an handicap that can be overcome only with great difficulties; according to the Italian law foreign minors should be enrolled in classes corresponding to their age group, except in cases in which the teaching body decides to enrol them in a different class (the one immediately above or immediately below their age group) taking into consideration the educational system in their countries of origin, the ascertainment of their level of competence, skill and preparation, the studies they have completed and any scholastic certificates they may have; in Austria, the School Organisation Act states that all schools are open to the public without differentiation made on the ground of nationality or language, and schooling is compulsory for all children who permanently live in Austria. In addition, children who are not yet able to master the German language, have the possibility to spend a maximum of one year in school as an associate pupil.

- Quota system for foreign pupils in given classes; in Italy, the teaching body can propose the separation of foreign students so as to avoid the formation of classes in which foreigners predominate; each school can define its own criteria for assigning foreign students to classes;

- Lack of quality control over failure rate of foreign pupils at school;

- Minority approach in curricula: Measures to encourage knowledge of the history, traditions, language and culture of the new minorities existing in host countries. In this connection, reference is made to article 29 of the Convention on the Rights of the Child, which member States shall apply to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

- Provision for language courses of the hosting country as part of the standard curricula and/or as supplementary after-school activities to consolidate language learning;

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43 Among the aim of education, article 29 (1) (c) indicates: “The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”.

44 Article 2(1) of the UN Convention on the Rights of the Child.
Offer of optional mother-tongue language courses; the conservation of the mother tongue, onto which the acquisition of a second or third language is to be grafted, is considered to be an additional and important element of integration. The conservation of the mother tongue facilitates indeed communication within the family, produces cognitive advantages and leads to the development of a multilingual identity which is the foundation in the process of integration.
5) Media

The vast majority of information in the European media touching upon immigrants or immigration appears to be connected with crime. The media have often resorted to sensational reporting on issues concerning immigrants. Concerned at the prejudice and misconception that this type of reporting fuels in society, the media professions should, thus, adopt codes of self-regulation or charters aimed at countering racism, xenophobia, antisemitism and intolerance, and at promoting cultural pluralism and equal opportunities. These should include guidelines on reporting, but also, *inter alia*, a commitment to reflect cultural pluralism in all sectors and to respect the human dignity of all persons.

The following have been identified as main common issues:

- Lack of a code of conduct for media professions legally binding and not limited to internal rules;
- TV/radio frequencies allocated by law for programmes of/on immigrants;
- Financial contribution for press and other media dealing with immigrants.
III. Best Practices

1) Participation in public life: positive impacts of decentralised systems

A general issue to be addressed is the impact on the integration of new minorities stemming from immigration of a centralised versus a decentralised system of public functions and competences concerning immigration.

In Italy and Austria, the legislation in force provides for a decentralised system of competences and a close co-operation among central and local authorities at regional, provincial and municipal level for the drafting and implementation of policies pertaining to immigration.

This decentralised system has been able to initiate an innovative process of integration. Local institutions played in this field an essential role and have become the main actors in the process of integration and mediation. Many local institutions, after having realised that immigrants are an important presence in their territories, decided in fact to undertake a series of initiatives and policies in order to tackle the problems relating to immigration and integration.

In the UK the problem of the effective and successful implementation of a decentralised system has been connected with the issue of proper funding. Some local authorities have had indeed a greater burden of migrants than others but have not been allocated adequate funding by the central government commensurate with that additional task.

The option for a decentralised system is closely connected with the issue of the effective participation of foreigners in public life.

In particular, one of the most relevant innovation included in the Italian Law n.142/1990 on Local Autonomies is indeed the provision imposing or providing for the possibility for municipal councils to create institutions for the participation, in the local administration, of Italian as well as foreign citizens.

The Italian and Austrian legislation alike introduced various forms of integration and participation of immigrants at local level. Among the most relevant are, in Italy, the Territorial Councils and the Cultural Mediators and in Austria, the Foreigner Advisory Board and the Human Rights Advisory Board.

i. Territorial Councils (I)

They are established within the Office of the Prefetto (representative of the Government at the provincial level) and chaired by him/her. Their composition consists of representatives of local and central institutions, organisations dealing with immigrants, trade unions and representatives of entrepreneurs and foreign workers.

This form of decentralisation at the provincial level creates a strong link between the institutions where policies are elaborated and implemented and the target groups. Some problems have been raised, especially at the beginning of the implementing phase, concerning the lack of planning strategy and transparency in the selection of associations of immigrants entitled to participate in the

45 The Italian legislation in this field is : Law 40/1998 “Discipline Regulating Immigration and Rules on the Status for Foreigners” incorporated in a consolidated text “Testo Unico”: 
activities of the Territorial Councils. Furthermore, although the Territorial Councils are institutions on and for immigration, the general trend is to give to the representatives of immigrants a formal rather than a decisional role.

