Foreword

This edition of "Trends in social cohesion" – *Institutional accommodation and the citizen: legal and political interaction in a pluralist society* – looks at ways of encouraging and promoting changes to institutions and individual behaviour to enable citizens of our increasingly pluralist societies to live together in harmony. It forms part of a project funded jointly by the Council of Europe and the European Commission on the development of intercultural skills in the social services.

The articles in this volume are concerned with "accommodating differences" from both the European and Canadian perspectives. Part A looks at the potential contribution of the law on both sides of the Atlantic to changes in our societies. Part B then raises the highly relevant question of whether we are concerned with reasonable accommodation or mutual accommodation, that is how to coexist at a time of growing diversity. The answer is far from simple since what is implied is acceptance of cultural interaction and an evolution towards something new, which is still to be created.

Since we also wish to place the question of accommodation in the context of intercultural dialogue – which the Council of Europe, with its White Paper, has made a priority – and training in intercultural skills and competences, Part C goes on to look at the various forms of resistance to this approach and the anti-pluralist position, and then at ways of ensuring that the "exceptions" established for minorities also benefit the rest of the population and can serve as vehicles of progress. This volume will be followed by one more specifically focused on education and training in intercultural competences aimed at social agencies, local authorities and civil society, but it already highlights a number of challenges that such an approach poses for public services.

For example, in addition to the debate on legal options, we look at policies and practices for dealing with plurality in a democratic society faced with hitherto unprecedented rapid change.

This edition of "Trends in social cohesion" is thus an opportunity for the Council of Europe to contribute to a major social issue and outline a vision of the future that allows us to set aside mutual suspicion and develop institutional arrangements and forms of social interaction capable of making diversity a factor for progress and well-being. In particular, this

vision should enable each of us to benefit from the presence of others, and discover a world in which identities will not in any case remain fixed but will evolve and accommodate to each other.

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Introduction

The papers appearing in this edition of "Trends in social cohesion" are part of a broader reflection on the ways in which public institutions – primarily social services, health-care services, employment services and others – can adapt their conduct and service provision in response to the plural identities of European populations while at the same time ensuring due regard for human rights. These contributions are part of a project co-financed by the Council of Europe and the European Commission.

This project asks the key question how – that is, by what voluntary or mandatory means – do institutions incorporate the skills, knowledge and practices enabling them to respond to the specific needs of individuals caused by the "rift" between identity and territory.[1] There is a danger that these specific needs, if overlooked or disregarded on the pretext of uniform equality, will turn into factors of exclusion arising from discriminatory or stigmatising practices.[2] From the point of view of social cohesion, incorporating at institutional level a concept of plurality accommodating difference is one of Europe's most important challenges.

Accordingly, this project analyses the value of a reasonable accommodation obligation as an inclusive and proactive approach for the integration of cultural diversity, using as a reference its application in Canadian law. In Canada, this obligation seeks to correct the discriminatory effects of a norm, either by exempting the individual concerned from its application or by adapting the norm itself.

"Accommodating" difference is an exercise in social and political discernment which should be part of "common sense" and "reasonableness", but which unfortunately comes up increasingly against such impassioned emotions and opposition that it often has to be implemented by legal imposition or, discreetly, out of goodwill.[3] The transformation in the concept of "nation", as described in Article 7 of Resolution 1735 (2006) of the Parliamentary Assembly of the Council of Europe, "from a purely ethnic or ethnocentric state into a civic state and from a purely civic state into a multicultural state where specific rights are recognised with regard

1. Text by Lidija R. Basta Fleiner.
2. Text by François Fournier.
3. Text by Emilio Santoro.

not only to physical persons but also to cultural or national communities", presupposes a long learning curve on the part of institutions and citizens requiring reference frameworks, training in skills, the transformation of language and legitimised political spaces for interaction and exchange between "diverse cultures".

