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The Names

Claude Cahn

FOR A PERIOD OF TIME just after our founding that in my memory now seems like about twenty minutes but at the time must have been closer to three or four months, we were called the “Roma Legal Resource Center”. How different the imagined history of the “RLRC” is from that of the project called *ERRC*! It is hard to imagine even using an exclamation point in an editorial of a journal that, I suppose, would have been named “Roma Legal Resources”, had we stayed the course upon which we originally embarked long enough to issue a publication under our original name.

An early memory from shortly after becoming “The European Roma Rights Center”: Several tens of people are gathered in a dingy hall somewhere in the suburbs of Budapest to discuss human rights issues facing Roma in Europe. This was back when conferences on Roma were held in dingy halls in the suburbs of Budapest (it is circa 1996, I think). We are milling in the gray foyer because the only government official attending, an undersecretary of the deputy head of the department of something irrelevant, had already left. A Romani activist has cornered me and objects in no uncertain terms to the use of the phrase “Roma rights”; “We are fighting for equality, for equal access to inherent human rights. Why ‘Roma rights’? We don’t want any special privileges. Why do you muddy the waters with your ‘Roma rights’?” Later a non-Romani guest at the *ERRC* pursues a similar theme from a different angle: “What are Roma rights?” At that time, we had a cliché which we dusted off for all such occasions: “Roma rights, because human rights are universal, but human rights violations fall disproportionately (and in different ways) against certain groups.”

With the passage of time, I have on a number of occasions admired our name for the sheer level of


frictive heat it was and is capable of generating. There have been weeks when it seemed no one could pass our name without turning it for scrutiny, as if it were a mental puzzle to be resolved with several deft strokes. At some points it was possible to imagine “Roma rights” as a piece of ground at the perfect median between several discourses, a pole of sorts at which we have established ourselves, until some great upheaval makes remaining at the particular spot of “Roma rights” untenable and we are driven upward at explosive speed to some new paradigmatic plane. Said differently: our name, our idea, our two-word slogan, our project has at times generated intense controversy.

Last summer, the World Bank and the Open Society Institute held a conference in Budapest to herald a “Decade of Roma Inclusion”. Three prime ministers attended. The dingy hall at the back of Budapest was replaced by the Hotel Intercontinental. The atmosphere was decidedly celebratory. I can’t remember anyone there calling us to task for our purportedly misguided name. This week the European Union held another quite un-dingy conference in Brussels on “Roma in an Enlarged European Union”. We have arrived, one might think. This must be the new paradigmatic plane.

One person in attendance at this week’s European Union conference was Eric Thomsen. Eric is a Roma rights activist based at an organisation in Denmark called “Romano”. The majority of the work of “Romano”, as far as I can tell, involves assisting Roma from Serbia and Montenegro whom the government of Denmark is trying very hard to expel. Eric has sought a hearing concerning these expulsions at most of the institutional doors of Europe. These endeavors have not, on the face of it, been very successful. For example, his effort to have the European Court of Human Rights review the case of a Romani man slated for expulsion to

Kosovo was rejected without hearing. (Full disclosure: the case was brought by the *ERRC*; his failure is ours). Eric found the celebratory atmosphere of the EU conference somewhat hard to take and at one point during the question-and-answer period following a plenary session, he took to reading out the names of people whom he had tried to assist and who had subsequently been expelled from Denmark. This made some people edgy, including a number of persons I recall from the dingy edge of Budapest, back in the day, who now sat on the podium.

This editorial is for Eric, who voiced the Romani names of the victims, apparently as an antidote to being dazed by spectacle. We could never have really been for long the “Roma Legal Resource Center” or the “Roma Human Rights Center”. Those names would never have fully captured the fact that we are about people like Mirjana Kalderas, expelled to Belgrade last month without her family despite still having open applications for a residence permit in Denmark, because Danish authorities will not tolerate the idea of a foreign Gypsy woman establishing in their country. In the sound of her Romani name, her predicament. In our name, her issues as yet unresolved.