In the Province of Bolzano/Bozen, a Territorial Council for Immigration has been established in 2000 within the Office of the Commissioner of the Government (Prefettura). The Council is tasked with programming and implementing initiatives and projects involving a wide range of institutional, economic and social stakeholders.

ii. Cultural Mediator (I)

The Testo Unico introduced and recognised, for the first time, the figure of “cultural mediator” with the task of facilitating the relations between the public administration and foreigners belonging to different ethnic, national, linguistic and religious groups.

In 2000, the Department for Vocational Training in Italian Language of the Province of Bolzano/Bozen, with the funding of the European Social Fund, organised a course aiming to create the professional figure of the Intercultural Mediator. At the end of this course 17 diploma have been assigned.

The tasks of the Cultural Mediator are usually the following: facilitate the relations between public offices and foreigners by reducing tensions and misunderstanding; inform immigrants on vacancies and opportunities, relevant legislation, requirements to obtain various documents, etc.; facilitate full access and effective use of public services by immigrants by providing, for instance, translations and guidance; in general, contribute to make public services for immigrants more effective.

Generally, the Mediators who obtained this diploma work, under short-term contracts, in various sectors and/or specific projects concerning the integration of foreign citizens funded by the Public Administration or private organisations.

iii. Foreigner Advisory Board (A)

In Styria, Foreigner Advisory Boards have been established since 1999 in three major cities. Their main task is to give advice to political responsible persons at the municipal level and to report on the foreigners’ situation in their cities; furthermore, they battle against all forms of direct and indirect discrimination of the foreign population with the aim to support a multicultural society where integration can take place without assimilation.

iv. Human Rights Advisory Board (A)

The Human Rights Advisory Board has been established in 1999 under the supervision of the Federal Minister of Internal Affairs. The main task is to evaluate the activities of the police forces under the aspect of the safeguard of human rights. It also provides reports for the Minister on initiatives and proposals. In order to ensure a complete evaluation of police forces activities, six commissions have been established to control the conditions of detention, police jails and similar institutions.
2) Justice

i. Respect for religious rights of detainees

In Italy prison staff are obliged to satisfy the requests of detainees of the Islamic faith, in particular during the period of Ramadan.\(^{46}\) Thus, the prison personnel must adequately provide for the appropriate preparation and distribution of food, facilitate the entry of accredited Muslim clergy and allow for the exercise of the most important religious practices during the period of Ramadan.

ii. Legal Assistance

In the UK two instruments have been identified as means to assist foreigners in their relations with the public authorities in the legal field. The first is a good network of law centres and citizens’ advice bureaux partly subsidised by local authorities. They provide advice and guidance in legal matters. Another mechanism is the representation by MPs, who particularly in London have been willing to listen to their migrant community constituencies and make representation on behalf of individuals.

3) Observatory on Immigration

In 2000, the Autonomous Province of Bolzano/Bozen proposed the establishment in the Province of a public observatory for immigrants coming from outside the EU and who are already residents in South Tyrol. This Observatory aims at improving the level of information on immigration as well as an improvement in the social situation of immigrants. It will be charged with studying the types of foreigners and their family situation; monitoring socio-economic development; studying the needs and situation in the field of occupational training and refresher courses; observing the capacity for integration and the phenomenon of exclusion in the different productive sectors and the social environment; surveying needs and the recourse to public services; setting up information systems and organizing periodical presentation of reports. Although this initiative was included in the *Provincial Social Plan for 2000-2002*, at the time of the drafting of this report, such an Observatory has not been established yet.

4) Education

Closely connected with the question on decentralisation and autonomy is the issue of education. In this connection it has to be mentioned the Law no. 12 entitled “School Autonomy” of the Autonomous Province of Bolzano/Bozen that introduces in schools autonomy in teaching and organization and paves the way for innovation and change by assigning duties of educational research and experimentation to the single schools\(^{47}\).

