EURISLAM WORKPACKAGE 1

FINAL INTEGRATED REPORT

Sara Carol, Manlio Cinalli, Zuhal Kavacik, Ruud Koopmans and

Gabrielle Maas

Due date of deliverable: 31 July 2010
Actual date of deliverable: 7 October 2010

Start date of project: 1 February 2009 Duration: 36 months

Organisation name of lead contractor for this deliverable: FNSP-CEVIPOF

Revision [0]

Project co-funded by the European Commission within the Seventh Framework Programme
Dissemination Level
PU Public

PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	**X**

Summary

This report has been produced under the frame of EURISLAM project, funded by the EC (Framework Programme Seven). Details about project, its main research questions, and its different parts can be found online at http://www.eurislam.eu/page=site.home. As regards its specific focus, this report systematically explores a broad set of indicators impacting upon people of Muslim background, and which can be taken together to assess the overall institutional and political opportunity structures within which they are located across different milieus. The analysis is based on the national level of the six countries of the EURISLAM project, namely, Belgium, France, Germany, the Netherlands, Switzerland, and the UK, in four different points of time between 1980 and 2008. Hence, this report stands out as an innovative first study of continuities and changes in political opportunities for people of Muslim background that includes a broad set of countries over a long period of time and across a wide range of citizenship rights, including cultural and religious rights.

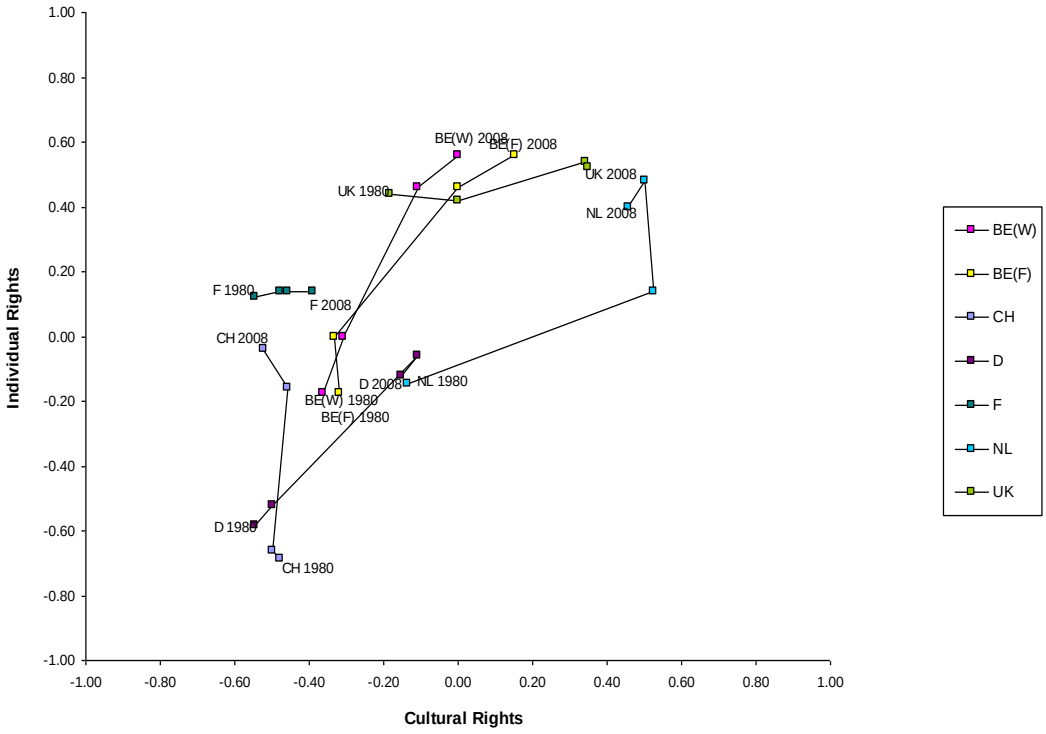
In particular, this report focuses on two main dimensions. The first refers to individual rights, and more specifically to rights related to the access to the national community, owing to the frequent immigrant background of Muslim people in the six countries object of this study. The second dimension concerns group rights: it analyzes cultural constraints as well as collective resources and rights people of Muslim background are experiencing in their own specific country. To capture the institutional political opportunity structure that can impact on people of Muslim background, 38 indicators have been defined so as to grasp a wide range of various aspects of the institutional political opportunity structure.

The list of indicators and the scoring instructions have been added to this report for easy reference while reading, with no need to provide additional tables. For comparative purposes, a 5-level scoring has been used for each indicator, in addition to the in-depth analysis and presentation of each indicator. The score "-1" refers to the most restrictive situation that can be envisaged, the score "1" corresponds to the most open configuration and the scores "-0.5", "0", and "0.5" applies to intermediary potential situations between the two main poles between restriction and openness. As said, scoring is assessed diachronically in each country in four

different points of time, namely, 1980, 1990, 2002, and 2008 so as to evaluate longitudinal variations side by side with cross-national variations.

Overall, results of this report suggest that immigrant citizenship rights are still to some crucial extent a national affair and there are no indications that this is fundamentally changing. In other words, our findings prove the usefulness of a cross-national approach which takes into consideration the relevance of different 'citizenship regimes'. Cross-national differences in political opportunities have not become smaller over the period 1980-2008. Indeed, evidence for divergence can be found in the majority of policy areas that are investigated in this report, while stability of cross-national differences can be found in two areas. The only areas showing evidence for convergence are antidiscrimination rights and partially protection against expulsion. Figure 1 gives an immediate snapshot of overall findings, before they can be discussed at length throughout the following pages.

Figure 1. Individual vs. Collective Rights: Cross-National and Cross-Time Differences



In particular, the position of each country has been placed in a bi-dimensional space that combines the two dimensions of individual and collective rights. As said, our results do provide some strong support for the usefulness of an approach that takes into account the weight of cross-national differences.

However, relevant similarities are also at work across the six countries of the EURISLAM project. Findings of this report, for example, show that in seven of the eight policy areas, and on both individual and collective dimensions, the amount of rights granted is larger in 2008 than it was in1980. The only deviation concerns family migration rights. Settlement of large groups of Muslims has translated into a push towards extending rights on the individual equality dimension, for instance by making naturalization or access to public service employment easier. Perhaps as a consequence of the rise of a right-wing populist countermovement against Islam, countries have also implemented restrictive twists in terms of cultural and religious rights, for instance by restricting the display of signs of Muslim faith in public institutions. Obviously further research is necessary to test our findings by extending the geographical scope beyond the six countries of the EURISLAM project.

WP1 INDICATORS AND SCORING

I – INDIVIDUAL EQUALITY

1.1 Nationality acquisition

N°	Indicator	Scale				
		-1		0		1
1.1.1	Number of years' residence before naturalisation can be requested	10 or more		0 6 - 9	0.5 4 - 5	< 3
1.1.2	Welfare and social security dependence as obstacle to naturalisation	Reason to refuse		Reason to refuse but with exceptions (no personal responsibility etc)		Not a reason to refuse
1.1.3	Automatic attribution or facilitated naturalisation for second generation	-1 No facilitation	-0.5 Other type of facilitation	0 Option / declaration	0.5 Automatic at birth with conditions, and automatic at majority	Automatic at birth without further conditions
1.1.4	Allowance of dual nationality	Not allowed or only limited exceptions		Not allowed but generous exceptions (refugees, prohibitively high costs attached to relinquishing previous nationality)		Allowed
1.1.5	Actual naturalisation rates (as percentage of foreign-born population)	-1 0 - 0.99	-0.5 1 - 1.99	0 2 - 2.99	0.5 3 - 3.99	> 4

1.2 Citizenship rights for foreign nationals

N°	Indicator	Scale				
		-1		0		1
1.2.1 (a)	Conditions for family reunification of third country nationals: age limit and integration requirement for spouse	-1 Age 24+ and integration	-0.5 Age 18+ and integration	0 Age 24+	0.5 Age 18+	Age 16 or no requirement

N°	Indicator	Scale				
		-1		0		1
1.2.1 (b)	Family reunification: income requirement for sponsor	Strict requirement (minimum wage or more)		Simple income requirement (eg. No welfare use)		No income requirement *or* welfare benefits can be counted as income
1.2.1 (c)	Family reunification: eligibility of sponsor	More than one year stay or quota system		Up to one year of stay		Residence permit only
1.2.2 (a)	Conditions for expulsion: criminal convictions for short-term residents	**-1**	**-0.5**	**0**	**0.5**	Specific crimes may lead to expulsion regardless of sentence type
		Any prison sentence	Specific crimes may lead to expulsion regardless of sentence type	One-year prison sentence	Two-year prison sentence	
1.2.2 (b)	Conditions for expulsion: criminal convictions for long-term residents *NB. Add 0.5 to score where absolute protection after 20 years' residence exists in addition to conditions listed)*	**-1**	**-0.5**	**0**	**0.5**	Absolute protection of long-term residents
		No protection	1-2 year sentence, or "some protection nfs"	3-4 year sentence	5-6 year sentence	
1.2.2 (c)	Expulsion impossible or prohibitively difficult for members of 1.5 and 2. generations *(NB. Add 0,5 points for cases were expulsion is only possible in case of state security threats)*	No regulation or only minors		Protection for second generation		Protection for 1.5 generation
1.2.2 (d)	Welfare dependence as reason for expulsion	Yes		Not for long-term residents		No
1.2.3	Voting rights for foreigners (excluding EU votes) a) at local level? b) at other levels? c) active or passive? d) inclusive or selective (eg Commonwealth nationals)?	**-1**	**-0.5**	**0**	**0.5**	More than local/passive/inclusive
		None	Regional differences	Either only inclusive or only passive	Passive *and* either inclusive or more than local	
1.2.4	Rights of non-citizens	Not allowed in any section		Allowed, but excluding police		Allowed in all

N°	Indicator	Scale		
		-1	0	1
	to work in government or civil service (sections of interest: police, education, administration)			sections

1.3 Antidiscrimination rights

N°	Indicator	Scale				
		-1	0			1
1.3.1	ICERD provisions in criminal law: is incitement to racial hatred included in criminal law	-1			1	
		No			Yes	
1.3.2	ICERD provisions in criminal law: is discrimination penalised by criminal law?	-1			1	
		No			Yes	
1.3.3	Discrimination in civil law: which spheres covered (education, access goods/services, employment, social benefits, housing) and what types of discrimination count (religion, race/ethnicity, nationality)?	-1	-0.5	0	0.5	1
		No specific provision at all	Specific spheres and not all grounds covered	Only specific spheres but all grounds covered, *or* inclusive spheres but only few grounds	Inclusive spheres but not all grounds covered	Inclusive in any respect
1.3.4	State-established antidiscrimination bodies and legal mandate: a) does such a body exist? ***Yes=1, No=0.*** If so, can it: b) take legal action ***Yes=1, limited=0.5, No=0;*** c) initiate independent investigation ***(idem);*** d) decide on discrimination complaints ***(idem)*** *Add up points total*	-1	-0.5	0	0.5	
		Total = 0	Total = 1 - 1.5	Total = 2	Total = 2.5 - 3	Total = 3.5 or more

II – CULTURAL DIFFERENCE

2.1 Cultural requirements for residence and naturalisation

N°	Indicator	Scale				
		-1		0		1
2.1.1	Requirements for residence permit: language skills/civic knowledge?	Language and civic knowledge requirements		One requirement		No requirements
2.1.2	Requirements for naturalisation: a) language skills b) civic knowledge c) oath/declaration of loyalty d) assimilation	-1	-0.5	0	0.5	No requirement
		Includes (d)	(a), (b) and (c)	(a) and *either* (b) or (c)	(a) only	

2.2 Religious practice rights outside public institutions

N°	Indicator	Scale		
		-1	0	1
2.2.1 (a)	Allowance of Islamic ritual slaughter	Not allowed	Allowed but under strict conditions (certification, in presence of doctor, immobilisation during bleeding, no export etc)	Allowed without regulations or under liberal conditions
2.2.1 (b)	Allowance of Islamic call to prayer	No practice on local level	Practised, but limited to noon and not widespread	Widely practised or national provision
2.2.2	Number of mosques with appropriate architecture (dome and minaret) relative to size of Muslim population	None	1-5 per 500,000 Muslim population	5 or more per 500,000 Muslim population
2.2.3 (a)	Provision for burial according to Islamic rite: separate cemeteries/sections in public cemeteries	No Islamic cemeteries and few separate sections	No cemetery but several separate sections	Separate cemeteries exist
2.2.3 (b)	Provision for burial according to Islamic rite: inhumation without coffin	Not allowed	Partly allowed but no real regulation	Allowed