The Roma: Between a Myth and the Future¹

Dimitrina Petrova

Who are the Roma? An Identity in the Making

UNTIL the early 1990s, few people knew the meaning of the term “Roma,” but almost everybody had opinions about the “Gypsies.” In the last years, however, the term “Roma,” which is the ethnocultural self-appellation of many of those perceived by outsiders as “Gypsies,” has come to dominate the official political discourse, at least in Europe, and has acquired the legitimacy of “political correctness.” Not all so-called Gypsies in the world today recognize themselves as Roma, and it is difficult to predict whether a broader identity will be constituted in the future to encompass the non-Roma “Gypsies.” But at present, the political construction of the Roma identity has reached a stage at which the outsider identifications, such as Gypsy and Tsigane, terms still preferred in much of the historical, anthropological, and ethnographic literature, are considered undesirable due to the huge baggage of prejudice they carry.

Groups externally identified as “Gypsies” but not necessarily considering themselves as ethnic Roma include the Jevgjit in Albania; the Ashkaelia and Egyptians in Kosovo and Macedonia; the Travelers in Britain and Ireland; and the Rudari and Beyashi in Hungary, Romania, and other countries. The Sinti, who live in many European countries, particularly Germany, are sometimes subsumed under the Roma category (e.g., by Hancock, 2002: 34), and sometimes set apart from Roma (e.g., Marushiakova and Popov, 2003). Speaking the Romani language (Romanes) is not a necessary identity characteristic either: some communities that consider themselves Roma have actually lost the Romani language (the majority of today’s Roma in Hungary, for example).

In the Romani language, the word “Roma” means “people” in the plural masculine gender, with a connotation of “us” as opposed to “them.” Outsiders are referred to by the general term *gadje* (also a masculine noun in the plural). It is my impression that calling all “others” by one name, “gadje,” is a strikingly frequent conversational practice when Roma speak with Roma. This frequent reference to a generalized “other” is generally not found in any other insider ethnic discourse. This certainly reflects a high degree of “us/them” opposition that has been historically reinforced by centuries of internalized oppression and isolation.

At first glance, it is quite amazing and even exceptional that over centuries of exclusion, marginalization, discrimination, and in some regions slavery and forced assimilation, the Gypsy groups have preserved strong elements of a common ethnocultural self-consciousness, which serves as one of the bases for the continuing construction of the Romani identity. In the course of one millennium, many ethnic identities in Europe have vanished without a trace. But in the Gypsy case, several factors have created a synergy to preserve the sense of belonging together. These include late arrival in a continent already populated by settled communities, the high degree of difference from European culture and society, and the ensuing structural social and political weakness of the Roma in European history. Attitudes and practices that reproduce the pariah status of the Gypsies are deeply entrenched anti-Gypsism and the systematic abuse of their human rights in the last few centuries, including widespread persecution and racial discrimination. These same factors can be described as the root causes of both anti-Gypsism and the survival of the Roma as one single – but not yet internally homogeneous – cultural identity.

It is also important to emphasize that, following the end of communism in Central and Eastern European

¹ This article was first published in *Social Research*, Vol. 70, No. 1 (Spring 2003).

societies (where the largest numbers of Roma are concentrated), new political dynamics are at work. In postcommunist countries we have witnessed the rise of racially based discrimination, exclusion, and marginalization of the Roma at the same time that the opposite forces of an advancing Roma rights movement are taking shape. These parallel tendencies undoubtedly fuel the construction and consolidation of a Romani ethnic identity and, more recently, of a “nonterritorial Roma nation” (Project on Ethnic Relations, 2001).

