In the context of WP 3, devoted to the comparative study of the processes of criminalization and their evolution, one central theme deals with the (de)criminalization of foreigners in Europe. The official text of the European programme – *Priority 7, Citizens and Governance*, in section 6.2.3 – Crime and criminalization – refers to criminality, criminalization of foreigners and cultural diversity. ‘Different communities’, ‘race’, repatriation (with reference to illegal immigrants or unrecognized asylum seekers), ‘negative stereotypes’ and last of all ‘integration policies’, are mentioned one by one. “Coordinated Action (CA) will examine how the ‘new’ and the ‘old’ forms of violence help in (re)defining the concept of crime and highlighting the role of class, *race*, gender, age and place of residence in understanding such phenomena”.
The first seminar was held at Toulouse on October 19 and 20, 2007. Its aim was essentially to identify and develop issues common to the representatives of the nine countries present. The participants of this seminar were P. Hebberecht from Belgium (Universiteit Gent), J. Whitfield from Great Britain (Open University), G. P. Nikolopoulos from Greece (Panteion University of Social Sciences and Politics), S. Schied from France (Université Toulouse 2), S. Palidda from Italy (Università di Genova), J. A. Brandariz and C. Fernández Bessa from Spain (Universidad a Coruña and Universitat de Barcelona), E. Baillergeau from the Netherlands (CREMIS Montreal and Amsterdam University), A. P. Dores from Portugal (Lisbon University) and D. Klimke from Germany (Institut fur Sicherheits und Präventionsforschung, Hamburg).

The European Commission having already supported an earlier programme on this question a decade earlier, what remained to be done now was to study the most significant evolutions since then: fear of Islamic terrorism; Europe’s considerable and rapid expansion and the ensuing interrogation around the Nation-State model; implementation of coordinated policies of immigration control; lastly, the spreading in European societies of an “ethnic activeness” signifying the development of consciousness and action around cultural differences as well as identity-related demands.

To deal with this question, a well thought out perspective addressed the phenomena from the immigration policy angle, that is to say, the regulation and control of the influx of immigrants and foreigners, the generalization of the detention of foreigners as a means of managing issues related to immigration and asylum, and the creation of irregularity as a form of illegality and crime.

We have chosen to analyse them from another angle, i.e. immigrant policies related to the life of resident immigrants, their rights and contribution to social and political life, in short all that we perceive as integration. More precisely, what are the policies with regard to the entry of aliens and the management of diversity in different European countries? Which diversity is designated as odd or criminal? That of “domestic foreigners”, the gypsies for instance, or children of immigrants whether naturalized or not, or representatives of former colonies – through whose lives historical relations, incomplete in a sense, between colonizer and colonized continue to operate – the new Europeans or the extra-EU citizens?

The issue of cultural conflicts and their prevention has been a central EU concern over the last few years. It has been thrashed out in different European bodies: in the Council of Europe, by the Human Rights Commission, by the Parliamentary Assembly and the Organisation for Security and Cooperation in Europe (OSCE). On November 9, 2006, during a Conference on Social Cohesion in a Multicultural Europe the Human Rights Commissioner took the position...
that: “The effective access to social rights for all is a crucial factor in the fight against poverty, by making it possible to establish a link between cohesion and social inclusion”. If it is not possible for us in this work package to endorse the theory of cultural conflicts, we can nevertheless ask ourselves in which country are conflicts, disorder, riots interpreted as such, or result from an insufficient recognition of identity. The intention of our work programme was not to try and discover which system in Europe was the most efficient – depending on the recognition of cultural diversity or definitions of alien and citizen – and steered clear of cultural conflicts, divergences over laws and rights, criminality and criminalization of foreigners and immigrants, but how the other’s culture was or was not taken into account in the integration policies and what conflicts appeared around this question.

What can be said about the instrumentalisation of cultural differences as an explanation of the social difficulties encountered by those who are designated aliens? Which communities or ethnic groups are involved, or are perceived as being aliens? What is their legal status? Are they illegals, nationals, citizens, immigrants from the EU or other countries? What qualities or faults are attributed to them (their excessive unfamiliarity with the dominant culture, with the values and norms of the host country? The danger they represent to the social order?) Cultural diversity and assimilation policies do not have the same effect or are not necessarily aimed at all foreigners but make choices and target specific groups.