2.3 Cultural rights and provisions in public institutions

N°	Indicator	Scale

		-1	0	1
2.3.1 (a)	State recognition and funding of Islamic schools: a) does legislation provide for possibility of such funding?	No	Yes but under strict conditions (close conformity with public school curriculum, teachers state employees etc)	Yes, under liberal conditions (more free appointment of staff and choice of curriculum etc)
2.3.1 (b)	State recognition and funding of Islamic schools: b) how many schools are in practice (partly) financed by the state relative to size of Muslim population	None	1-2 per 500,000 Muslim population	3 or more per 500,000 Muslim population
2.3.2	Islamic classes in state schools as direct alternative to religious education?	No	Partly yes	Generally yes
2.3.3	Right of female teachers to wear headscarf in schools?	Prohibited / negative case law	School or regional variation *or* no case law / public discussion	Allowed
2.3.4	Right of female students to wear headscarf in schools?	Prohibited / negative case law	School or regional variation *or* no case law / public discussion	Allowed
2.3.5	Is there public broadcasting in major immigrant languages? How much time per week?	None	Only either radio or TV	TV and radio
2.3.6	Islamic religious programmes in public broadcasting? How much time devoted?	None	Infrequently	Yes, regularly
2.3.7	Mother-tongue teaching in schools: a) Is there MTT during regular school hours b) Is it state funded?	No MTT, or outside school hours and not state funded	Outside schools hours and state funded *or* during school hours and not state funded	During school hours and state funded
2.3.8	Are there state-paid imams in army / prison ?	Neither	Imams in army *or* prison	Both

2.4 Political representation rights

N°	Indicator	Scale				
		-1		0		1
2.4.1	Immigrant consultative bodies (local):	-1	-0.5	0	0.5	

(a)	a) does a local body exist? ***Yes=1, yes but limited=0.5, No=0*** b) State influence in appointing representatives? ***Yes=0, No=1*** c) Share of immigrants ***100%=1, 50-100%=0.5, less than 50%=0*** d) Represented are organisations or individuals? ***Individuals=0, Orgs=1*** *Add up points*	Total = 0	Total = 1-1.5	Total = 2-2.5	Total = 3-3.5	Total = 4
2.4.1 (b)	Immigrant consultative bodies (national): e) does a national body exist? ***Yes=1, yes but limited=0.5, No=0*** f) State influence in appointing representatives? ***Yes=0, No=1*** g) Share of immigrants ***100%=1, 50-100%=0.5, less than 50%=0*** h) Represented are organisations or individuals? ***Individuals=0, Orgs=1*** *Add up points*	**-1** Total = 0	**-0.5** Total = 1-1.5	**0** Total = 2-2.5	**0.5** Total = 3-3.5	Total = 4
2.4.2	Muslim consultative bodies *(national)*: a) Existence of permanent consultative body? ***Yes=1, yes but limited=0.5, No=0*** b) State influence in appointments? ***Yes=0, No=1*** c) Do Muslims represent 50% or more? ***Yes=1, No=0*** d) Majority representatives of organisations or elected? ***Elected=0, Orgs=1*** *Add up points*	**-1** Total = 0 As above	**-0.5** Total = 1-1.5 As above	**0** Total = 2-2.5 As above	**0.5** Total = 3-3.5 As above	Total = 4

2.5 Affirmative action in the public sector

N°	Indicator	Scale		
		-1	**0**	**1**
2.5.1	Quota or other scheme for ensuring minority representation in public sector jobs?	No quota or other affirmative action	No quota but other measures	Quota system

I – INDIVIDUAL EQUALITY

SUMMARY TABLE

	year	Natl. Acqu.	Citiz. Rights	Anti-Disc.	Average
BE (W)	1980	0.00	0.22	-1.00	-0.19
	1990	0.20	0.22	-0.50	0.03
	2002	0.80	0.22	0.38	0.55
	2008	0.70	0.44	0.75	0.65
BE (F)	1980	0.00	0.22	-1.00	-0.19
	1990	0.20	0.22	-0.50	0.03
	2002	0.80	0.22	0.38	0.55
	2008	0.70	0.44	0.75	0.65
CH	1980	-0.80	-0.69	-1.00	-0.82
	1990	-0.90	-0.50	-1.00	-0.83
	2002	-0.30	-0.39	0.13	-0.22
	2008	-0.20	-0.17	0.13	-0.11
D	1980	-0.70	-0.44	-0.38	-0.55
	1990	-0.70	-0.28	-0.38	-0.51
	2002	0.10	0.00	-0.38	-0.04
	2008	0.00	-0.22	0.00	-0.06
F	1980	0.60	-0.11	0.00	0.27
	1990	0.60	-0.11	0.13	0.30
	2002	0.50	-0.11	0.38	0.32
	2008	0.60	-0.44	0.88	0.41
NL	1980	0.10	-0.31	0.00	-0.03
	1990	0.10	0.00	0.00	0.05
	2008	0.50	0.11	1.00	0.53
	2008	0.50	-0.11	1.00	0.47
UK	1980	0.70	0.00	0.75	0.54
	1990	0.70	-0.06	0.75	0.52
	2002	0.80	0.17	0.75	0.63
	2008	0.80	0.06	0.88	0.63

1.1 Nationality acquisition

This indicator allows us to account for the conditions that foreign nationals have to confront when they apply for a country's nationality. We measure this indicator by looking at the following regulations:

1) Number of years of residence before naturalization can be requested
2) Welfare and social security dependence as an obstacle to naturalization
3) Automatic attribution or facilitated naturalization for the 2nd generation
4) Allowance of dual nationality
5) Actual naturalization rates

1.1.1 Concerning the first sub-indicator, *number of years of residence before naturalization can be requested*, the most restrictive case is Switzerland. Over the entire period studied, that is from 1980 until 2008, the federal regulation requires at least twelve years of residence.[1] At the other end of the spectrum, Belgium currently demands only three years of residence from a foreigner before application for naturalization.[2] There has been an significant reduction in years of residence required in Belgium. A law passed in 2000 modifying the 1984 Code of Belgian Nationality came to be known as the "quickly-Belgian-law" (*Snel Belg Wet*) as it significantly reduced the residence requirement for naturalization, with the aim of facilitating the integration of foreigners into society.

1.1.2 The second criterion of interest is *whether welfare and social security dependence is treated as an obstacle to naturalization*. The strictest regulations are again in Switzerland over the entire period, demanding economic independence as a prerequisite for naturalization without exception.[3] The majority of the countries studied do not impose such restrictions on the applicant for naturalization: Belgium, the Netherlands and Britain today, as well as France in the past, do or did not consider welfare dependence as an obstacle to naturalization. The legislative changes that have taken place over the past three decades

[1] Cf. Article 15 of the Swiss Nationality Law (*Bürgerrechtsgesetz, BüG*). Additionally municipal and cantonal level residence requirements exist, which may come on top of national requirements for immigrants who moved between cantons in Switzerland. Usually, the municipal citizenship provisions are the basis for the Cantonal citizenship provisions. A list on the current Cantonal residence requirements can be found under http://www.bfm.admin.ch/bfm/de/home/themen/buergerrecht/einbuergerungen/ordentliche_einbuergerung/wohnsitzfristen.html . The necessary residence requested by cantonal authorities can vary from two to twelve years. Among the 26 cantons, nine impose a short residence requirement (two or three years), while 15 impose five or six years of cantonal residence and only one (Nidwalden) imposes a period up to twelve years.

[2] Cf. Article 19 of the Code of Belgian Nationality (*Code de la nationalité belge*).

[3] Regulations on welfare dependence are set out in the naturalization orders of the respective Canton. See for example Regierungsrat Zürich 1978.

have moved towards restricting the naturalization of persons dependent on the state. This trend has been particularly acute in France, with the 2000 Ministry of the Interior circular[4] stating formally that material autonomy and stable economic establishment in France are important criteria for naturalization. However, the circular continues by saying that insufficient economic means may be compensated by a good integration into social life. Since the ensemble of the applicant's social and economic situation has to be taken into account, the circular appears less definitive in legislative terms than it might at first seem regarding naturalization restrictions on grounds of welfare dependency.

1.1.3 The *automatic attribution or facilitated naturalization for second generation* is a more comprehensive indicator in which several aspects have to be considered. Two basic stances with regard to the facilitation of naturalization for second generation immigrants, that is, children born of foreign parents but in the host country, can be distinguished. In a strict sense one policy concept would not allow for any kind of facilitated naturalization as nationality is held to be determined by parents being a national of the respective state. However, even those countries that adhere to that principle in practice offer some form of facilitated naturalization. On the other hand, policies may allow for automatic naturalization of all second generation immigrants. Therefore, we distinguish between four ways of attributing nationality to second, but also third and so-called "1.5" generation[5] immigrants: automatic attribution of nationality at birth (also known as "*ex lege"),* automatic attribution of nationality at majority, attribution based on declaration of a wish to become national or explicit opting for nationality, and other forms of facilitation for third and 1.5 generation immigrants. Our extreme cases are Switzerland and (until recently) Germany, both traditionally ethnically oriented countries favoring *ius sanguinis* policies. It should be mentioned that although Switzerland has not changed its limited facilitation regulations since 1952,[6] several legislative attempts have been made to facilitate naturalization of second and third generation immigrants. Legal revisions, however, never achieved the consent of all Cantons. The most liberal policies can be found in Britain, France and Germany today (the latter having liberalized its Nationality Law in 2000 by allowing for *ius soli* attribution of nationality). Children born in the host country to foreign parents automatically acquire British nationality at birth if the parents fulfil a minimum residence requirement. France's second generation immigrants acquire nationality automatically not at birth but at majority. If they want to naturalize before that they have to declare explicitly the wish to become French.

[4] Cf. Circulaire DPM n° 2000-254 du 12 mai 2000 relative aux naturalisations, réintégrations dans la nationalité française et perte de la nationalité française (http://www.sante.gouv.fr/adm/dagpb/bo/2000/00-27/a0271947.htm).
[5] The 1.5 generation alludes to children not born in the host country but arriving there at a very early age.
[6] Indirectly stipulating naturalization of children to foreign parents, no matter if born in Switzerland or not, a reduction of the general twelve year residence requirement is guaranteed by the following provision: time spent in Switzerland is for administrative purposes counted as double between the ages of ten and 20.

1.1.4 Besides the fact that *dual nationality* in all countries analyzed is today an unavoidable reality, countries differ in their legislations concerning the allowance of dual nationality arising during the naturalization of non-nationals. Making nationality acquisition dependent on the applicant's release from his or her previous nationality can run counter to the applicant's wish to naturalize. For example, it might lead to the loss of inheritance or land ownership rights in the country of origin or, in a less material sense, cause psychological stress. Belgium, France, and the UK are the only countries that have always taken a liberal stance towards dual nationality, and are also countries that attribute citizenship automatically to children born in the country (*ius soli*), thus creating many dual nationals. The requirement to give up one's own nationality would thus be rather difficult to legitimate. Belgium has never had explicit regulation in its Nationality Code concerning dual nationality, but has also never made naturalization dependent on giving up previous nationalities.[7]

1.1.5 The *actual naturalization rates* are a way to grasp the significance of informal factors influencing nationality acquisition. To give just two examples: there might have been proactive public campaigns promoting naturalization in some countries, whereas in others the high degree of discretion leaves quite a lot of leeway to bureaucrats during the naturalization process. Germany attracts attention with extremely low naturalization rates, just below 0.4 per cent in 1980 and 1990. Still today, Germany exhibits the lowest figures in a cross country perspective despite having liberalized its nationality legislation quite extensively in 2000. Again, this supports the inclusion of this indicator as an approximation of informal factors affecting naturalization rates. Countries with similar naturalization requirements may actually have quite different naturalization practices. Looking at the overall average one can see that the aggregated naturalization rates have doubled from around two percent in 1980 to around four percent in 2008. Comparing the situation in 1980 and 1990 with the 21st century, all countries represent this trend without exception. However, recently (between 2002 and 2008) naturalization rates have not risen further but even decreased in quite a number of cases, notably in Belgium, Germany, and the Netherlands. These decreases may relate to other informal factors as picked up by this indicator of administrative practices (eg. the recent introduction in many countries of strict language and civic knowledge requirements for naturalization. Not wanting to anticipate these developments, we will give more details on them below, when we discuss the cultural dimension of citizenship). It should be mentioned that the Netherlands had a

[7] Interestingly, regulations concerning Belgian nationals have only recently changed. Previously, Belgian nationals opting for another nationality were frequently required to renounce their Belgian nationality.

very high naturalization rate of 12% in 1995/6. However, as we measure naturalization rates at specific time points, this does not become visible in our data.