However, the idea of a pluricultural or intercultural state in itself gives rise to profound resistance among populations whose national identity is synonymous with loyalty, conquest, freedom and discipline forged over the course of history. While plurality presupposes that rights to express themselves and to decision-making powers are granted to minorities on an equal footing with majorities,[4] and acceptance of the principle of mutual influence by interaction, then tension on the part of the host society over values, symbols, ways of occupying spaces, etc., could damage the calmness of the debate on the institutional changes to be made. This resistance could become all the more manifest given that it is frequently stirred up and exploited by the political class presenting "plurality as an embarrassment in itself" as A. Sen (2002) critically observed in another context. Such tension may lead to the formulation of false equations, giving the impression that restricting the freedoms of the "new arrivals" or "minorities" would lead to an increase in the freedoms of the majority. The opposite is true: when one interferes with the freedom of conscience of one section of society, it is everyone's freedom that is affected.[5]

Public facilities and services – which are supposed to comply with the principle of equality in access to rights and services – inevitably reflect the national culture in both the application of norms and in behaviour vis-à-vis citizens, institutional language and the evaluation of problems and satisfaction levels. It is generally assumed that these facilities do not give rise to psychological barriers, mistrust, incomprehension or fear since they are in response to the public interest. It is only very recently that the "ethnic" composition of administrative staff in Europe has been taken into account as a factor contributing to equality: it is not that long since multicultural cities such as Amsterdam and Berlin introduced multi-ethnic or multiracial staff recruitment policies.

The texts included in this edition present legal "options" which have been adopted in Europe and in Canada (particularly Quebec) to combat both direct and indirect discrimination and to produce guidelines to

4. Text by Eduardo Ruiz Vieytez.

5. Text by Tariq Ramadan.

ensure that "acknowledgement" of specific features is not undermined by stigmatising practices; consequently, institutions have been obliged to analyse the facilities they offer. Moreover, these texts raise questions concerning the possible political and legal choices (reasonable accommodation through legal procedures or through the development of institutional competences? Reasonable accommodation for minorities or for everyone? What type of intercultural dialogue can support the adaptation of regulatory frameworks, services and policies? How can one accommodate the "Islamic question" when Islam is so different from – or indeed incompatible with – the laws of secular countries?). Lastly, they describe the actions and steps – of varying degrees of political legitimacy – taken to accommodate difference in public services.

The contributions also address the question of the explicit or latent "resistance" encountered by any type of transformation.[6] Some authors believe that "ha da passa' 'a nuttata" (the night will soon be over) quoting the Neapolitan writer Eduardo de Filippo. Our societies are bound – despite resistance – to find the most appropriate ways to re-establish balances in contexts of rapid cultural change.[7] Others ask how far a democratic society must go in recognising differences.[8] The challenge is a considerable one especially as this gives rise to a highly emotive debate, particularly concerning the belief that any identity must remain unchanging and unchangeable in order to survive. In the "Invisible Cities" of Italo Calvino, we find Zora: in order to preserve its identity, this imaginary city banks on immobility, languishes and ultimately disappears. The Earth has forgotten it. There is no trace of its existence. Nonetheless, since the question of "to what extent should we change" persists, in order to avoid it becoming a source of sterile confrontations, the answer should take into account the fact that interaction also enables "the others" to change: migrants and minorities too have no desire to see their culture "calcified" or to live on the sidelines of democracy, rather they want to ensure that what makes them different does not turn into discrimination.

On another register, these texts explore – by comparing two different legal traditions – whether it would be appropriate for Europe to incorporate the North American concept of reasonable accommodation (over and above the provisions of Directive 2000/78/EC for the employment of

6. Text by François Fournier.
7. Text by Emilio Santoro.
8. Text by Marie-Claire Foblets and Pierre Bosset.

people with disabilities) to encourage the adaptation of rules and practices, public and private facilities and services so that difference does not become a barrier to the full enjoyment of rights and opportunities.[9] This measure also concerns both the procedures for identifying the obstacles (of a cultural, psychological or other nature) to equal access to services and the preventive and proactive conception of their operating rules and, lastly, the provision of personalised solutions where obstacles persist because of organisational constraints (cost, availability of relevant staff, etc.).[10] A number of questions are raised in this connection. If applied to the European context, would this legal measure provide additional protection for rights? Could it constitute a new means of recognising diversity? Would it make it possible to overcome hitherto unimagined obstacles to integration? Above and beyond the value of this legal measure in the fight against all forms of discrimination, what contribution could it make to more harmonious coexistence for the well-being of all which takes due account of our differences?

