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**Book Review: *Legal Aspects of Ethnic Data Collection and Positive Action. The Roma Minority in Europe*, by Jozefien Van Caeneghem**

*The collection and processing of ethnic data is surrounded by controversy and methodological challenges; nevertheless, scholars broadly agree that reliable ethnic data are necessary tools for combating discrimination and supporting positive action. This book investigates the various issues surrounding data and positive action, how they interrelate, and how they play out in the specific case of the Roma – one of the most disadvantaged minorities in Europe. **Andreea Cârstocea**<sup>\*</sup>, of the European Centre for Minority Issues, welcomes the book's comprehensive coverage and appreciates the author's structured explication of the topic's myriad issues and considerations. In spite of its lack of contextual specificity, she applauds the book's detailed information and analysis and recommends it to both specialist and non-specialist readers alike.*

***Legal Aspects of Ethnic Data Collection and Positive Action. The Roma Minority in Europe*, by Jozefien Van Caeneghem. Springer International Publishing: Switzerland, 2019, 728 pp. ISBN 978-3-030-23667-0**

The book is a timely and comprehensive analysis of the ways in which ethnic data collection and positive action schemes can complement existing anti-discrimination frameworks to combat discrimination and more effectively work towards the inclusion of Roma populations in Europe. The book's underlying assumption is that anti-discrimination legislation alone is not sufficient for achieving this purpose; the author's argument is that positive action – as informed by reliable ethnic data collection – can be a major factor in improving the situation of the Roma.

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There is a general agreement in the literature that ethnic data collection represents a valuable tool for policymaking, and that the existence of reliable ethnic data allows for the creation of targeted policy measures aimed at remedying socioeconomic disparities.<sup>1</sup> The deep inequalities and socioeconomic disadvantages affecting Roma communities have led international organizations, NGOs, and academics to call for more – and more reliable – data concerning this ethnic group. Indeed, information as basic as the number of people belonging to the Roma minority in countries across Europe is notoriously unreliable, even in those countries where it is legal to collect ethnic data – whether through censuses or by other means. Oftentimes, international organizations such as the Council of Europe or the World Bank use rough estimates of the number of persons of Roma origin, which are usually much higher than those reflected by census results.<sup>2</sup>

This speaks to the many methodological problems in collecting data on the Roma. One of the most quoted hurdles in this respect is this group's reluctance to share information concerning their ethnic background (Rughinis, 2010), which leads to severe underestimates of the size of this minority. A further problem is the fact that the term 'Roma' applies to a wide range of subgroups (Achim, 2004), all of which face considerable residential, educational, and economic discrimination. As such, terminological and definitional solutions employed by data collectors can sometimes obfuscate the results even further, as was the case with the definition of 'Roma household' employed by Unicef in a 2015 study. The instructions stated that if at least one member of the household was found to be Roma or Egyptian, then that household was to be classified as a Roma household (Surdu, 2019; 489). Given that previous studies had demonstrated that about one third of 'Roma households' in Romania had members of another ethnicity, it is clear that methodological problems can distort the results of the data collection exercise (Surdu, 2019; 489). To this, one can always add the bias of the field operators, as oftentimes it is their responsibility to exogenously assign an ethnic affiliation to their respondents (Surdu, 2019; 488).

In this context, Van Caeneghem's book is an important contribution to the question of how ethnic data can best be obtained and used so as to inform positive action measures. Starting from the premise that there is a pressing need for both improved ethnic data collection and positive action policies for the inclusion of the Roma minority in Europe, the author argues that up-to-date, reliable, and disaggregated data concerning the ethnic diversity of the population and its corresponding socioeconomic structure presents a wide range of benefits. She finds that the most important among them are the exposure of disadvantages and inequalities of ethnic

groups, the possibility of creating evidence-based anti-discrimination and socioeconomic inclusion policies, and crucially, in the case of legal proceedings, the fact that statistical data helps establish a *prima facie* case for discrimination (Van Caeneghem, 2019: 319). As for positive action schemes, the author argues that they can help to compensate disadvantaged groups for the present-day effects of past discrimination; contribute to removing negative stereotypes, discrimination, and structural disadvantage; promote and strengthen diversity; enhance social homogeneity; and promote balanced economic growth (Van Caeneghem, 2019: 514).

In spite of the benefits outlined above, both ethnic data collection and positive action measures present their own challenges and limitations. For one, ethnic data collection is controversial as well as methodologically challenging. Fears over the potential misuse of such data – which could arguably be used to discriminate against ethnic groups, or be used in violation of privacy and data protection rules – have led some countries to refrain from collecting ethnic data. Further complicating the issue are the significant methodological challenges arising from identifying the most appropriate terminology, categorization, and answer format in ethnic data collection processes.