1.2 Citizenship rights for foreign nationals

There are a number of specific requirements with respect to foreign nationals living in a host country (sponsors) wanting to reunite with family members from the home country or some other third country. These requirements primarily concern the length of the sponsor's residence in the respective country and his/her ability to support him/herself as well as the family member abroad. Furthermore, the age of children or spouses are taken into consideration. For reasons of comparability and variability, we have chosen the following four indicators on *conditions for family migration for third country nationals*:

1) Age limit of spouse in the home country
2) Income requirement for the sponsor in the host country
3) Residence requirement for the sponsor in the host country

1.2.1(a) Over the time period studied, we can observe a general (though not universal) trend towards increasing the age limit for spouses in the home country for family reunification cases. The rationale given for this has in some cases been prevention of forced marriage, although in practice it is a measure aimed at immigration control more generally. Belgium has kept the age limit for family reunification at 18 and increased the age limit to 21 for family formation. This was part of an amendment of the Aliens Act adopted in 2006, transposing the European Directive on Family Reunification into national legislation. The same directive led Germany to change the family migration regulations in its Residence Law in 2007. Previously having no age limit for spouses, a minimum age of 18 years for both marriage partners was introduced in cases of family reunification.[8] France's new immigration and integration law, adopted in 2006, aims amongst other things at restricting family immigration and thereby sets the minimum age of spouses at 18 years.[9] In the Netherlands, a minimum age of 21 years was demanded for family formation with the revision of the Foreigner Law in 2002. The British government raised the age limit for spouses in

[8] Cf. § 30(1)1 Residence Law (*Aufenthaltsgesetz, AufenthG 2007*).
[9] Cf. §44 Chapter 2 Title 2 of the Immigration and Integration Law (*Loi n°2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration*).

family reunification cases from 16 to 18 in 2007,[10] and even further – after a study on the effect of age limits on the prevention of forced marriages – to 21 in November 2008.

1.2.1(b) Next to age limit, a *minimum income of the sponsor in the host country* is often taken into account when assessing eligibility for family migration. The only country that has no income requirement over the period studied is Belgium.[11] We also consider cases as liberal that demand a certain degree of guaranteed subsistence level, but do so in combination with counting public compensation benefits as regular income (e.g. the Netherlands in the past). The highest income requirements are to be found in the Netherlands, Germany and France today. Since 2004 in the Netherlands, the sponsor wishing to *form* (rather than reunite[12]) a family in the receiving country must earn at least 120% of the standard social security benefits received. In Germany, a stable minimum income without recourse to public assistance benefits, as well as health insurance coverage for all family members, has to be secured.[13] And France now requires the sponsor to earn at least the minimum wage (RMI). Additionally, in cases of large families and depending on the number of children, the wage has to amount to at least 110-150% of the minimum wage. All income must be acquired through employment.[14] Similarly to the previous indicators, regulations have overall turned towards the restrictive end of the spectrum, with countries either continuing existing policies or introducing stricter ones.

1.2.1(c) It is not only material self-sufficiency that counts in the application process for family migration, but also the *length of stay of the sponsor* in the host country. All countries expect the sponsor eligible for family migration to hold a legal residence permit in the host country. In most cases this permit takes the form of a first allowance to remain for a certain amount of months, usually twelve, in the country before a renewal becomes compulsory. Usually, after several continuous renewals, the foreign national has the right to an unrestricted allowance or permanent residence. Our data demonstrate that many countries refrain from requiring additional waiting periods or even a permanent residence permit before family members move over. For the entire period from 1980 to 2008, Belgium and the United Kingdom followed this example. Switzerland in 1980 and France in 2008, on the other hand, demand waiting periods that

[10] Cf. "Undercounted and over here. Foreign workers", The Economist, November 3rd 2007.
[11] However, though third-country nationals are not subject to any income conditions for family reunification in Belgium, recent legislative amendments impose adequate housing and health insurance as general conditions for all types of family reunification (Foblets/Vanheule 2008: 273).
[12] In case of family *reunification* 100% of the minimum wage suffices as income (OECD 2005: 94).
[13] Cf. §2(3) Residence Law (*Aufenthaltsgesetz*). Note that contribution based social benefits are not considered, which make up a considerable amount of the Germany social security system.
[14] Book 4, Title 1, Article R411-4 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile*.

exceed one year (18 months in France[15] and 15 months in Switzerland respectively). The restriction trend across countries, however, is less marked compared with the previous two indicators on family migration.

Expulsion regulations are an important aspect of citizenship regimes. They refer exclusively to non-nationals and affect their right to stay in a certain country. In most cases, expulsion is a threat to those persons that are involved in criminal activities or pose a risk to the "national or public security". However, expulsion regulations may also indirectly affect access to social or civic rights. For example, the grounds on which expulsion decisions are made may also be connected to dependence on public benefits; welfare, though in theory available to nationals and non-nationals alike, may thus end up excluding the latter from claiming access to it. The grounds for expulsion are usually connected to the foreigner's length of residence, birth in the country or arrival at a very early age. All in all, we look at the following four sub-indicators of expulsion conditions:

1) Crimes leading to expulsion for shorter term residents
2) Crimes leading to expulsion for longer term residents
3) Expulsion not possible or extremely difficult for persons socialized in the country
4) Welfare dependence as reason for expulsion

1.2.2(a) Criminal behavior and the possible prison sentence resulting from it may lead to expulsion from the host territory.[16] In general stricter for *foreigners that have been resident for a shorter period of time*, countries can be distinguished according to the prison sentence and gravity of the crime committed that in most cases lead to expulsion. On one side of the spectrum are countries that consider any prison sentence a reason for expulsion. Switzerland in the past and the Netherlands in more recent times belong to this category. In the Netherlands, a so-called "sliding scale"[17] (the longer the residence the better the protection) was introduced in 1990, when the Secretary of State for Justice issued an instruction with new rules on expulsion in order to lessen the discretion of the administration. When the Ministry for Integration and Immigration introduced a new expulsion policy in 2002, the lower end of the scale was set in the following way: a residence permit can be withdrawn if an alien has lived in the Netherlands for less than a year and was sentenced to at least one month of detention (Netherlands Helsinki Committee 2006:

[15] Book 4, Title 1, Article L411-1 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile*.
[16] Expulsion as a decision by a public authority is made either by administrative or judicial institutions. Ordering an alien who has been lawfully resident is a country to leave the country might or might not include a ban on return.
[17] The underlying principle of the so called "*glijdende schaal"* is the principle that the longer an alien has lawfully resided in the Netherlands the more serious an offence must be before it may justify withdrawing a residence permit and excluding the alien from Netherlands territory.

77).[18] In 2006, the legislation became even more stringent: for aliens who have lived for less than three years in the Netherlands, any sentence can lead to the withdrawal of the residence permit and ultimately to expulsion. Belgium, on the other hand, stands out as having the most liberal regulation, with the prison sentence having to exceed three years before an expulsion decision is considered.

1.2.2(b) As *longer-term resident foreign nationals* continue their residence with the prospect of receiving a permanent residence permit, they in general enjoy more protection with respect to expulsion.[19] Although no country goes as far as granting absolute protection to permanent residents per se, the customary regulation exists that after a minimum residence of twenty years foreign nationals may not be expelled for any reason. As for the previous indicator, Belgium stands out as particularly liberal, setting a five-year prison sentence as grounds for expulsion. In addition, the twenty years' residence regulation mentioned above is effective in Belgium as well as the Netherlands. The strictest rules are applicable in Switzerland. Although the length of residence has to be taken into account when making an expulsion condition, in principle any prison sentence may lead to expulsion.[20] Several minor violations of law, as well as behavior showing a lack of will to integrate, may lead to expulsion. The average trend over the years studied shows a slightly more liberal situation today as compared to 1980. However, this is overshadowed by the decrease in the average from 2002 to 2008 (see the Netherlands trend for an individual example). Germany became more liberal after the new Foreigner Law was passed in 1990. Permanent residents[21] became one of the privileged foreigner groups explicitly mentioned in the law with special expulsion protection, i.e. a criminal conviction must exceed three years in order to lead to expulsion.[22]

1.2.2(c) *Second generation immigrants and those arriving in the host country at a very early age* usually enjoy special protection against expulsion.[23] We are looking merely at the fact of whether this expulsion protection is absolute, i.e. whether these persons cannot be expelled under any circumstances, as most countries provide for some form of privileged treatment of this category of foreigners in national

[18] Cf. Part 3.2.4, Art. 3.86 *Vreemdelingenbesluit* (http://lexius.nl/vreemdelingenbesluit-2000/artikel3.86/).
[19] Note that prison sentences leading to expulsion may be sometimes scaled with respect to the residence period. In such cases, we take the conviction that can lead to expulsion after 5 years of residence (or the number of years of residence closest to) as a reference for our scoring.
[20] Cf. §10(a) Residence Law (*Bundesgesetz über Aufenthalt und Niederlassung der Ausländer, ANAG*).
[21] As a rule (with exceptions), an unrestricted residence permit (*Niederlassungsbewilligung*) is granted after eight years of residence.
[22] Cf. (old law) §48 Foreigner Law 1990 (*Ausländergesetz*) and (current law) §56 Residence Law 2004 (*Aufenthaltsgesetz*). The Foreigner Law passed legislative procedures in July 1990 and entered into force in January 1991 which is why we consider all new provisions under this law for the year 2002 and not 1990.
[23] Some countries, such as France, additionally prohibit the expulsion of minors generally. However, we are not making this distinction in our coding.

legislation. On the strict side of the spectrum, Switzerland, Germany, and the United Kingdom have not had absolute protection at any point over the time period studied. The most liberal case is Belgium, which in May 2005 amended the expulsion rules in its Residence Law dating back to 1980: previously having provided no absolute protection for any category of foreign nationals, legal residence in Belgium since the age of twelve or before now protects from expulsion without exception.[24]

1.2.2(d) Some countries recognize the practice of a *terminating the residence of foreign nationals in their territory if dependence on public welfare benefits cannot be precluded*. Often, the conditions on which the right to stay depend are more liberal for long term residents, which is why we also look at differential treatment for those foreigners with an unrestricted residence permit. Accounting for the most extreme cases gives us Switzerland, Germany and the United Kingdom on the restrictive end, while France and the Netherlands lie on the liberal end of the spectrum. Among the restrictive countries, all but the United Kingdom recorded changes in their legislation excluding permanent residents from being expelled for not complying with economic self sufficiency provisions. We coded the United Kingdom as -1 on this indicator nonetheless, justified by the high level of discretion that authorities have in expulsion matters. Here, under certain circumstances, welfare dependence may lead to expulsion regardless of whether the person concerned is in possession of a permit of restricted or unrestricted ("indefinite leave to remain") nature. Those countries with liberal expulsion practices, thus scoring 1, do not provide for expulsion on grounds of manifest welfare dependence. The general trend is towards more liberal rules. This development is due principally to Switzerland, and Germany – all these countries adjusted their expulsion rules towards excluding welfare dependence as grounds for expulsion for long term residents.[25]

1.2.3. *Voting rights for foreigners*[26] for foreigners started in most countries at a time of large-scale migration. Democracies today host large populations of foreigners that have resided within their borders for many years, arguably sharing more political interests with the local community than with the citizens in their home countries. We check not only whether voting rights exist or not, but further distinguish between the levels at which voting rights are granted (local and national), between active and passive voting rights (the right to vote or also to be elected), as well as the inclusiveness of voting rights (dependent on nationality or not). All information is included in a single indicator.

[24] Article 21(1) Residence Law 1980 (*Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*).
[25] We decided not to account for the still rather restrictive practice in Switzerland in our scoring. Here, the expulsion protection on welfare grounds applies only after 15 years of residence.
[26] So far, no European country has extended the right to vote to the national level to all foreigners. In the United Kingdom Commonwealth and Irish citizens are included in national suffrage.