Broadly speaking, this line of questioning around (de)criminalization can lead to three types of developments. The first consists of identifying in each country studied, the underlying cause of the criminalization phenomena.

The second refers to the actual factors of primary criminalization: by establishing penal norms, a society can show itself to be more or less tolerant of cultural diversity. Primary criminalization – recognition by law of certain offences – can directly involve cultural minorities by condemning so-called traditional practices: or indirectly, when a law is applied de facto mainly to persons of foreign origin or those considered aliens (this concerns laws not aimed directly at immigration control, but common laws, whether or not criminal). The dominant culture’s claim to having the monopoly of the universal can thus result in the primary criminalization of norms, customs and ways of being and acting of the dominated cultures. Which segment of the population is considered dangerous and/or criminal, not by public opinion but from the angle of primary criminalization?

The third analytical approach, which we are not covering in this seminar, concerns secondary criminalization and especially issues based on police functioning in multicultural societies, the issue of sentencing and especially the fact of taking into account the “origi-
nal culture” of the ‘guilty’ in court cases being heard in several European countries, as well as the debate on cultural practices typically associated with certain groups, considered with reference to human rights and minorities.

Lastly, the participants only perfunctorily examined the specific processes of the primary criminalization of “aliens”, especially due to the absence of detailed research on this subject. They essentially developed their exposé against the backdrop of the (de)criminalization of aliens. The diversity of contextual factors raised by them in fact created some difficulties. The participants took as obvious the importance of the job market, the magnitude and origin of migratory influxes, migration history… without examining the weight of these factors or these contexts in the (de)criminalization process. Secondly, the causal processes that lead from these contextual factors to criminalization were not addressed. How are the changes in the manner of perceiving the alien translated in criminal law? At the conclusion of which social, historical processes are these differences rendered visible then somehow incorporated, into the criminal policy act?

I. WHO ARE THESE ALIENS?

The concepts of alien and criminal are in a relationship of dialectical construction: criminality or criminalization pointedly targets the Other, constructs the other, i.e. the foreigner. The criminal is perceived as an alien even when he has acquired the nationality of his country of residence. Since the introduction of the concept of European citizenship, we can say that nationals from the European Union are no longer foreigners to each other. As stressed by an author recently (E. Balibar): There are no aliens in the general and strictly legal sense of the term. Some have assimilated with the nationals and are thus less alien while others, dissimilated, are very much more alien. The former are neighbours, friends, partners and ultimately fellow-countrymen within the space of a citizenship in the making. The others are the aliens. In consequence, the ‘nationals’ category is itself tendentiously divided between the “true national”, perceived under the sign of ‘sameness’, the fellowman, and the “false national” perceived under the sign of the heterogeneous.

The terms used for designating different categories of foreigners are significant for the perception of otherness and for its social construction. Thus the word alien designates strangeness without taking nationality into account: the British talk of coloured people; elsewhere they are designated as ethnic groups or minorities (Greece, Netherlands, Belgium), immigrants (France), allochtons (i.e. foreign born – term used in the Netherlands from the early 1980s, before that they were called ethnic minorities), while the category of extra-EC members is becoming widespread and with it the new divisions among the foreigners.

In addition, the cataloguing of foreigners varies, depending on the
issue addressed (access to nationality, role on the labour market, discrimination, criminality…).

One difficulty in the analysis stems from frequent discrepancies between the official categories of diversity, those of “public opinion” or the lay use of the official categories, those by which individuals introduce themselves and the 

ad hoc categories produced by researchers. A European comparison will necessarily have to make choices. Lastly, the definition of alien is not merely legal, it is also a subjective and inter-subjective phenomenon of individuals calling themselves or considering themselves foreigners.

Countries with a long history of the recognition of cultural diversity have developed the most comprehensive official categories and segmentation of ‘problem groups’ – and therefore of related public policies – whereas the Nation-States and countries newly open to immigration restrict themselves to distinguishing immigrants according to their legal status.