Following the adoption of this law some schools have gained significant experience in the inclusion and integration of foreign pupils. They have organized in-school training courses centred around intercultural topics. They have followed and verified transversal itineraries and activities and they have accumulated an important and useful documentation for those who intend to include education in diversity among their educational goals. The methods adopted by South Tyrolean schools in

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\(^{47}\) Law of the Province of Bolzano/Bozen n. 12, 29 June 2000.
meeting the challenge of inclusion and integration of foreign pupils have up to now had the following characteristics:

- almost all schools included in the compulsory range and, in the recent past, even some upper secondary schools, plan a first stage of reception which may be limited to few initial activities or a more continuous and better organized involvement of families, cultural and volunteer associations as well as linguistic/cultural mediators. Many schools distribute to newly-arrived foreign families a guidebook containing information on the different activities, as well as printed forms in different languages to facilitate communication and participation in school life;

- all schools provide language courses in Italian and/or German. The resources employed and the organization may vary depending on class activities, with the contemporary presence of two teachers. Teaching is carried on at different levels and language courses are tailored to individual needs, with supplementary after-school activities to consolidate language learning.

- some school districts and secondary schools attribute special importance to intercultural themes, with more articulated projects providing for the development, comparison and exchange between cultures, the broadening of the range of training courses made available, with dedicated language teaching, the offer of optional mother-tongue language courses, the setting up of language laboratories and intercultural workshops, the performance of activities of various kinds leading to encounters between the school and the families with the consequent occasions for acquaintanceships.

Moreover, since the school is the initial point of contact, exchange and comparison between immigrant families and the host society, there is the possibility of organizing meetings with families and children, with the presence of a linguistic/cultural mediator in order to plan and organize their inclusion.

With regard to the university, it has to be mentioned that in Austria an increasing number of students have been coming during the last years from the former Yugoslavia, especially from Bosnia. These students receive various forms of aid and support by local and federal authorities, for instance they are granted scholarships together with residence permits.

5) Media

In various Styrian cities is sold an independent street magazine, Megaphone, which publishes articles on social and cultural topics in order to disseminate information on the situation of minorities. The most relevant aspect is that the magazine is not only made for or about these groups, but it is also made by them as they can actively participate in writing and publishing. In addition, the sale can be a source of income for all those who are in a difficult social situation, because 50% of the price remains to the vendor.

6) Role of NGOs

Finally, the role of ngos should be emphasised as they play a vital role in providing assistance for new minorities, especially in areas neglected by the public authorities. In the three areas selected, there are several examples of ngos active in a wide range of fields such as legal advice, house and work-seeking, first reception, guidance, health assistance, education, language courses, training, etc.
The role of NGOs, especially with the active participation of foreign citizens, is particularly relevant in the field of culture, language and religion in which initiatives and projects can respond to the objective of conserving cultural identity and intercultural processes and which are, even more importantly, the condition for effective access to various administrative and social services represented for instance by the school and health facilities.

NGOs function, thus, as important mediators between the local authorities and the host community, on the one hand, and the new minorities, on the other, by planning and implementing various initiatives, promoting local claims, exchanging ideas with the local society and by soliciting adequate policies to tackle immigrants’ problems. However, it should not be failed to remember that the planning and implementation of integration policies is the primary duty and responsibility of the national and local administrations.
IV. Conclusions

Until well into the twentieth century the problem of minorities was understood in terms of assimilation. According to that view, the solution to the problem of the existence of migrants and minorities in the short, medium or long term entailed the assimilation of the minority into the majority. Cultural merging or ethnic and social integration were the ultimate goal of most policies on the subject. For many States, ethnic and cultural diversity was seen as a weakness. It was considered either as entailing a latent danger of conflict or as a weakness in comparison with more homogeneous social systems.

More recently the protection of minorities is intended to ensure that integration does not become unwanted assimilation and that it does not undermine the group identity of persons belonging to the different groups living on the territory of the state.

The right to be different is also proclaimed by the 1978 UNESCO Declaration on Race and Racial Prejudice, whereby, in developing policies for the integration of immigrants, host States should guarantee the preservation of migrants’ cultural identity as a pledge of their right to be different, although subject to the legislation of the host countries.

The concern underlying the LISI Project is to suggest a road to integrate the different groups of new minorities stemming from immigration into a multicultural society characterized by intercultural tolerance and co-operation and not to assimilate the weaker groups into the culture of the dominant group.

In the next activities of the LISI Project, the Partners will explore the possibility to analyse a new approach of integrating new minorities, which goes beyond multiculturalism, that is fostering diversity. Whilst „multiculturalism“ is almost associated with more or less homogenous groups with different cultures, diversity allows us to address cultural diversities between regions, urban and rural areas, religions and so on. Diversity refers, therefore, to the diversity of culture which is not exclusively a by-product of migratory movements or settled minorities, but it is a concept which encompasses the whole society.

49 See article 1, para 2.