This comparative exercise in the legal field raises a number of questions, discussed by the authors themselves: an analytical summary is presented in the conclusion. And here, by way of introduction, are some of these questions to whet the reader's appetite.

To what extent are European legal frameworks (human rights, non-discrimination and protection of national minorities) effective in ensuring that the adaptation of facilities, social services, health care and other establishments can put into practice the principle of equality in diversity, in comparison to the reasonable accommodation obligation, as applied in Canada (bearing in mind that this does not relate to minority issues, which are regulated in the context of relationships between provinces)? Furthermore, how do these frameworks lay down the limits of what is reasonable (or the margin of appreciation) to ensure the desired results?

By granting courts the entire responsibility for deciding whether some individuals or groups should enjoy special regulations, does reasonable accommodation lead to exceptional treatment being the rule? Is exceptional treatment able to provide the right approach for social and citizenship learning in contexts where accommodating differences gives rise to conflict?[11] Does the accommodation obligation have the potential to

9. Text by Jennifer Jackson Preece.

10. Text by Myriam Jézéquel.

11. Text by Emilio Santoro.

adapt collective rules in the interest of all citizens, by devising new inclusive rules, rather than exceptions to the rules targeting the majority?

Is the right not to suffer indirect discrimination a suitable legal instrument for guaranteeing respect for ethnic, religious and cultural diversity in Europe? Does it oblige social structures to go beyond appearances of equality, to take a fresh look at themselves and if necessary to adapt in order to meet the needs of new groups of citizens?[12]

How can reasonable accommodation, as a legal technique, supplement the European legal framework regarding indirect discrimination in order to encourage our democracies to develop from a mere question of majorities towards the necessary incorporation of minorities from an equality perspective?[13]

In the light of certain best practices developed in Europe, can one claim that accommodations in Europe are the result of "common sense" rather than impositions by the courts? What can be gained from court proceedings?

Is reasonable accommodation a relevant approach to rectify the discrimination suffered by the "more vulnerable groups" or is it more appropriate to acknowledge specific aspects of identity, considered as essential for the integrity of individuals, separately from a situation of social or economic disadvantage?[14]

Above and beyond the debate on legal options, this edition includes discussions on political concepts and practices to address the question of plurality within democratic societies, in the context of rapid unprecedented change. Several texts emphasise the fact that reasonable accommodation – like the legal instruments for the recognition of human rights in Europe – does not replace policies of intercultural dialogue, interaction and participation aimed at building up a feeling of belonging, of shared projects. These policies seek to encourage – by fostering a sense of citizen empowerment – the creative management of differences and a sustainable accommodation-oriented approach in society, as indicated by one of the authors.[15] It is therefore not simply a matter of institutionalising a

12. Text by Frédérique Ast.
13. Text by Eduardo Ruiz Vieytez.
14. Text by Jennifer Jackson Preece.
15. Texts by Christoph Eberhard and Lidija R. Basta Fleiner.

new practice, but of ensuring that mutual and dynamic accommodations become an integral part of changes in society.[16] To this end, the Council of Europe is suggesting that the development of a vision and of progress indicators in well-being for all and in the communities be based on deliberative processes in which citizens representing social, cultural, religious and other "differences" all participate on an equal footing. Seeking out a shared vision is a means of overcoming dividing lines and possibly moving towards defining common understandings and projects.

Public institutions, more than any other organisations, have a responsibility to offer high-quality services, which are accessible and tailored to a pluralist population and to reflect this diversity in its programmes, practices and action.

The uncertainty focuses on the extent (and the binding aspect) of the necessary and reasonable adjustments to be made to institutions in a spirit of equity and inclusion. With due regard for the rights (legal benchmarks) and responsibilities (organisational constraints and remit) of everyone, how much adaptation should we agree to? What principles should guide us in this respect?

At a practical level, the search for equitable solutions, excluding the creation of a parallel network of services, requires institutions to think about their practices and transform their organisational culture.

In other words, the accommodation obligation refers to a question of managing diversity and reconciling rights which goes far beyond intercultural education in tolerance and harmonious coexistence. How can one encourage the integration of diversity in equality without adversely affecting social cohesion or democratic values? How can one strike a fair balance between competing interests? In order to respond to the needs of its immediate environment, should the institution accept the reasonable accommodation obligation by moving beyond the search for ad hoc solutions towards structural solutions? Should one extend the concept of diversity to include any distinctive feature which might make someone vulnerable? How can one avoid the situation in which consideration of diversity is regarded only in a conflictual context and one for which a judicial solution is required?