The Netherlands stand out as granting foreigners the most extensive suffrage, with both types of voting rights, passive and active, introduced on the local level in the Elections Act (Kieswet) of 1985 after the revision of a constitutional clause which up to 1983 had prevented the legislator providing for alien suffrage in municipal elections.[27] Several countries exclude foreigners from outside the European Union from local suffrage.[28] These countries in our study are Germany, France and – up to very recently – Belgium. The general trend for the sox countries between 1980 and 2008 is one of a slight liberalisation. The legislative changes in the countries that account for this trend have already been discussed, which leaves us with a short note on Switzerland. Here, cantonal jurisdictions can set up their own rules for voting rights.[29] As a consequence there is significant regional variation meaning that in some cities or Cantons resident aliens can vote or even be elected for local political offices while this is not possible in other Cantons. The first Canton to introduce voting rights on the local level was Neuchâtel, where foreigner voting rights on the communal level date back to the foundation of the Canton in 1849.[30] We coded the country as -0.5 for the entire period in light of the fact that most Cantons or municipalities still do not extend voting rights to foreign nationals.

1.2.4 We also need to consider *access to public sector employment for foreign nationals*. We take into consideration firstly whether access is open to foreign nationals or not, and secondly if so to which sectors (police, civil service, education). Currently, the principle of exclusion of non-nationals from civil service positions that constitute a "special connection to the state" is accepted in all countries studied. However, it is applied differently as the principle might be defined more or less broadly concerning different areas within the civil service. Therefore, we distinguish jobs in the police force, in public schools, and in public administration. These are three fields traditionally grouped under the civil service, yet in all three cases the "special connection to the state" is not an obvious characteristic that would naturally exclude non-citizens from taking up work in these areas.

[27] Cf. Chapter 5, Section 1, Article 130 of the Dutch Constitution (Grondwet voor het Koninkrijk der Nederlanden): "The right to elect members of a municipal council and the right to be a member of a municipal council may be granted by Act of Parliament to residents who are not Dutch nationals provided they fulfil at least the requirements applicable to residents who are Dutch nationals."

[28] At EU level the right to vote and stand as a candidate is guaranteed to EU citizens in local elections in the Member States (Article 19 of the Treaty of the European Communities) since 1992. The EU has no power to make binding rules on the voting rights of third-country nationals in its member states.

[29] In Switzerland the regulations on voting rights in Cantonal and municipal matters are exclusively competence of the Cantons according to the Constitution of the Swiss Confederation (§39(1) Bundesverfassung, BV).

[30] Cf. also website of the Immigrant Voting Project: http://www.immigrantvoting.org/World/Switzerland.html.

Our data show that no country scores 1 over all three indicators. The most liberal country is the United Kingdom, where the civil service is equated with the "Bureaucracy of the Crown", which as such excludes various public sector positions: members of the armed forces, police officers, local government officials or members of the National Health Service. In accordance with the Race Relations Act from 1976 (see below) there should be no nationality requirement for public sector positions as the act codifies that employers cannot lawfully apply practices which discriminate on grounds of nationality (Morris et al. 1990: 15). Nationality requirements, however, exist for the civil service (i.e. Bureaucracy of the Crown) and some other public services, such as the police forces until 2002. In that year the nationality requirement was abolished with the enforcement of the Police Reform Act.[31] The Crown Bureaucracy comprises employees that support the government of the United Kingdom (ministers appointed by the prime minister as well as the devolved administrations in Wales, Scotland and Northern Ireland). These service positions are restricted to British nationals and in case of various so-called non-reserved posts (ca. 75% of all posts) are open to EEA, Swiss, Turkish and Commonwealth citizens.[32]

Another liberal country is the Netherlands, where since the constitutional reform in 1983 it is no longer prohibited to appoint non-nationals to the public service. As such, Dutch public sector employers are allowed to exclude non-nationals only in a limited number of cases: Dutch nationality is explicitly required for high ranking posts in the judiciary, the military, the police[33] and the diplomatic service, and in positions involving state security. Today, France is the most extreme case on the restrictive side of the spectrum. A large number of jobs are restricted to French (or EU-) nationals. Even public sector enterprises, such as the gas and electricity utilities, the state railways, the RATP Paris transport service etc., all apply the rule of excluding foreigners other than EU nationals.

A general trend towards more liberal rules is observed, exemplified by Switzerland, Belgium and Germany. In Belgium, all public administrative posts were opened to non-nationals in the 1990s, subject to exceptions based on the criteria of public authority. On all levels of government, third country nationals

[31] Cf. Part 6, Section 82 on Nationality Requirements of the Police Reform Act: subject to proper immigration status, competence in English and certain reservations relating to sensitive posts, nationality is no longer a barrier to joining the police (http://www.opsi.gov.uk/acts/acts2002/ukpga_20020030_en_1).

[32] For more information on nationality requirements in the British civil service, see http://www.civilservice.gov.uk/jobs/Nationality-Requirements/Nationality-Requirements.aspx. It should be mentioned that family members of EEA, Swiss and qualifying Turkish nationals are allowed to take up non-reserved civil service positions. By contrast, family members of Commonwealth citizens who are not themselves Commonwealth citizens are not eligible to join the Civil Service.

[33] The Dutch police frequently accepts foreign nationals resident in the Netherlands for their training programs, but they must have obtained Dutch nationality at the time of appointment as police officer.

would be allowed to work in public functions in which no authority is exercised, particularly on the local level. Police forces are not open to non-nationals and school teachers are part of the regionalized public sector in Belgium. In Germany, the police forces (on federal level and in most of the *Länder*) gradually opened to include persons without Germany nationality starting in the 1990s.

1.3 Antidiscrimination rights

The principal of equal treatment regardless of racial, ethnic or national origin is the third area we subsume under the individual equality dimension. It is of considerable practical importance for all individuals living in a certain country to defend themselves against unjust discriminatory behavior. This behavior may be prosecuted via criminal or penal provisions and we will look at both legal fields in turn. Concerning criminal law provisions, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) entering into force in 1969 provided for a mechanism that urges all signatory states to pursue a policy of eliminating and penalizing racial discrimination in all its forms. [34] However, as long as the statements of the Convention are not integrated into national law they are of limited impact, which is why we look at the implementation process in national legislations:

1) Provisions against racial hatred in criminal law
2) Provisions against racial discrimination next to racial hatred in criminal law

Alongside criminal law, the civil law may be an important source for obtaining protection against discrimination in those cases where the ultimate aim is not so much the conviction of the perpetrator as the victim's access to certain employment and education positions or any goods and services provided for public use and denied on discriminatory grounds. Via the race relations legislation – passed in several rounds in the late 1960s and 1970s – the United Kingdom is an early example of relying on civil law for punishing racial discrimination which –especially in the employment-related field – has led to a considerable case load (Bleich 2003: 10). More recently, the European Union has passed a directive, known as the Race Directive, which deals with discrimination on grounds of racial or ethnic origin in a wide number of areas such as employment, education and access to goods and services.[35] This directive

[34] Ratification status for countries studied: Belgium: 1975; France: 1971; Germany: 1969; Netherlands: 1971; Switzerland: 1994; United Kingdom: 1969.
[35] Cf. Council Directive 2000/43/EC.

instructs the EU member states to put in place legal measures to the minimum standard set out in the Directive, which includes the development of a comprehensive anti-discrimination legislation as well as the allocation of independent organizations to provide independent assistance to victims of discrimination and conduct independent surveys. We will look at the following aspects:

3) Specific anti-discrimination regulations in civil law
4) State established anti-discrimination bodies and legal mandates

1.3.1 *Criminal law on racial hatred* existed in all countries by 2002, defining it as a criminal offence. Even at our first study point in 1980 – at that time all countries but Switzerland had ratified the ICERD – only Switzerland and Belgium did not have such provisions in their criminal laws. After Belgium had passed a law against racism and xenophobia in 1981[36], Switzerland is left as the only country without a racial hatred provision in criminal law in 1990. Finally, in 1995 and as a reaction to the ratification of the ICERD in 1994, a new paragraph on racial incitement and discrimination was inserted into the Swiss Penal Law.[37] This was after a national referendum appealed for by the rightwing Swiss Democrats turned out affirmatively on this penal law revision in September 1994.

1.3.2 The situation looks different when looking at *racial discrimination provisions in criminal law*. This provision becomes relevant in practice when discriminatory behavior is not accompanied by explicit statement of racist intent and can therefore not be prosecuted as violation of the racial hatred norm. Germany still lacks such legislation in its criminal code, not providing for any elements of criminal offences other than the so-called "*Volkverhetzung*"[38]. That is, the German Penal Law does not include an article specifically penalizing discrimination based on race or ethnicity. The positive trend in this indicator is explained by legislative progresses in Switzerland and Belgium. As mentioned, the Swiss made racial discrimination a criminal offence in 1995: "Anyone who refuses a service meant for public usage to a person or group of persons on the basis of their racial, ethnic, or religious appearance commits a crime".[39] Belgium amended its law against racism and xenophobia in 1994, outlawing discriminatory

[36] *Loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme et la xénophobie.*
[37] Cf. §261 Swiss Penal Law (*Strafgesetzbuch, StGB*).
[38] *Volksverhetzung* (racial hatred) is understood as assaulting in a manner that disturbs public peace the human dignity of others by (1) inciting to hatred against certain groups of people, (2) prompting to violent or arbitrary measures against them, or (3) insulting, maliciously decrying or defaming them" (cp. §130 StGB).
[39] The question is what the "service meant for public usage" refers to. In the Federal Council's supplement to the law, "quasi-public" facilities such as transportation, hotels and restaurants, theaters, parks and swimming pools are listed.

behavior when supplying goods or services and in employment (private and public) relationships.[40] As relations between private persons such as employment contracts, private schools, and rented apartments are usually not covered by the criminal law, the inadmissibility of discriminate behavior in private law relations is mostly covered by civil law. Apart from that, the evidentiary burdens facing the prosecution are often insurmountable, because the perpetrator's intent has to be established. We will now look at the civil law provisions.

1.3.3 This indicator looks at two central aspects of *anti-discrimination regulations in civil law*, that is, on which *grounds* and in which *spheres* equal treatment provisions provide protection. Typical grounds of discrimination are gender, disability, age or sexual orientation. What we are looking at here are ethnic origin, nationality[41] and religion. Spheres center on those areas of private and public relations that are prone to discriminatory behavior. We look at education, access to goods and services, employment, social benefits and housing. Our focus is very much in line with the above-mentioned Race Directive from the European Council, which is why many countries have passed general anti-discrimination legislation in the recent years. This is reflected in the overall upwards trend of this indicator. Looking at the countries with the most extensive anti-discrimination legislation over the entire time period, the Netherlands is the only country receiving a score of 1 (in 2002 and 2008). The Dutch General Equal Treatment Act (*Algemeine Wet Gelijke Behandeling, AWGB*) of 1994 contains extensive stipulations against discrimination in a wide range of social spheres and on all grounds we consider. This legislation rests on the Race Relations policies in the United Kingdom – a country, which over the entire period studied has been extremely progressive in this regard. Via the comprehensive national race relations policies implemented in 1965 and revised several times since then, the British have developed legal instruments to fight discrimination much earlier than all other countries. By contrast, Switzerland stands out as the strictest country when looking at all four time periods. Anti-discrimination has so far not found its way into the civil code and the inadmissibility of racial discrimination can only be deduced from more general legal clauses and constitutional provisions.[42]

[40] Cf. Article 2 and Article 2 bis in the *Loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie*.

[41] A short note on nationality discrimination: As already discussed in the case of access to civil service positions, discrimination by nationality is generally allowed, and varies in different countries. Thus, many commentators exclude "nationality" from the notion "national origin" (which next to "ethnic origin" can be found in much anti-discrimination legislation), stating that the non-discrimination rule did not envisage the obligation of countries to automatically grant to foreigners the same rights as to their own nationals. As such, the difference of treatment based on nationality is specifically excluded from the European Race Directive's scope (Article 3(2) Council Directive 2000/43/EC).