While the Romani ethnic identity is the basis of present-day emancipatory mobilization, it is difficult to say to what extent a shared consciousness of belonging together can be ascribed to the larger group of communities labeled by the external world as Gypsies. For example, in Albania, while the historic relatedness of the Jevgjit to the Roma is a subject of scholarly debate, the members of these two groups, seen indiscriminately as Gypsies by the surrounding majority, in fact consider themselves separate peoples and reveal negative attitudes toward one another. Similarly, in Kosovo, the Ashkaelia reject an association with the Roma; but because they are perceived as Gypsies by the nationalizing Albanian majority, they were subjected to the same ugly ethnic cleansing as the Roma in the aftermath of the 1999 NATO war against Yugoslavia and the mass return of the Kosovo Albanian refugees to their homeland. In the countries of the former Soviet Union, certain groups are perceived as Gypsies (Tsygane in Russian) although they are not Roma. Apart from the more established Ruska Roma and the other Romani groups who have been in the Russian empire lands for several centuries, there are also small groups of Sinti who moved eastward from Germany through Poland at the beginning of the twentieth century; Armenian-speaking Gypsies called Boshha who identify as Lomavtic; Asian Gypsies known as Karachi from the Caucasus (mainly Azerbaijan); Central Asian Gypsies called Lyuli (who also use the appellation Mugat) found in Tajikistan but who have intensely migrated to the large Russian cities in the last decade. In the complex history and geography of Gypsy identities, still in flux on the territory of the former Soviet Union, the Ruska Roma make up only

one part – albeit the largest – of the Gypsy groups, connected by a common historical and cultural legacy (for detailed description, see Marushiakova and Popov, 2003; Demeter et al., 2000: 87–114).

Leaving aside the non-Roma Gypsies, the Roma themselves do not (yet) make up a homogeneous ethnic group. Rather, the Roma today are a continuum of more or less related subgroups with complex, flexible, and multilevel identities, with sometimes strangely overlapping and confusing subgroup names. But in the last decade, as was noted, we have been witnessing a process of historic and political consolidation of a unifying Romani identity so that the name “Roma” has now become preferred by most international and national organizations dealing with various aspects of the “Roma problem.”²

The Abracadabra of Romani Statistics

It is widely accepted that reliable demographic and social statistics on the Roma are nonexistent. This is evident also in the European Roma Rights Center compilation on absolute numbers of Roma in European countries (see Table 1). Adding numbers regarding the Americas, the Middle East, and the rest of the world would render an even more complicated picture. The reason for this can be traced to the Roma and government authorities, both of whom have found it undesirable to collect Roma-related statistics. Roma have little reason to trust gadje with notebooks and questionnaires visiting their ghettos. Authorities and the mainstream media have been ambivalent at best: they have been willing to publicize police data about the allegedly high proportion of Roma crime, but not about the high proportion of child mortality, illiteracy, or unemployment. At present, Roma-related statistics are trapped in a set of legal and policy problems, including data protection laws, constitutional rights to choose freely one’s ethnic identity, and the needs of ethnically coded disaggregated data for anti-discrimination agendas (for comprehensive country reports regarding race statistics, see Krizsan, 2001).

It should be noted that Roma in some countries are reluctant to reveal their identity. Of the countries with

² Some Romani activists have opposed the reference to a “Roma problem” and consider the very phrase to be based on racist premises. Indeed, from the point of view of the Roma themselves, Roma are not a “problem”; the gadje racist society is.

Table 1
Number of Roma, by country

Country	Total Population	Official number	Estimate
Albania	3,549,841	1,261	90,000–100,000
Austria	8,150,835	95	20,000–25,000
Belarus	10,350,194	11,283	10,000–15,000
Belgium	10,258,762	N/A	10,000–15,000
Bosnia-Herzegovina	3,922,205	9,092	40,000–50,000
Bulgaria	7,928,901	370,908*	700,000–800,000
Croatia	4,334,142	6,695**	30,000–40,000
Cyprus	762,887	N/A	500–1000
Czech Republic	10,264,212	11,716*	250,000–300,000
Denmark	5,352,815	N/A	1,500–2,000
Estonia	1,423,316	N/A	1000–1500
Finland	5,194,901	10,000	7,000–10,000
France	59,551,227	N/A	280,000–340,000
Germany	83,029,536	50,000–70,000	10,000–130,000
Greece	10,623,835	150,000–300,000	160,000–200,000
Hungary	10,174,853	190,046	550,000–600,000
Ireland	3,840,838	10,891	22,000–28,000
Italy	57,679,825	130,000	90,000–110,000
Latvia	2,385,231	7,955	2,000–3,500
Lithuania	3,610,535	N/A	3,000–4,000
Luxembourg	442,972	N/A	100–150
Macedonia	2,046,209	43,900	220,000–260,000
Moldavia	4,431,570	11,600	20,000–25,000
Netherlands	16,171,520	20,000	35,000–40,000
Norway	4,525,000	356	500–1000
Poland	38,633,912	25,000–30,000	50,000–60,000