Positive action is similarly not without its challenges. There is a wide range of positive measures available, but only limited understanding as to which types are most appropriate in which contexts. Strong positive action measures can generate disagreements concerning the qualifications and merit of members of targeted groups. Furthermore, negative reactions from majority or non-targeted groups might hinder the positive effects envisaged for such measures, or might negatively impact the level of commitment of political actors (Van Caeneghem, 2019: 514).

In this context, the author probes the legal feasibility of collecting ethnic data and implementing positive action policies, and demonstrates that – provided certain conditions are met – it is possible to do both while fully respecting international and European human rights norms. In doing so, the author presents a comprehensive, wide ranging analysis, making extensive use of international legal norms, relevant caselaw from the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU), as well as a broad selection of secondary literature. The author's argument is well structured and comprehensive, and includes detailed analyses of topics such as equality and anti-discrimination, the right to privacy, personal data protection, the link between positive action and ethnic data, and the

international legal framework on positive action. The book provides an excellent summary of the contemporary legal standards on these issues, which are skilfully used to reflect on how they can best be applied to combat discrimination and to advance the inclusion of the Roma minority in Europe. The broad scope of the book, in combination with the detailed analysis provided, makes this a very useful tool for both specialist readers and non-specialists with an interest in ethnic data collection, positive action, and their relevance for the Roma communities in Europe.

The book is structured around two main parts which correspond to the book's title: Part I focuses on ethnic data collection, while Part II focuses on positive action. These are preceded by an introduction focusing on the identity and situation of the Roma in Europe, and by a chapter outlining key the concepts related to human rights and the Roma.

The *Introduction* briefly outlines some basic information about the Roma minority, such as the diversity of the populations covered by the 'Roma' umbrella term, as well as the ambiguity of the multiple denominations of subgroups covered by this generic term. The introduction further outlines the main challenges facing Roma communities, in particular the discrimination and social exclusion this group is subjected to in contemporary times, with reference to the historical context of Roma people in Europe. The introduction thus offers the necessary – if superficial – background information about the ethnic group which constitutes the focus of the book.

The following chapter, *Human Rights and the Roma: Key Concepts* complements the introduction in bringing together the building blocks on which the book's argument is built. Van Caenegem offers a brief overview of the human rights concepts most relevant to the issue of ethnic data collection and positive discrimination, including equality and anti-discrimination, the right to privacy, data protection, and socioeconomic rights. This is an important segment in the structure of the book as it provides the reader with a set of detailed considerations as to the concepts that necessarily undergird any reflection on how ethnic data collection and positive action regarding the Roma can successfully be carried out.

Part I of the book, *Ethnic Data Collection*, takes an in-depth look at the key elements, legal rules, and principles that define and shape this instrument. The author discusses the difficulties in defining the notions of ethnic and racial origin, acknowledging that race and ethnicity are context-dependent social constructs. These concepts, however difficult to define, are nevertheless fundamental in collecting ethnic data and, by extension, in building policies

aimed at improving the socioeconomic situation of specific ethnic groups. The author considers the often rigid interpretation of privacy and data protection legislation, which states often employ to justify the absence of ethnic data collection; her analysis however demonstrates that personal and sensitive data processing is allowed for equality and non-discrimination purposes, preconditioned on appropriate safeguards. The author also weighs the benefits and risks of ethnic data collection, as well as the main data sources and methods that can be used. Among the benefits of ethnic data collection, Van Caeneghem notes that information on population diversity together with corresponding socioeconomic data across groups allows for the exposure of disadvantages and inequalities affecting ethnic minorities, and facilitates the identification of good practices that can alleviate them. The author argues that, although the risks associated with ethnic data misuse can never be entirely removed, the privacy and data protection rules help to prevent discrimination against ethnic groups.

The final section of Part I considers the rules and principles outlined in the previous sections in relation to the case of the Roma. The author argues that official statistics have limited value due to low self-identification rates or, sometimes, the absence of Roma categories in surveys. She notes that, in certain cases, constitutional law prohibits the collection of ethnic data but argues that alternative ways should be found in these instances to assess the extent of the problems faced by groups at risk of discrimination. Among the difficulties in collecting data concerning the Roma minority, the author mentions the ‘complex, fluid, and multidimensional nature of Roma identities’ and identifies the need to involve Roma communities in the process to ensure that the categories used in data collection correspond to those used and preferred by Roma persons (Van Caeneghem, 2019: 423).

Part II of the book, *Positive Action*, follows the same broad organizing principle as Part I, first outlining the main elements, legal rules, and principles underlying this human rights instrument, and then analysing how it can be employed – in conjunction with ethnic data collection – to combat discrimination and to promote the inclusion of Roma communities in Europe. Van Caeneghem starts her analysis of positive action by first considering its links with ethnic data collection. The author understands positive action as group-based measures that target group-wide disadvantages and inequalities, and which are proportional (differences in treatment must be reasonably and objectively justified) and temporary (these measures must be discontinued once the objectives have been achieved and sustained for a period of time). The link with ethnic data collection is evident at all stages of positive action: in the needs assessment, implementation, monitoring, and evaluation stages.