The strangeness of the alien is less a result of the objective pseudo-characteristics, the scale of migratory influxes, the length of time since the move to the host country (one can, in France, be the grandson of an immigrant and be called a third-generation immigrant of French citizenship) than a result of three broad sets of elements which are: the political imagination (Germany has catalogued itself a host country only since the late 1990s, whereas the ‘invited workers’ (Gastarbeiter) have been present since the 1950s); - the organization and segmentation of the labour market; - the history of immigration. On this last point, it appears that ‘foreigners’ especially from former colonies are more criminalized than the others. This is the case in France (the Maghreb), in Great Britain (ex-Commonwealth countries) and in the Netherlands (Moluccas).

Except in the case of Belgium, the participants have not considered the political orientation of governments as a fundamental element in the perception, designation and treatment of ‘foreigners’. The number of foreigners is not necessarily a relevant criterion of the perceived threat. When we think of gypsies (known as Roms in France) – though not many in France, they are highly visible despite the fact that they represent less than 1% of the population. Unlike the social players from the world of politics, this visibility is not to their advantage. Neither did the participants discuss the establishment of ‘foreigners’ on a territory: concentrated in well-delimited zones such as suburban neighbourhoods, or on the contrary dispersed, planned localization, decided or endured.

II. IMMIGRANT POLICIES

If we had thought we could broadly compare the societies of the Nation-States with societies having multi-ethnic policies, we quickly realized the need to transcend this dichotomy. Apart from special
cases, a general trend towards integrative policies seems to be visible in most European countries. The emphasis is placed on what all citizens should have in common: shared values, a certain civic or “republican” dimension, rather than the “right to be different” and, at the same time, a reappraisal of the multicultural policies in countries where they were in place.

In France, the basic premise of public policies is that having being socialized alike, individuals have a natural inclination for living together. The link between citizenship and nationality effectively excludes from citizenship, not only foreigners, but all those who do not correspond to the national culture. Integration is conceived in this national society as the transition from a traditional culture to a modern one. That is to say it necessitates compatibility of the cultural specificities of immigrants with the norms of the host country. In recent times, the propagation of the concept of diversity in public debates and policies appears to be initiating change.

In Great Britain, economic reconstruction after World War II had made it necessary to import labour, which is why it has a long history of the migration of peoples from its former colonies. From 1972 onwards, Great Britain opted for an integrationist policy combined with a tolerant approach to cultural diversity. It abandoned, therefore, the assimilation approach to immigrants, and chose multiculturalism in order to integrate the original cultures of citizens from an immigrant background in harmony with the dominant culture; a non discriminatory social security policy and even voting rights; tolerance towards religious signs and symbols in public spaces and institutions, despite the avowed secularism. The new arrivals were to a large extent encouraged to retain their cultural practices while enjoying British citizenship. Nonetheless, there have always been strong reservations especially vis-à-vis the Muslim presence – the majority being of South Asian origin, i.e. from Pakistan and Indonesia and not from the Middle and Near East – and the difference that it constituted in comparison to the national multicultural model. Following the September 11 and July 7 (London) attacks, an ideological reversal occurred, and 2006 marked the official abandonment of multiculturalism. The possibility of a resulting segregationism was denounced. In his December 8, 2006 speech on “the duty to integrate shared British values”, Tony Blair wonders about the adaptability of Islam to the modern world.

In the Netherlands also, multicultural policies were called into question, but only since the early 1990s. The earlier integrationist model in force conceived society as a vertically structured totality. Groups from an immigrant background, like other groups with a specific identity and cultural code, corresponding to different families of religious, philosophic and political thought, constituted the “pillars” with whose elite discussions and negotiations on the social order were conducted. This system favoured the concept of group, com-
munity-based identity, the recognition of cultural specificities, to the detriment of the individual. Officially since the 1960s, this system no longer existed, but until recently it continued to inspire the Dutch way of managing religious and cultural diversity. Once the Muslim “community” increased significantly in numbers (in the early 1980s), it acquired its own “pillar”. For the Dutch State, religious identity was not perceived as an obstacle to the integration of minorities from an immigrant milieu, but rather as a lever for better integration. This policy is now blamed for promoting the alienation of the Muslim population and preventing the spread of liberal values. Special mechanisms for public actions and positive discrimination were applied in general to immigrants since the 1980s. The prevention of criminality is thus approached from a social perspective, namely to treat the root cause of delinquency while there still remains a certain optimism in the Welfare State’s ability to check the phenomenon. It also means building afresh the bridges between the police and the people. With the emergence of the theme of insecurity in the early 1990s, youth of foreign origin are perceived as not desirous of adopting Dutch values and norms. The new mechanisms give less and less space to the recognition of cultural differences.