16. Text by Jane Wright.

In this context, promoting equal access by users to these services (without their difference being a disadvantage to them) also depends on the operators themselves having access to a series of conceptual reference points and means of action. What are the best strategies to enable professionals to solve conflicts of norms, evaluate their margin for manoeuvre and negotiate reasonable adjustments?

Over and above political arguments (integration of minorities), ideological arguments (enhancing difference), legal arguments (application of the right to equality) or social arguments (the demographic necessity for adjustment), consideration of diversity requires the building up of new professional skills incorporating diversity.

Diversity sensitisation tools are no longer adequate for stakeholders who want legal benchmarks and professional reference points (intercultural mediation techniques, social and procedural guidelines) to find a practical solution to conflicts of norms, values and rights. They wonder how they can adapt the legal obligations of non-discrimination to the particular terms of reference of their institution. Furthermore, these conflicts have not risen solely because of immigration. Individual freedom and the individualisation of deeply held convictions multiply the diversity of personal values and the individual ways of applying common values. Any rigidity in the application of rules can put people in a dilemma: should they forego their rights or go against their convictions. Liberal societies find it intolerable that society interferes in the intimate beliefs and convictions of individuals. Nevertheless, what forums for expression are provided for such beliefs and convictions when they are in conflict with common norms?

In this area, there are many questions going beyond the scope of the stakeholders involved, calling on the whole of society to reflect on the choice of its collective values. What reasonable limits can society impose on individuals who want to live according to their personal convictions but whose convictions run counter to the rules or common values? To what extent should institutions attempt to make their rules compatible with these minority differences? Can a society or an institution transform its rules without giving up its identity?

How is one to decide whether or not the harmful effects of a rule for certain individuals outweigh the beneficial effects of making the rule universal in nature? Assuming that the advantages of a rule having general application weigh heavier on the scales of a particular right than the disadvantages for a group, is the solution to create an exemption? How can we be sure in weighing up individual rights on the one hand and

public order on the other that we are not overestimating (exacerbating the difference) or underestimating (diluting the difference) the impact of the hardship that may be caused? How can we avoid criticism of "excessive concessions" or, on the contrary, "excessive restraint"? How can we guard against cultural claims being presented as claims for acknowledgement of a right?

Clearly, the doctrine of reasonable accommodation has pushed back the frontiers of exclusion and made it possible to relax the rules of general application. But it raises the crucial question of the degree of flexibility of our common rules and the "excesses" of particular demands and the latitude that institutions have in managing this diversity. From this perspective, each society must strike what it regards as the right balance to incorporate diversity while ensuring social cohesion, legal stability, reliability of the system and the viability of the organisation.

These contributions are an attempt to discuss together whether the institutional adjustments and new social balances should take place by means of a citizenship-based, legislative or judicial approach. In this way, it sheds light for policy makers on the multiple facets of incorporating diversity in our public institutions. A key question in this connection relates to clarifying and promoting the advantage for the majority of the institutional accommodations introduced to incorporate diversity.[17] Moreover, even though mediation is an indispensable practice to be introduced in all public services, accommodating differences necessitates changes in the organisational conception of structures themselves. Should one therefore consider other institutional ways of functioning, for example in networks or by creating cross-sectoral support facilities, so as to introduce a degree of sharing of difficulties which is inherent in accommodation? Experiments under way in Europe highlight some of the avenues to be explored. In the town of Prato (Tuscany), schools are networked in order to share the taking in of immigrant children throughout the school year. The Dutch Equality Commission – an independent organisation set up in 1994 to promote and monitor the application of non-discrimination legislation – advises and provides information on the standards to be applied. Any citizen or institution may contact this commission to obtain free of charge an opinion on a specific situation of inequality or discrimination.

To conclude, the questions raised in these papers call for calm, collected political reflection – in consultation with citizens – on the frameworks to

17. Texts by Francine Saillant and Fabrizia Petrei.

be drawn up and the skills to be acquired in order to "live, interact and develop together" in our pluralist societies.

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