The analysis of the international legal framework concerning positive action is carried out with a view to understanding the legal feasibility of this instrument. Van Caeneghem examines four UN treaties related to human rights: two comprise substantive provisions on positive action (the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of all Forms of Discrimination Against Women*), whereas the remaining two include positive action through the UN Human Rights Commission and UN Committee on Economic, Social and Cultural Rights' interpretation of their respective equality provisions (the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*). The author concludes that it is up to individual states to decide when it is necessary and appropriate to take special and concrete measures for positive action. She also highlights the conditions that must be fulfilled for positive action not to constitute discrimination (i.e. they must pursue a specific and legitimate purpose, any differences in treatment must be proportional, and they must be temporary). Van Caeneghem also focuses on the European framework on positive action, conducting an analysis of the caselaw of the CJEU and ECHR, and comparing these cases to the UN treaties. The author concludes that a lot of the discussions on positive action largely focus on strong measures that provide preferential treatment; she notes however that this instrument comprises a broad range of measures of varying intensities – some do not include preferential treatment and are therefore less controversial – and that other options should receive more attention in the efforts for Roma inclusion (Van Caeneghem, 2019: 599).

One of the most important chapters in the book focuses on how positive action could advance the inclusion of the Roma minority in Europe (Chapter 9, *Positive Action for the Roma Minority in Europe*). The author identifies five potential aims that positive action for Roma can pursue: the eradication of present-day discrimination (as a remedial aim); promotion of diversity (as a cultural aim); enhancing social homogeneity through Roma social inclusion (as a societal aim); the promotion of Roma role models (as a pedagogical aim); and increasing productivity and competitiveness through inclusion and greater participation of Roma in the labour market (as an economic aim). In the following chapter (Chapter 10, *Positive Action for Roma in Four Key Areas*), the author provides concrete examples of areas of socioeconomic life in which positive action can be particularly effective, namely education, housing, employment, and healthcare, presenting a set of good practices of positive action in each of these sectors. Related to these, a final chapter in the book (Chapter 11, *Inter-Cultural Mediation to Enhance Roma Inclusion*) is dedicated to intercultural mediation as an example of positive action for Roma people. Roma

mediators have for years been playing an important role in the life of Roma communities in several member states. Van Caeneghem acknowledges their important and beneficial role in many areas of life, and particularly emphasizes their role in fostering interaction and cooperation between Roma and other parties.

Beyond the beneficial effects of positive action measures, the author also considers some of the main challenges that prevent them from fulfilling their potential. Among these, a lack of awareness of the situation of Roma communities, and of positive action in general, can lead to negative and prejudiced reactions from non-Roma groups. The lack of political will to adopt measures to promote Roma inclusion often compounds the problem, while the absence of reliable disaggregated data on Roma complicates the design, implementation, monitoring, and evaluation of positive action measures. Finally, the lack of consultation or involvement of Roma communities and the prevalence of limited, short-term, top-down funding of positive action measures also limit the progress and long-term effects of this instrument (Van Caeneghem, 2019: 648)

The broad scope of the book, while providing a lot of valuable information and analysis, is also one of its major limitations. The author provides a bird's eye view of the general international norms and analyses how they can facilitate better ethnic data collection and positive action to improve the situation of the Roma minority in Europe. This level of analysis, while indeed useful, does away with national legal specificities and the concrete contexts and challenges faced by Roma communities. The author offers recommendations and prescriptive advice as to how data collection can be improved for the Roma minorities in Europe, but the reader is often left wondering to what extent, and in which ways, this advice can be meaningfully applied in specific local contexts. In particular, the analysis of how positive action can be conceptualized and applied would have greatly benefited from a more detailed and nuanced discussion of concrete examples.

These last points notwithstanding, the book is a valuable addition to the body of knowledge on the subject of data collection and positive action in general, and all the more so to our understanding of how these tools can be used for improved policy making for Roma communities. Both the specialist and the non-specialist reader will surely find food for thought in browsing this very comprehensive book.

## Notes

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<sup>1</sup> See for example Ringelheim's 'Minority Protection, Data Collection and the Right to Privacy' (2008), Viano and Baker's 'How Administrative Data Collection and Analysis Can Better Reflect Racial and Ethnic Identities' (2020), and Wrench's 'Data on discrimination in EU countries: statistics, research and the drive for comparability' (2011).

<sup>2</sup> See for instance Ringold et al's *Roma in an Expanding Europe: Breaking the Poverty Cycle* (2005).

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