According to the representatives of these countries, neither Greece, nor Spain, nor Portugal have a real integration policy because of the recent nature of immigration. Hence the absence of structures and a tradition of hospitality with regard to foreigners. In Spain, moreover, the problem is compounded by the great regional autonomy, as each region can formulate its own policies with regard to aliens. It should however be mentioned that some regions do not receive immigrants.

In Greece, where there exist ‘multicultural’ schools for children, it is the non-existence of a Church/State divide, a religious vision of society, which produces a specificity and explains in particular that it is not the Islamic scarf that causes a problem but atheism. The 2001 law “on the entry and the stay of aliens on Greek territory, the acquisition of Greek nationality, formalizes the immigration policy. It has a two-fold objective: to implement a second regularisation programme to deal with the mass of paper delinquents (illegals), and create mechanisms for the management of the migratory phenomenon. The 2005 law, for its part, expands upon the “rights and obligations”: foreigners have the right to participate in the economic, social and cultural life on an equal footing, but they have an obligation to respect the country’s basic laws and values. Actions and measures pertaining to the following aspects are envisaged: proven knowledge of Greek: clearing the introductory courses in Greek history, civilization and way of life; adhering to the Greek labour market rules; active integration in the social life. The importance of the informal economy structures relations with ‘aliens’.

In Portugal, a weak State, the small number of immigrants (merely
5% of the population), their mostly European origin explains the limited scope of immigration policies and the absence of any major specific policies on ‘aliens’. The emergence of ethnic tensions is recent and linked to the growth of unemployment among the labour classes. The studies on immigrants involve Africans and Brazilian illegals – who it is felt should remain invisible – and East Europeans who arrived in the 1990s and were hailed by the press because of their high qualifications. Problems of integration are also linked to the high level of disparities, one of the highest in Europe. With the arrival of large numbers of ‘black’ immigrants, the ‘white’ Portuguese began to be wary of the ‘Blacks” and discrimination towards the latter reached such proportions that the government had to take appropriate legislative measures. Thus a 1991 order coordinated and encouraged within the educational framework, campaigns advocating tolerance, dialogue and solidarity between the different ethnic groups and cultures. More specifically, the government had developed programmes to promote the coordination of the already existing multicultural educational projects, especially those involving children from Timor, Cape Verde and gypsies; and secondly, promote an intercultural dialogue campaign enhancing cultural diversity in schools. A 1993 resolution prescribed measures favouring full social and professional integration of immigrants and ethnic minorities.

In Belgium, to give an overview of the integration policy in favour of immigrants is a difficult task as the different levels of government (federal, language community and regional) have so many specific powers. Generally speaking, from 1980 onwards the Government was handling this problem, but in 1993 the policy was regionalized and the situation between the Flemish and Walloon (French-speaking) belts became substantially different. For a long time the immigration policy was reduced to controlling the entries and exits to and from the country in keeping with its economic manpower requirements. In the 1970s, several demands were made in favour of the integration of foreigners. Two conflicting concepts of integration were at play here: the first gave preference to citizenship (through the vote) and the second to nationality (via naturalization). From the 1980s, “hospitality and integration of immigrants” became a Community subject. Until the late 1980s, it was possible to ascertain a de facto ethnicisation of social life. Over and above the federal policy, two positions emerged between the Walloons and the Flemish, whether at the level of the Communities or the Regions (officially it is the Regions that are responsible for the integration policy since 1993). The former, partial to the French model, do not want foreigners to form ethno-cultural models and endorse a community-based social policy (by and large aimed at the underprivileged). The latter, influenced by the Dutch model, want to create a special place for the “non-natives” and introduce an integration policy based on target populations. The early 1990s are indicative of the direct ethnicisation of criminality.