[42] It should be mentioned that a new Swiss Constitution (*Bundesverfassung, BV*) was passed in 2000, replacing the old one from 1874. While the old version did not provide explicitly for the principle of non-discrimination with regard to race and

1.3.4 Our final indicator is *whether a state has set up special offices and legal mandates* to deal with discrimination complaints and, if so, what powers those bodies have. Specifically, three powers are taken into account, i.e. whether an office can take legal action, whether it may initiate investigative procedures and whether it can decide on discrimination complaints. The importance of these bodies which lead to the inclusion of this indicator into our study results from the fact that victims of discrimination frequently lack their own resources to struggle against unequal treatment. Thus, they gain significantly from sufficiently resourced specialized bodies that take up their complaints.[43]

Aside from the United Kingdom, there was no country in 1980 that had installed a body with statutory powers to counteract discriminatory practices in public or private institutions. The British Commission for Racial Equality (CRE) recently merged into the Commission for Equality and Human Rights (CEHR)[44], was established by the Race Relations Act in 1976. Appointed by government it was equipped with the powers to conduct investigations, allowed to either fund claims it thought were worth backing or to take legal action on its own initiative. Powers and freedom of action of the new commission, the CEHR, were strengthened in comparison to its predecessors. Among other it may enter into as well as enforce via legal action if necessary binding agreements with employers and other bodies (ibid: 154). Alongside the British CEHR, the recently established French equality body stands out as another office equipped with a substantial mandate to fight discriminatory behavior. The so called High Authority against Discrimination and for Equality (*Haute Autorité de Lutte Contre les Discriminations et Pour L'Égalité, HALDE*) is an independent administrative agency created in 2004.[45] It can pursue cases of discrimination with the agreement of the alleged victims, can file individual and collective investigations, and since 2006, via the "*transaction penal*", can impose sanctions.[46]

---

ethnicity, §8(3) of the new Constitution now reads as follows: "No one can be discriminated with regard to country of origin, race, sex, age, language, social position, life form, religious, ideological or political believes, or physical, mental, or psychological illness."

[43] Unfortunately, we do not account for the budget of these offices since information on this is scarce and incomplete. Often, the budgets have remained limited considering the high volume of discrimination cases. Thus, support for individual cases inevitably involves the selections of cases from a large pool of individual claims.

[44] The creation of the CEHR was an act of putting expertise on equality, human rights and good relations all in one place. The Disability Rights Commission and the Equal Opportunities Commission dealing with gender equality were the first bodies to be merged into the CEHR in 2007. The CRE existed as a separate body until 2009.

[45] Cf. *Loi n°2004-1486 du 30 décembre 2004 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité.*

[46] Cf. *Loi n° 2006-396 du 31 mars 2006 pour l'égalité des chances*. HALDE may propose a specific criminal sanction to the perpetrator which he/she/it can either accept or reject. In case the perpetrator rejects, HALDE can initiate a criminal prosecution, in place of the public prosecutor, before the criminal court.

On the restrictive side are Germany and Switzerland. Equality bodies have been established by both states, but their respective powers are quite circumscribed. Switzerland has set up a Federal Commission against Racism (*Eidgenössische Kommission gegen Rassismus, EKR*) as well as a Service for Combating Racism (*Fachstelle für Rassismusbekämpfungm FRB*) in 1995. The FRB can only engage in public debates, advice governments and fund antiracist activities, while the EKR can also give advice to people that are victims of discrimination, research in conflict situations and mediate if necessary. Neither institutions neither have investigative nor enforcement powers. In Germany the Federal Anti-discrimination Agency (*Antidiskriminierungsstelle, ADS*) took effect in conjunction with the commencement of the General Law on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz, A*GG) and is located within the Ministry of Family, Seniors, Women and Youth. It can assist victims by way of independent legal advice about claims and possibilities of legal procedures, but has no investigative powers, cannot decide on discrimination complaints or take legal action on its own behalf.[47]

There is a noticeable upward trend when considering the overall scores from 1980 to 2008. All countries have been subject to this tendency, that is, they have introduced specialized bodies in order to support victims of discrimination.

[47] Cf. Section 27 of the *AGG*.

II – CULTURAL DIFFERENCE

SUMMARY TABLE

	Year	Cult. Requ.	Islam. Pract	Cult. Rights	Pol. Repr.	Affirm. Act	Average
BE (W)	1980	0.33	-0.20	-0.50	-0.33	-1.00	-0.34
	1990	0.33	-0.25	-0.44	-0.67	-1.00	-0.41
	2002	1.00	-0.20	-0.20	-0.33	-1.00	-0.15
	2008	0.67	-0.20	0.05	-0.83	-1.00	-0.26
BE (F)	1980	0.33	-0.20	-0.56	-0.50	-1.00	-0.38
	1990	0.33	-0.25	-0.28	-0.33	-1.00	-0.31
	2002	1.00	-0.20	-0.35	0.17	0.00	0.12
	2008	0.67	0.20	0.05	-0.33	0.00	0.12
CH	1980	0.33	-0.40	-0.61	-0.67	-1.00	-0.47
	1990	0.33	-0.40	-0.69	-0.67	-1.00	-0.48
	2002	0.33	-0.40	-0.55	-0.67	-1.00	-0.46
	2008	-0.33	-0.40	-0.55	-0.50	-1.00	-0.56
D	1980	-0.33	-0.60	-0.50	-0.50	-1.00	-0.59
	1990	-0.33	-0.40	-0.50	-0.50	-1.00	-0.55
	2002	0.33	0.20	-0.20	-0.50	-1.00	-0.23
	2008	-0.50	0.20	-0.10	-0.17	-1.00	-0.31
F	1980	0.33	-0.20	-0.78	-1.00	-1.00	-0.53
	1990	0.33	-0.20	-0.78	-0.50	-1.00	-0.43
	2002	0.33	0.00	-0.80	-0.50	-1.00	-0.39
	2008	-0.67	0.00	-0.50	0.00	-1.00	-0.43
NL	1980	0.33	-0.20	-0.22	0.33	-1.00	-0.15
	1990	0.83	0.40	0.50	0.33	1.00	0.61
	2002	0.83	0.60	0.40	0.17	1.00	0.60
	2008	-0.50	0.60	0.60	0.83	1.00	0.51
UK	1980	0.83	0.33	-0.56	-0.67	-1.00	-0.21
	1990	0.67	0.25	-0.11	-0.67	0.00	0.03
	2002	0.50	0.50	0.40	-0.17	1.00	0.45
	2008	-0.17	0.60	0.55	-0.17	1.00	0.36

2.1 Cultural requirements for residence and naturalisation

2.1.1 A selected number of countries have introduced *cultural requirements for delivery of a residence permit*. We distinguish between countries that have provisions for examining language skills and/or civic knowledge before granting secure resident statuses. Countries that have not introduced any integration requirement before immigration are scored as +1. France, Germany and the Netherlands receive the intermediate 0-score because they only require language skills (France, Germany) or language skills and civic knowledge (Netherlands). The trend over time may be described as follows. In 1980 and 1990 Germany was the only country in our sample to formulate integration requirements (including language and civic knowledge) for permanent residence. A permanent residence was only to be issued if it could be show that the person has integrated in the economic and social life in the FRG.[48] Basic knowledge of Germany was established in the so called Consolidation Clause ("*Verfestigungsregel*") for immigration of 1978.

Nearly all other countries followed suit by 2008, the Francophone part of Belgium being the only exception. This means that in 2008, Francophone Belgium is the only case that still receives the +1 score because it does not have any integration requirements for permanent residence. On the other hand, countries with language and civic knowledge requirements have received the restrictive score of -1. In our sample, only Belgium Flanders in 2008 and Germany in 2002 have received intermediate scores. We attributed a 0-score to Flanders because it has an obligatory integration program in which newly arrived immigrants have to participate, but immigrants who refuse to partake in the program cannot be sanctioned with the refusal of a permanent residence permit.[49] Germany received the 0-score for 2002 because the Aliens Law that entered into force in January 1991 only foresaw language skills but no longer any civic knowledge.[50] However, the Residence Law that entered into force in 2004 replacing the Aliens Law from 1991 made permanent residence again dependent on civic knowledge. The foreign applicant has to demonstrate his/her knowledge of the German language (at a low level) and possess basic knowledge of the legal and social systems and the way of life in Germany. These requirements regarding German language and culture are considered to be fulfilled when an integration course has been completed.[51]

[48] Cf. §8 of the Aliens Law (*Ausländergesetz, AuslG*) from 1965.
[49] That is, there is a real pressure since the non-participation in these courses is accompanied by financial sanctions. However, it does not influence an immigrant's legal status.
[50] Cf. §24(1)4 of the Aliens Law (*Ausländergesetz, AuslG*) from 1991.
[51] Cf. §9(2) of the Residence Law (*Aufenhaltsgesetz, AufenthG*).

The general trend that has developed in the years between 1980 and 2008 is slightly negative for this indicator.

2.1.2 *Access to nationality is also dependent upon cultural requirements* in a number of countries. According to the country these can include language skills, civic knowledge (national history and geography, civic values), an oath or declaration of loyalty, as well as assimilation. Where assimilation is made a prerequisite for naturalization – as expressed in the corresponding naturalization laws and regulations – we give countries the most extreme score on the monist side of the spectrum, since this form of cultural adaptation exceeds the mere knowledge of language, history and democratic order. Furthermore it provides the administration with a lot of leeway for more or less arbitrary decisions on migrants of different origins. France and Switzerland are at this extreme side of the spectrum over the entire period of study, while Belgium has now liberalized its previously assimilationist stance on requirements for naturalization. Indeed, Belgium today scores on the opposite side of the spectrum, not demanding any cultural requirement for naturalization. The United Kingdom, meanwhile, has tightened cultural requirements for naturalization over the period of study, while Germany and the Netherlands are less coherent. These latter two countries used to have strong assimilation regulations in the early years, relaxed in subsequent years only to turn again to stronger regulations by introducing civic and language knowledge requirements for naturalization. In a short time frame the United Kingdom, Germany and the Netherlands all introduced civic and language knowledge tests for naturalization.

2.2 Religious practice rights outside public institutions

We now turn to the regulations enhancing or obstructing the opportunities for the recognition of Islamic practices outside of public institutions.

2.2.1 To what extent national legal systems were adjusted as to accommodate Muslim practices such as *ritual slaughtering* (*shehita* or *halal*-slaughter), will be subject of the first indicator. There are strict regulations on meat production for human consumption with regard to hygiene, safety as well as animal protection in all countries. One aspect is the obligatory pre-stunning which collides with Islamic (and

Jewish[52]) ritual practices. Thus, some European countries have included an exemption clause in their laws so that ritual slaughter has emerged as an exception to the general rule on pre-stunning.[53] If slaughter without pre-stunning according to religious rites is forbidden the country gets a 1. If this exception is made without strict conditions, the country gets a 1. Where these conditions are very strict, we attribute a 0. The one country that has never allowed ritual slaughtering is Switzerland. Belgium, France, the Netherlands and the United Kingdom have always upheld their liberal stance on granting exemptions without many conditions to religious communities such as Muslims, Jews and Sikhs. Germany ranges in between, allowing for ritual slaughter on special occasions and for distribution only to a limited community.

The overall trend is positive. This has to do with Germany, which used to take a very restrictive position as expressed in its Animal Protection Law, but altered its practice following a decision by the Constitutional Court in 2002. This decision declared special treatment reasonable if "strong religious commandments" apply within a concrete group in the Islam and if the necessity to consume animals killed without prior stunning is demonstrated comprehensibly.[54]

2.2.2(a) *Allowance of the Islamic call to prayer* (especially when broadcasted via loudspeaker) have arisen as controversial and emotional issues in many communities and have often been collectively discussed. As far as the call to prayer, the *adhan*, is concerned, we were interested in local practices or possible nation wide policies prohibiting, limiting or allowing for it. Since religious freedom is a common constitutional provision, regulations on emission control, on road traffic and on construction and building are taken into consideration by local and national authorities when looking for adequate legislation. That is, the needs of religious communities to perform public acts of worship have to be balanced with the rights of all interested parties. Furthermore, increasing criticism from the public has led some mosque communities to officially renounce calling to prayer from the minaret or via loudspeaker as the maintenance of good relations within neighborhoods and local officials is a primary concern. Nevertheless, in other occasions, mosques proceeded with the call to prayer without obtaining permission.

[52] Historically, provisions on legalizing the *shehita* for Jewish communities can be found throughout Europe since the end of the nineteenth century.
[53] Already in 1993, Council Directive 93/119/EC on the protection of animals at the time of slaughter or killing provides for a relaxation of the pre-stunning requirement provided that religious rites demand so. This puts countries under pressure to harmonize slaughter legislation within the EU single market.
[54] Cf. BVerfG, 1 BvR 1783/99 from January 15th 2002.

Only the Netherlands received a score of 1, since although there is no nation wide regulation the call to prayer is practiced widely across the country. Already in the 1980s the first community (Leiden) allowed the (amplified) *adhan* which was then practiced every Friday before the main prayer. Today, a number of local authorities offer Muslim communities the opportunity to make a public call to prayer once a week or more. We score these countries as -1 where the call to prayer is not practiced at all. Belgium, France, and Switzerland are countries where today no such practice can be found. What one can see, by looking at the overall score, is a move towards less restrictive provisions. This change has to do with Germany, becoming more liberal in the 1990s especially in the Ruhr area,[55] as well as the United Kingdom, where the Birmingham Central Mosque in the mid 1980s was the first mosque that after extensive deliberations and resubmitted applications was allowed to broadcast the amplified *adhan*.[56] As in most German and British cities the call to prayer is rather an exceptional event, we attributed a score of 0.

2.2.2(b) Concerning the *total number of mosques that have been constructed* we also considered the size of the Muslim population. With respect to this indicator, one can say, that there is articulated variance between the countries. The United Kingdom has by far the largest number of mosques. Belgium, Germany and the Netherlands – taking into account the number of Muslims living in each country – also offer several such places of worship. The overall trend is positive – steadily increasing from 0 to 0.5. Apparently, the need for proper places of worship for Muslims in Europe has led to their continuous construction – despite the controversies that still arise over this issue.

2.2.3 We now turn to another aspect of Islamic practices that has caused conflicts with the traditional organizational practices of municipalities: how to proceed with the deceased? Islamic inhumation rules are usually not compatible with common cemetery or burial laws. Muslims demand that their deceased be buried without coffin in spatially separated sections of cemeteries. These issues had to become a concern for municipalities.

(a) With regards to the indicator on *separate sections or cemeteries*, more and more has there been a consideration for Muslim needs. In the majority of cases there have been separate sections providing for the burial of Muslims already in the 1980s. More recently the construction of separate cemeteries can be observd. The United Kingdom has several Muslim cemeteries and in France the historic cemetery of

[55] In the city of Düren the call to prayer was allowed to be performed five times a day. At the same time it was the first city in Germany to allow Muslims to call for prayer publicly in 1987.

[56] Only recently, there has been considerable furore over the decision by a mosque in Oxford to obtain permission from the local council for amplifying its call to prayer.

Bobigny has turned into an extra-municipal extension of Aubervilliers, Bobigny, Drancy and La Courneuve, and is used as Muslim burial place.

(b) A more restrictive stance has been taken on allowing Muslims to *bury the deceased without coffin*[57], which is sometimes also considered an environmental and hygienic risk. As for separate sections, considerable liberalization is again reflected in the average score.

2.3 Cultural rights and provisions within public institutions

The needs and wishes of cultural and religious minorities put public authorities increasingly under pressure to grant special rights. Here, we consider the chosen indicators in the order given above.

2.3.1(a) Interestingly, the six countries are more willing to allow and (partially) finance separate *Islamic schools* than to organize Islamic religious classes during regular school hours. The most extreme cases on this indicator are France and Switzerland, that have never throughout the four points in time compared here (partially) financed Islamic schools. It should be noted, however, that France started to fund some teacher salaries at the Lycée Averroes in Lille during 2008, just after the period under consideration. The trend on this indicator is more pronounced than on the previous indicators: while the average score of all 10 countries was -0.8 in 1980, it moved up to +0.1 in 2008. This means that at the start of 2008, France (but see above) and Switzerland were the only two countries that did not have even one state-funded Islamic school.

2.3.1(b) The indicator *how much funding Islamic schools* receive from the state is difficult to measure since it strongly depends on the country's general legislation in this field. The Netherlands have the most liberal legislation in this field since they have started in 1988 to allow the financing of Islamic schools on the same foot as Christian schools. The most restrictive countries in this regard are France and Switzerland where the funding of Islamic schools was not permitted in 1980 and is still not in 2008. The general trend on this indicator is slightly positive.

[57] According to religious requirements the body has to be draped before burial and after the ritual ablution. The draped body is buried without coffin. Muslims are never cremated.

2.3.2 *Islamic religious classes* that are taught at school as a directive alternative to other religious education classes are still not a very frequent phenomenon among the six countries compared here. In 1980 no country except Belgium provided for Islamic religious education in public schools. The situation in Belgium dates back to an amendment of the education law in 1978: in case a parent asked for Islamic religion classes, schools would be obliged to offer them.[58] Today, the picture is more mixed. On the other side of the spectrum, France does not have any form of optional Islamic education in public schools.

The trend on this indicator is slightly positive in the sense that the other four countries have introduced some arrangement for Islamic religious classes either in 1990 or 2002.

2.3.3 When we look at the indicator on whether *female teachers in state education have the right to wear a headscarf*, we first of all have to mention that scores are missing for all ten countries for the years 1980 and 1990. The explanation lies in the fact that in the earlier years many European countries had not yet started to draft legislation on headscarves (or the *hijab*) in schools. Furthermore, lacking case law prevented us from drawing conclusions from judicial decision and their interpretations of existing legal provisions.[59]

The variation for the years 2002 and 2008 is limited: on the one hand, there are countries that allow female teachers to wear a headscarf, for instance the Netherlands and the UK. There have been some discussions on the wearing of the headscarf in these countries, but the restriction of its use has mostly been considered to be at odds with the right to religious freedom. On the other hand, there are countries that do not allow teachers to wear headscarves, i.e. France, Belgium, and Switzerland. In France, teachers have a special duty to embody the neutrality of the state, as do all civil servants. Furthermore, a recent law explicitly forbids wearing any "ostentatious" religious symbols in public primary and secondary schools.[60] In contrary to other European countries, opposition to the ban on the *hijab* in state education has been very limited – perhaps because the display of religious belonging by a state representative remains unthinkable for a majority of French citizens. In Switzerland, a case ultimately brought before the

[58] Prior to that, in 1978, the Muslim religion was officially recognized by the state (Vinikas/Rea 1993: 145). As a consequence, state funding for such institutions as religious education became possible.
[59] To get an overview of the headscarf regulations in the different countries consult the website of the VEIL project: http://www.univie.ac.at/veil. VEIL – Values Equalities & Differences In Liberal Democracies – is a project funded via the 6th framework of the European Commission that "focuses on the debates, conflicts and regulations concerning head- and body coverings of Muslim women in the public sphere, particularly in public institutions such as schools, universities and the courts". The materials and studies that are posted on the website give background reports on the situation in the respective countries. For a comparative study on debates about the Islamic headscarf in Europe.
[60] Cf. *Loi No 2004-228 du 15 mars 2004*.

European Court of Human Rights (ECHR) has gained considerable prominence in the late 1990s. It referred to the dismissal of a teacher at a primary school in Geneva on the grounds of wearing the headscarf in school. After the Federal Court of Justice had weighed the confessional neutrality of the school higher than the teacher's interests and additionally argued that the Muslim headscarf runs counter to the constitutionally granted right of equal treatment of men and women, the teacher brought suit at the ECHR – again, without success. The ECHR did not see reasons for a violation of human rights and ruled in 2001 the dismissal had justifiable legal basis in the Swiss law. From this case law one might infer that according to secular principles, the Swiss Cantons do not tolerate the wearing of religious emblems by teachers.

Given that the early years are missing, it seems difficult to make statements about trends on this indicator. And despite the numerous public debates about Muslim women's headscarves this indicator also shows that the countries move surprisingly little or not at all. The average score trend for this indicator is slightly positive.

2.3.4 Our second indicator concerning the *right of female students in state education to wear the hijab* seems largely comparable to the first one. However, the countries compared here are more open to female students wearing headscarves: all countries except for Belgium and France allow students to wear a headscarf. France used to have a regulation whereby each school could decide individually whether or not to allow a headscarf, but with the 2004 law that bans ostentatious religious signs in public institutions (cf. previous footnote), France is in 2008 the only one of the six countries compared here that does not allow headscarves. Belgium occupies an intermediary position, as each school can make individual decisions. A survey released in 2004 showed that in Brussels 84% of the 110 surveyed schools and 41% of the French community schools did not allow the headscarf.[61]

2.3.5 An important infrastructure for Muslim immigrants in the host country is the availability of media in their language of choice. Thus, we look at special provision and rights for ethnic and religious minorities in the public (state-funded) broadcasting system, i.e. television and radio, considering whether such programming exists and how much time is devoted to it if so. First of all, we consider the context of

[61] Currently, all public schools in the locality of Antwerp in the Flemish Community in a common effort are planning to ban the wearing of the *hijab* for students in classes (cp. Le Monde, 17th September 2009. "L'interdiction du port du voile à l'école fait polémique à Anvers").

public broadcasting directed towards immigrants in general, before moving on in the next indicator to consider programming aimed specifically at Muslim communities. The following aspects are considered:

Countries receive a higher score if they have public broadcasting programs that are clearly differentiated from the normal programming and directed only to immigrant minorities. This can be in the form of programs in immigrant languages, religious programs, or possibly in independent broadcasting organization or radio and television stations. Germany and the UK today, as well as the Netherlands until recently, get a score of 1. Germany in the 1960s has seen "guest worker programs" in public broadcasting, i.e. television and radio, in immigrant language, mainly on the initiative of the ARD (a joint organization of Germany's regional public-service broadcasters). That is, the respective programs were all under German direction.[62] Today, immigrant programs are supposed to be integrative and intercultural, so that those developed to replace the guest worker programs have a multilingual design. In 1994 an entire radio station mainly directed towards immigrants was established (at this time this full-bound format was unique in Europe): *Radio Multikulti*, broadcasted by the *rbb*[63], was in German and 19 other languages. For financial reasons the program was phased out in 2008. *Funkhaus Europa* is the West German counterpart to *Radio Multikulti*, a radio station founded in 1999 and a project by the WDR.[64] In the UK, BBC created the *Asian Programmes Unit* (APU) in 1965. It produced television programs such as "Make Yourself At Home" or "New Life New World" which featured tutorials on British life, including voting and using gas boilers.[65] In 2008 this unit was closed down. [66] As far as the radio is concerned, the regional BBC Asian Network has since 1988 featured a generally regular schedule of programming in South Asian languages (locally in Leicester since as early as 1977). In 2000 the Asian Network went national, although in the new broadcasting law of 1996 there is no longer a policy regarding the need for the media to reflect the multicultural nature of the country (Georgiou n.d.).

The Netherlands had a wide range of programs directed towards minorities on radio and television in immigrant language already in 1980. This is partly due to the fact that concessions for broadcasting are distributed over a wide range of independent broadcasting organizations of different social and religious

[62] Until the 1980s these programs were fairly important for the migrants, but there is not much scientific research on this.
[63] *Rundfunk Berlin-Brandenburg* (rbb, Berlin-Brandenburg Broadcasting) is a public broadcaster for the states of Berlin and Brandenburg.
[64] *Westdeutscher Rundfunk* (WDR, West German Broadcasting) is a public broadcaster institution based in the Federal State of North Rhine-Westphalia. The previous frequency of the phased-out *Radio Multikulti* is now occupied by WDR's *Funkhaus Europa*.
[65] Cf. http://www.guardian.co.uk/media/2009/jan/12/bbc-asian-programmes-unit.
[66] It is argued, that mainstream media's content does not address particularly minority audiences and it is almost never in minority languages (Georgiou n.d.).

group. The national broadcasting organization NPS[67] is required to devote 20 percent of the television time and 25 percent of radio time to minority target groups. However, since the early 1990s, except for radio, there are no programs in the immigrant languages in public broadcasting. Furthermore, the official multicultural practice of the NPS explicitly targeting cultural minorities has been announced to be discontinued by the government – all broadcasting corporations (local, regional, national) should produce better multicultural programming, but this depends to a great extent on the support within the different broadcasting corporations.[68]

Belgium and France range at the other side of the spectrum with a score of -1 or no immigrant language programs in public radio or television broadcasting. In France, the law stipulates that the media should broadcast in French. In Belgium, media policy is the exclusive responsibility of the communities. Public service radios in both Francophone Belgium and Flanders have offered immigrant language broadcasts, but the last ones were dropped in 1997. Today, private local radio stations satisfy the needs of the immigrant community for programs in different languages (e.g. Arabic, Spanish, and Portuguese).

A negative trend can be identified in this indicator. Switzerland stopped programs aimed at immigrant communities; what is left are "free radios" that receive some state money (so called "fee splitting") and that have a variety of programs in other languages.

2.3.6 Next to immigrant language programs, programs reflecting the religious diversity in a country are important for migrant communities with often Islamic backgrounds. Therefore, we now investigate whether there are Islamic programs on public radio and/or television and how much time is devoted to them.[69] Two countries stand out as particularly open to religious programs broadcast on public television or radio and produced by Muslim communities: the Netherlands and the United Kingdom.