If, since the 1950s, Germany never really spoke of immigration, it
was because it did not consider the 8 million people “expelled” from Poland and Czechoslovakia, who had arrived in the Federal Republic of Germany after the war, as immigrants. They continued to be perceived as Germans unjustly forced to leave their homes abroad. In the 1960s, the utilitarian and exclusively economic relations of the elite with the Gastarbeiter – “invited workers” – obscured the definite transformation of Germany into a land of immigration. The “national community” ideology prevented a realist perception of the immigration phenomenon and persisted in the official relations of the State with the refugees and asylum seekers who arrived in large numbers in the 1980s and more so in the 1990s. The 1990 law on aliens still reflects the idea that one must protect oneself from foreigners and refuse equal rights. With nonetheless one concession since it allowed some privileged immigrants living since a long time in Germany to make their resident permits permanent, and in fact to become German nationals. A law on nationality enacted in 2000, nonetheless includes a significant change: for the first time, children of foreign parents born in Germany could acquire German nationality. The current debate is about ‘Muslim’ integration – whatever their relationship with the religion – but it remains silent on problems of integration encountered by peoples of Serb, Italian and Greek origin.

IV. A DE FACTO ETHNICISATION OF PRIMARY CRIMINALISATION?

With a few rare exceptions, the participants were not really interested in seeing in what form are the alien’s cultural differences, a topic being discussed in all the European countries and partially incorporated into the integration policies, present (or not present) in criminal law. To begin with the discussions centred around judicial and penal statistics, their validity, their meaning – a question that will be taken up in detail during the second seminar at Genoa, and is already the focus of several research projects. In addition, an important topic of discussion was immigration control – the immigration policies – and also the social construction of illegalism as a form of crime. However, it is well known that there are conflicts of values and interests that are expressed in criminal law and we can make the assumption that the designations of alien, the characteristics that are attributed to them and the public policies conceived to ensure their co-existence with values considered national, also find expression in criminal policies.

In England’s case, J. Whitfield has, for example, remarked that of late, the concern felt by both the public as well as the legislator has induced them to focus on the difficulties faced by immigrants i.e. problems resulting from human trafficking and the economic and sexual exploitation of the victims of the latter, as well as the cultural practices of some immigrants from certain regions of Africa, Asia and the Middle East. Hence, the Female Genital Mutilation Act, passed in 2003, or the fact that “the Metropolitan Police in 2003 set up a strategic working group to examine the problem of the so-called ‘honour crimes’”.

In the case of Belgium, P. Hebberrecht has put forward the idea of the “indirect ethnicisation of criminalisation”. Thus recent laws on the war against terrorism, drugs, fraud, regulation of the road transport economy and human trafficking do not explicitly cite a particular group of ‘aliens’. But in reality, it is the ethnic minorities that are targeted or mainly affected. This phenomenon is the culmination of a much more global phenomenon of the ethnicisation of social relations, whose chronological stages it is possible to trace.

The same can be said of France with the “misdemeanour constituted by the occupation of building lobbies”, instituted by the law on internal security in 2003 which, effectively, concerns youth of foreign origin who live in ‘ghettos’, and the 2006 bill proposed by a Member of Parliament from the majority party – subsequently thrown out – “aimed at combating the violations of female dignity in certain religious practices”. The policy of the French government towards gypsies has possibly led to criminalizing a social practice connected with their way of life. For French governments in general, the condition for the integration of gypsies resides in the success of institutions – if not the complete abandon at least the monitoring of the nomadic way of life, which is at variance with sedentary society. Thus there exists an entire judicial arsenal against illegal parking, or in other words, mobility. Even though social groups such as the *travellers* (often associated with *rave* and *free* parties) or camping car practitioners are equally concerned, it is essentially the gypsies that are targeted. The regulations framing festive or cultural gatherings can have the same effect. It is moreover clear with the gypsy example in France that empirical research must be carried out over and above a simple analysis of legal texts and in relation to public policies, for the laws regulating their stay and installation face strong resistance on the part of local communities and people. If criminalisation there is, it is at this ground level.

The issues raised in this work package, in keeping with the objectives of the European programme, are not considered completely justified by researchers in the sense that they do not seem to have led to empirical research enabling an effective link between primary criminalisation and decriminalization and immigration policies. It is equally true that although it is necessary to transcend the legal definition of “alien” because the (de)criminalisation factor involves populations whose administrative status and history of their relationship with the host country are diverse, an operational category for research purposes remains to be found. The issues of this seminar are, moreover, in competition with two other sets of – more classic – issues, one, the impact on immigrants of the European security policies, and two, those associated with the interpretation of statistical data held by the various administrations on the criminality of aliens.
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