All other countries score -1 over the entire period studied as they do not provide for Islamic religious programs on public broadcasting.[70] The overall score steadily increased from 1980 to 2008. This is due to

[67] *Nederlandse Programma Stichting* (NPS, Dutch Program Foundation)
[68] For an overview of all multicultural programs on public broadcasting, cp. Information on the website http://www.miramedia.nl/.
[69] Often, public broadcasters air Islamic cultural programs as part of programs devoted to religions in general. However, these programs are not produced by Muslims for Muslims, but instead by public broadcasters for the broader public. We therefore, only count programs produced by the Muslim community.
[70] There have been requests from and even talks between the Muslim Executive of Belgium (organization set up to represent the country's Muslims) and the VRT and RTBF (the Flemish and Francophone public broadcasting services) for broadcasting time.

developments in the Netherlands and the United Kingdom, where – as described – Islamic programs entered the public broadcasting scene over the past thirty years.

In contrast to the previous indicator, we scored the earlier years as +1 (and not as *missing*). This is so because only when Muslim pupils wearing the headscarf became more visible at public schools were religious symbols subjected to legal and political debates. In contrast, teachers wearing headscarves had little significance in practice and only turned out to become debated when actual cases arose.

2.3.7 Turning to the next indicator, *mother tongue teaching in schools* shows much more diversity. Here, on the one side of the spectrum, the Netherlands, Switzerland and the United Kingdom are at one time or another scored as -1. Switzerland is the most extreme case, as over the entire time period no state-funded mother tongue teaching during school hours has taken place.[71] On the other side of the spectrum, countries such as the Netherlands in the past have to be mentioned. The Netherlands' mother tongue teaching, called "Native Language and Culture", started as early as in 1974 during school hours (max. 2,5h). In more recent years, numbers of hours were reduced and courses were held in extracurricular time and addressed only younger pupils; until mother tongue teaching was finally discontinued altogether in 2003.

There is no overall cross-country trend in this indicator.

2.3.8 Finally, we will explore *whether imams are employed in two state institutions, namely, prisons and the military*.[72] Christian (and Jewish) chaplains have for a long time offered pastoral care to prison inmates and military officials respectively, as in most countries the availability of spiritual guidance in these institutions is legally prescribed. In recent years, the problem arose how to deal with Muslims – a group that is showing increasing presence in these two institutions – in need for religious counseling.[73] When looking at the data, we see that all countries but the Netherlands did not provide for employment of imams in 1980 – neither in the military nor in prisons. In the Netherlands there was some ad hoc recruitment of imams; however, regularized recruitment in form of allowing imams to become civil

[71] That is, the Cantons do not organize or finance the courses. Teachers are provided and paid for by the foreign consulates or private institutions. Although, in some Cantons the courses are integrated in the regular school hours, in most Cantons the schooling takes places entirely outside school hours in the children's free time.
[72] For all countries, information is partly taken from the very insightful annual Religious Freedom Reports by the U.S. Department of State, check http://www.state.gov/g/drl/rls/irf/.
[73] In a strict sense, Islam does not have an institution formally equating "chaplaincy", i.e. no institutionalized pastoral care. However, there is a quite intense relationship between the religious scholar and his followers.

servants did not take place until 2007. With this institutionalization, the Netherlands is among the countries with the most liberal practices – next to the United Kingdom, Belgium and France.

Britain has significantly opened up towards making facilities and activities available to Muslims in prisons, and more recently the military. Imams have since 2002 even been employed full-time in prisons. In Belgium, Islamic consultants have worked as volunteers in prisons for a long time. However, in 2005, the Belgian state declared by royal decree to pay the salaries of chaplains designated by Muslim communities. The decree regulates the institutionalization of 26 French and Dutch speaking Muslim councilors.[74] A Muslim representative organization, the Muslim Executive of Belgium (*l'Executif des Musulmans de Belgique, EMB*) has functioned as mediator between the state and the Muslim communities. Among others, it appointed (and trains) Muslims chaplaincies in prisons and the military.[75] However, since the government stopped financing this body in 2008, the current situation is a more difficult to assess. Finally, France has recently funded imams in state institutions. Imams have for longer been visiting prisons, but this was not nationally coordinated and very little funding was actually available. Only in 2005 did the state start recruiting officially state-paid imams for the French prisons, with the newly established French Council of the Muslim Religion as national cooperating partner. There are also the first imams officially entering the French army.[76]

There is a dominant upwards trend on these two indicators. Next to the countries already discussed, Switzerland and Germany have also begun to provide for Muslim counseling on an ad hoc basis. However, in these countries it is still quite common that imams work as volunteers, lacking funding from the state.

2.4 Political representation rights

In this indicator we consider forms of collective political representation of ethnic and religious minorities through consultation, firstly giving the context of immigrant consultative bodies in general and then moving on to consider the more specific (and recent) case of Muslim representative councils. Thus it is composed of the following sub-indicators:

[74] See also information on blog "Islam in Europe" http://islamineurope.blogspot.com/2006/12/belgium-paid-muslim-chaplains-in.html.
[75] Cp. information at http://www.euro-islam.info/country-profiles/belgium/.
[76] Bernard, Elodie. "Des imams dans l'armée", L'Express.fr, from January 3rd 2005.

1) Immigrant consultative bodies on the national level
2) Immigrant consultative bodies on the local level
3) Muslim consultative bodies on the national level

2.4.1(a) *Immigrant consultative bodies* – in some instances established to make up for the lack of voting rights – are supposed to represent the interests of ethnic minorities in the host society. We measure this political representation by looking at the existence and composition of immigrant consultative bodies on the national and local level. We want to know whether a consultative body exists, whether the state has influence on the appointment of its representatives, whether the share of immigrants is 100%, more than 50% or less than 50%, and finally whether the members of that consultative body are representatives of organizations (thereby representing a broader public) or individuals who have been nominated or invited to participate because of their personal expertise. We attribute fewer points to such councils that are composed of individuals because the actual power of representation is smaller than in cases of representatives of organizations.

For the indicator political representation on the national level, we find on the restrictive end of the spectrum the French community of Belgium in the years 2002 and 2008, Germany until very recently (2008), and finally France for the first point of measurement (1980), with a score of -1 in the respective years. For Belgium we distinguish between its Francophone part and the Flanders as the respective practices diverge, although at the national level a Consultative Council for Foreigners (Conseil Consultatif des Étrangers) was established already in 1980[77]. Similarly, the French community in Belgium had created by Royal Decree of December 7th 1979 a consultative body for immigrants in the Francophone Community, the so called Conseil Consultatif des Immigrés de la Communauté Française (CCICF). Appointed by government, it started its work in 1981 composed of representatives from immigrant and mixed Belgian-immigrant organizations next to government, trade union and business representatives (MPMC-Project; Noch anders zitieren). In 1986 the council changed its name into Conseil Consultatif pour les Populations d'Origine Étrangère de la Communauté française (CCPOE) which was, however, dissolved at the end of the nineties (EUMC-Report Belgium 2004; Noch anders zitieren). Germany never had a national consultative body until the Integrationskonferenz was set up in 2007.

[77] Cf. Article 31 of the Law from December 15th 1980 on the Territorial Access, Residence and Settlement of Foreigners (Loi de 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers). Next to cabinet members and executives from the Regions and Communities, the body is composed of members from immigrant organizations related to worker's and students' interests. For more details see also Arrêté royal du 28 juillet 1981 fixant la composition, la procédure et le fonctionnement du Conseil consultatif des étrangers.

However, this institution is not permanent, with experts appointed by the government in their majority having a non-immigrant background. Therefore, Germany still scores very low (-0.5). Finally, France established the National Council of Immigrant Populations (Conseil National des Populations Immigrées, CNPI) in 1984 (Schuerkens 2005: 24). Although in the minority (less than 50% of the body members), representatives from immigrants organizations, nominated by government formed part of the consultative enterprise. In 1993, this council became by decree law the Conseil National pour l'intégration des Populations Immigrée (CNIPI)78 but it has ceased to exist (Assemblé Nationale 2005: 6). Today only the High Council for Integration (Haut Conseil à l'intégration) established 1989 deals in consultative manner with immigrant issues. However, it is not really a consultative body and rather an expert council without representing immigrant organizations.

In the Netherlands, we see the greatest openness towards consulting immigrants in the political process over the entire period (scoring +1), i.e. an extensive system of minority representation on the national level has already existed since 1980. In 1985 the National Advisory and Consultation Structure on Minorities Policy (Landelijke Advies- en Overlegstructuur Minderhedenbeleid – LAO) came into force. That way, migrant associations were systematically introduced into the consultation and policy-making. In 1998 the LAO was replaced by the National Consultation Structure for Minorities (Landelijk Overleg Minderheden – LOM) receiving a legal foundation with the Law on the Consultation of Minorities Policies (Wet overleg minderheden – WOM).

The general trend is positive. However, the average score for all countries is even more favourable in 1990, which shows that there is no linear development towards ever more rights on this indicator. This lack of linearity can be traced back to France and Francophone Belgium. In both cases the scores decreased in 2002. As they have been discussed above, we will proceed with the situation at the local level.

2.4.1(b) For the indicator *political representation on the local level*, at the most restrictive end of the spectrum are France and the Francophone part of Belgium. In the latter, several Consultative Councils of Immigrant Communities (Conseils Consultatifs Communaux des Immigrés, CCCI) existed already in the 70s, although they were never really successful.[79] In 1990, Francophone Belgium scores -1 because of this

[78] Décret n°93-290 du 5 mars 1993

[79] Cf. Pierre-Yves Lambert, Les Conseils consultatifs communaux des immigrés en Belgique, Migrations Société, Vol. 13, Nr. 73, Janvier-Février 2001 (Numéro sur "Structures municipales de concertation ou de consultation des résidents étrangers").

inactivity; while in later years some local consultative bodes have entered the scene again. French did not have local advisory bodies in 1980. Only in 1981 did immigrants in France receive the right to associate under the same terms as French nationals. As a consequence, the left-wing government incited mayors in 1983 to create extra-municipal commissions open to associations of immigrant communities (Schuerkens 2005: 24). These extra-municipal commissions by now have pretty much ceased to exist (Andrès 2000), and instead consultation councils made up of immigrants have been established (as in Paris, Grenoble, and Strasbourg).The Netherlands is again the only country that receives a score of +1 on this indicator. Councils for different ethnic minorities existed already in 1980 (Adviesraden). In some cases the local government was obliged by law to seek the immigrant council's advice on policy measures that regard them. The latter's representatives were exclusively appointed by the different migrant organizations. A newer development is the discontinuation or reorganization of purely ethnic consultative bodies and the establishment of 'diversity' or 'intercultural' bodies, including representatives with non-immigrant background.

The general trend for all countries between 1980 and 2008 is very modestly upward.

When comparing immigrant political representation on the national and on the local level it should be noted that some results are not consistent. The most striking case certainly is Germany, where no political consultation or representation of immigrants has been organized on the federal level in the years between 1980 and 2002 (and even the so-called integration summit that existed in 2008 can only be scored as -0.5) while such a representation has existed on the local level ever since 1980. Only in Belgium (Flanders) is the opposite the case: while representation on the local level has been restricted (though not completely abolished), it has been increased on the level of the Flemish community.

2.4.2 Finally, the third indicator to measure political participation of minorities relates to the *Muslim representative bodies on the national level*. The criteria used are the same as those for the immigrant consultative bodies indicator. The most restrictive case is Switzerland, which has not created any formal consultation with Islam. The general trend on this indicator however clearly goes in the direction of such a consultation. This development can be observed in various countries. In 1996, Belgium has created the Muslim Executive of Belgium (Executif des Musulmans de Belgique, EMB) by royal decree.[80] But the official recognition body has been suspended by the Belgian Ministry of Justice in March 2008 with the

[80] Cf. L'arrêté royal du 3 juillet 1996 relatif à l'Exécutif des musulmans de Belgique.

"Arrêté royal portant suspension des articles 4 à 9 de l'arrêté royal du 3 mai 1999 portant reconnaissance de l'Exécutif des Musulmans de Belgique" as certain conditions were not met.[81] The German Islamkonferenz (DIK) reunites since 2006 representatives from the German state and the Muslim community in order to promote the dialogue between them. In France, the French Council of the Muslim Faith (Conseil Français du Culte Musulman) is operative since 2003 and is supposed to be the representative of French Muslims before the national government. The Muslim Council of Britain (MCB) performs since 1997 the task of representing Muslims in the United Kingdom. It is has to be kept in mind, however, that MCB is not a government instigated institution, i.e. it is not established by or for the government. We nevertheless include it in our scoring, as it has been accepted as being a representative body and therefore negotiating partner for the government.

2.5 Affirmative action in the public sector

The principle aim of affirmative action (also known as positive discrimination or positive action) policies is to make racial or ethnic group belonging a criterion for access to certain positions in the labor market or other spheres such as education or housing. Thus, affirmative action can be distinguished from anti-discrimination measures as it takes pro-active steps to erase differences in contrast to merely preventing the disadvantageous treatment of minorities.[82] We consider affirmative action as belonging to the cultural rights dimension of citizenship as programs falling under it require the classification and registration of individuals as members of particular ethnic or racial groups.

A variety of policies and strategies covering many different activities may fall under the rubric of affirmative action – hiring, recruitment, training, promotion, and so on. Our approach on this indicator is to ask whether there are affirmative action programs in the public employment sector and, if so, whether specific quotas, targets or preferential hiring schemes have been introduced – numerical yardsticks that are supposed to guarantee a percentage of hires and promotions of persons with different ethnic and racial backgrounds.

[81] Cf. Moniteur Belge de 11 avril 2008.

82 To avoid potential confusion between anti-discrimination (first dimension) and affirmative action (the second dimension): positive discrimination is concerned with the (occupational, educational, etc.) candidate selection process on the grounds of race, ethnicity, etc. rather than merit alone ; anti-discrimination aims at the promotion of recognition and acceptance of persons regardless of any attributes.

The Netherlands can be considered a pioneer in affirmative action. Programs for specific ethnic minorities in the public service have been set up in the 1980s establishing targets for achieving a more diverse workforce. The so called Wet Samen (Equity Law) from 1994 was a continuation of preferential hiring programs in the private sector. But the Dutch government decided to discontinue positive action in the private sector as the duty to report as at odds with the aim to diminish red tape. Today, there continue to be preferential hiring and target programs in the public sector, e.g. in the police force (quota for higher positions) and academia (special stipends from the Netherlands Organization for Scientific Research [NOW] for PhD students with a migration background).

More recently, extensive affirmative action programs have become an integral part of the public sector in the United Kingdom. In the United Kingdom, a systemic pro-active stance towards affirmative action has been taken by amending the Race Relations Act in 2001. Public bodies were subjected to a statutory general duty to promote race equality. In this way, the Home Office has introduced employment targets for ethnic minorities in the police – criticized by societal actors such as the Commission for Racial Equality.[83]

Other countries have been more reluctant to introduce such preferential system in their public employment systems. In Switzerland, for instance, there has up to now been no judicial debate on this topic and no law (whether on communal, Cantonal or federal level) providing for the adoption of quotas or other affirmative action measures. Voluntary single actions undertaken by official agencies and targeting the recruitment of minority groups function as improvement of service quality rather than as rationale for positive discrimination.[84] Reluctance is also observable in the Francophone part of Belgium, Germany and France; in Flanders, meanwhile, active measures such as diversity plans and annual reports have been introduced, aimed at demonstrating the intention of the respective public entity to increase the share of immigrants among its personnel.[85]

83 Cp. Morris, Nigel. "Row over quotas for black and Asian police officers", in The Independent, 19.04.2007.
84 Email from the Federal Commission against Racism
85 Cf. Decreet houdende evenredige participatie op de arbeidsmarkt (Decree of 8 May 2002 on proportionate participation in the employment market) adopted in 2002.

APPENDIX I:

DETAILED SCORES ON ALL INDIVIDUAL RIGHTS INDICATORS

	1.1.1	1.1.2	1.1.3	1.1.4	1.1.5	1.2.1a	1.2.1b	1.2.1c	1.2.2a	1.2.2b	1.2.2c	1.2.2d	1.2.3	1.2.4	1.3.1	1.3.2	1.3.3	1.3.4
BE(W) 1980	-0.5	1	-1	-1	-1	0.5	0	1	-1	1	1	0.5	1	-1	-1	-1	-1	-1
BE(W) 1990	-0.5	1	0	-1	-0.5	0.5	0	1	-1	1	1	0.5	1	-1	1	-1	-1	0.5
BE(W) 2002	1	1	0	1	1	0.5	0	1	-1	1	1	0.5	1	0	1	1	-1	0.5
BE(W) 2008	1	1	0	1	0.5	0	0	1	0	1	1	0.5	1	0	1	1	0.5	0.5
BE(F) 1980	-0.5	1	-1	-1	-1	0.5	0	1	-1	1	1	0.5	1	-1	-1	-1	-1	-1
BE(F) 1990	-0.5	1	0	-1	-0.5	0.5	0	1	-1	1	1	0.5	1	-1	1	-1	-1	0.5
BE(F) 2002	1	1	0	1	1	0.5	0	1	-1	1	1	0.5	1	0	1	1	-1	0.5
BE(F) 2008	1	1	0	1	0.5	0	0	1	0	1	1	0.5	1	0	1	1	0.5	0.5
CH 1980	-1	-1	-0.5	-1	-0.5	1	-1	0	-0.5	-1	-0.5	-1	-1	0	-1	-1	-1	-1
CH 1990	-1	-1	-0.5	-1	-1	1	-1	1	-0.5	-1	-0.5	-1	-1	0	-1	-1	-1	-1
CH 2002	-1	-1	-0.5	1	0	1	-1	1	-0.5	-0.5	-0.5	-1	-1	0	1	1	-1	-0.5
CH 2008	-1	-1	-0.5	1	0.5	1	-1	1	-0.5	-0.5	-0.5	-1	0	0	1	1	-1	-0.5
D 1980	-0.5	0	-1	-1	-1	1	0	1	-1	0	-1	-1	-1	-1	1	-1	0	-1
D 1990	-0.5	0	-1	-1	-1	1	0	1	-1	0	-1	-1	-1	-1	1	-1	0	-1
D 2002	0	0	0.5	0	0	1	-1	1	-1	0	0	-1	-1	0	1	-1	0	-1
D 2008	0	0	0.5	0	-0.5	-0.5	-1	1	-1	0	0	-1	-1	0	1	-1	0.5	-0.5
F 1980	0.5	1	0.5	1	0	1	0	0	-1	0	-0.5	0	1	-1	1	1	-1	-1
F 1990	0.5	1	0.5	1	0	1	0	0	-1	0	-0.5	0	1	-1	1	1	-0.5	-1
F 2002	0.5	0	0.5	1	0.5	1	0	0	-1	0	-0.5	0	1	-1	1	1	0	-0.5
F 2008	0.5	0	0.5	1	1	-0.5	-1	-1	-1	0	-0.5	0	1	-1	1	1	0.5	1
NL 1980	0.5	1	-0.5	-1	0.5	1	1	0	-1	0.5	-0.5	-0.5	1	-1	1	1	-1	-1
NL 1990	0.5	1	0	-1	0	1	1	0	0.5	0.5	0	1	1	0	1	1	-1	-1
NL 2002	0.5	1	0	0	1	0.5	-1	1	0.5	0.5	0	1	1	0	1	1	1	1
NL 2008	0.5	1	0	0	1	0.5	-1	1	0.5	-1	0	1	1	0	1	1	1	1
UK 1980	0.5	1	1	1	0	1	0	1	0.5	-1	0	-1	-1	0	1	1	0.5	0.5
UK 1990	0.5	1	0.5	1	0.5	1	0	0	0.5	-1	0	-1	-1	0	1	1	0.5	0.5
UK 2002	0.5	1	0.5	1	1	1	0	1	0.5	-1	0	-1	-1	1	1	1	0.5	0.5
UK 2008	0.5	1	0.5	1	1	0	0	1	0.5	-1	0	-1	-1	1	1	1	1	1

DETAILED SCORES ON ALL COLLECTIVE RIGHTS INDICATORS

	2.1.1	2.1.2	2.2.1a	2.2.1b	2.2.2	2.2.3a	2.2.3b	2.3.1a	2.3.1b	2.3.2	2.3.3	2.3.4	2.3.5	2.3.6	2.3.7	2.3.8	2.4.1a	2.4.1b	2.4.2	2.5.1
BE(W) 1980	1	-1	1	-1	0	0	-1	-1	-1	1	mis.	0	0.5	-1	0	-1	0	-1	0	-1
BE(W) 1990	1	-1	1	-1	0	0	-1	0	-1	1	mis.	0	-1	-1	0	-1	-1	-1	0	-1
BE(W) 2002	1	1	0	-1	0	0	-1	0	1	1	-1	0	-1	-1	0	-1	-0.5	0.5	-1	-1
BE(W) 2008	1	1	0	-1	0	0	-1	0	1	1	-1	0	-1	-1	0	1	-0.5	0.5	-1	-1
BE(F) 1980	1	-1	1	-1	0	0	-1	-1	-1	1	mis.	0	-1	-1	0	-1	0	-1	-0.5	-1
BE(F) 1990	1	-1	1	-1	0	0	-1	0	-1	1	mis.	0	0.5	-1	0	-1	0	-1	0	-1
BE(F) 2002	1	1	0	-1	0	0	-1	0	1	1	-1	0	-1	-1	0	-1	-0.5	0.5	0.5	0
BE(F) 2008	1	1	0	-1	0	0	1	0	1	1	0	0	-1	-1	0	1	-0.5	0.5	0.5	0
CH 1980	1	-1	-1	-1	0	0	-1	-1	-1	-1	mis.	1	0.5	-1	-1	-1	-0.5	-1	-0.5	-1
CH 1990	1	-1	-1	-1	0	0	-1	-1	-1	-1	mis.	1	-0.5	-1	-1	-1	-0.5	-1	-0.5	-1
CH 2002	1	-1	-1	-1	0	0	0	-1	-1	0	-1	1	-0.5	-1	-1	0	-0.5	-1	-0.5	-1
CH 2008	-1	-1	-1	-1	0	0	0	-1	-1	0	-1	1	-0.5	-1	-1	0	0	-1	-0.5	-1
D 1980	-1	-1	-1	-1	0	0	-1	-1	-1	-1	mis.	1	0.5	-1	0	-1	0.5	-1	-1	-1
D 1990	-1	-1	-1	0	1	0	-1	-1	-1	-1	mis.	1	0.5	-1	0	-1	0.5	-1	-1	-1
D 2002	0	0	0	0	1	0	0	0	0	0	0	1	1	-1	0	-1	0.5	-1	-1	-1
D 2008	-1	-0.5	0	0	1	0	0	0	0	0	0	1	1	-1	0	-1	0.5	-0.5	-0.5	-1
F 1980	1	-1	1	-1	0	-1	-1	-1	-1	-1	mis.	0	-1	-1	0	-1	-1	-1	-1	-1
F 1990	1	-1	0	-1	0	-1	-1	-1	-1	-1	mis.	0	-1	-1	0	-1	-0.5	-1	0	-1
F 2002	1	-1	0	-1	0	0	-1	-1	-1	-1	-1	0	-1	-1	0	-1	0	-1	-0.5	-1
F 2008	0	-1	0	-1	1	0	-1	-1	-1	-1	-1	-1	-1	-1	0	1	0	0.5	-0.5	-1
NL 1980	1	-1	1	-1	0	-1	-1	-1	-1	-1	mis.	1	1	-1	1	0	1	-1	1	-1
NL 1990	1	0.5	1	1	1	0	-1	0	1	0	mis.	1	1	1	1	0	1	-1	1	1
NL 2002	1	0.5	0	1	1	0	1	1	1	0	1	1	1	1	0	0	0.5	-1	1	1
NL 2008	-1	-0.5	0	1	1	1	1	1	1	0	1	1	-1	1	-1	1	0.5	1	1	1
UK 1980	1	0.5	1	0	1	mis.	0	-1	-1	-1	mis.	1	0.5	mis.	-1	-1	-0.5	-1	-0.5	-1
UK 1990	1	0	1	0	1	0	0	-1	-1	0	mis.	1	1	1	0	-1	-0.5	-1	-0.5	0
UK 2002	1	-0.5	1	0	1	0	0	0	0	0	1	1	1	1	0	0	-0.5	-1	-0.5	1
UK 2008	-1	-0.5	1	0	1	1	0	1	0	0	1	1	0	1	0	1	-0.5	-1	-0.5	1