Table 1 (Continuation)
Number of Roma, by country

Country	Total Population	Official number	Estimate
Portugal	10,084,245	44,600	45,000–50,000
Romania	21,698,181	535,250	1,800,000–2,500,000
Russia	145,470,197	152,939	400,000
Serbia and Montenegro	10,677,290	143,519**	400,000–450,000
Slovakia	5,379,455	89,920	480,000–520,000
Slovenia	1,930,132	2,293	8,000–10,000
Spain	40,037,995	325,000–450,000	700,000–800,000
Sweden	8,875,053	20,000	15,000–20,000
Switzerland	7,283,274	N/A	30,000–35,000
Turkey	66,493,970	N/A	300,000–500,000
Ukraine	48,760,474	47,914	50,000–60,000
United Kingdom	59,778,002	90,000	90,000–120,000
Total	795,101,136	2,281,577– 2,581,577	6,105,600– 8,625,150

Sources: The national statistical bureaus of the countries included that were consulted are: CIA World Factbook (Washington, D.C.); the European Union “Regular Reports of the Candidate Countries for Membership in the European Union”; government reports provided to the UN Committee on the Elimination of Racial Discrimination; government reports provided to the Council of Europe’s Committee on the Framework Convention; “N/A” indicates official data is not available. Some countries have provided official estimates (see for example Finland, Germany, Greece, Italy, Moldova, Netherlands, Poland, Spain, Sweden, and the United Kingdom). The source of the column “Unofficial Number of Roma” are NGO estimates provided in Liegeois and Gheorghe (1995).

* Census 2001

** Census 1991

large Romani populations, Bulgaria is an example of a country in which the gap between census data and estimates is relatively small: estimates are only about double the census data. The Romani community was

placed at about 371,000 people (4.7 percent of the general population) by the 2001 census, while most scholars believe that the real number is about twice that figure.³ In contrast, the Czech Roma present a

³ See complete results of the census by the Bulgarian State Statistics Institute at <http://www.nsi.bg/Census/Ethnos-final-n.htm>.

real statistical puzzle. While both government and independent sources estimate that approximately a quarter of a million Roma live in the country, the most recent (2001) census gave the number as 11,716, several times lower than the figure produced by the official census 10 years earlier.

Clues from History: The Gypsy "Invasion" in Europe

When the Romani migrated out of India is not well established. Some authors zero in on the eleventh century, while others emphasize that we are dealing with a long and complex historic process of multiple migrations by different Indian groups leaving their homeland for different reasons at different times between the seventh and thirteenth centuries. Different hypotheses have also been offered about the social status or caste in which the migrants belonged before their exodus. According to German historian Heinrich Grellmann, one of the founders of Gypsy/Romani studies in eighteenth century, the ancestors of the contemporary Roma were part of the Shudra, the lowest caste. But others oppose the low-caste ancestors theory and find it more convincing that the Roma were related to the Rajputs, tribes that conducted a long warfare against Islam and among whose present-day descendents are the Banjara in north-west India. The Banjara themselves recognize a connection to the Roma in Europe and have developed links with Romani activists in recent years (Hancock, 2002: 13).

In earlier literature it had been accepted that the first mention in Byzantium of Gypsies, under the name *atsinganoi* is from 1054, in which they are described as sorcerers and evildoers who visited the Emperor Constantine IX Monomachus (Soulis, 1961: 145), poisoning the wild animals that were entering the emperor's gardens by using magic. The emperor then invited them to do the same with his favorite dog, but a Christian saint intervened and their magic did not work. They were chased from the royal palace and left in disgrace. Not all authors today, agree that the reference here is actually to Roma: according to some, a heretic sect with the name *atsinganoi* existed between the eighth and eleventh centuries and its name passed erroneously to the Roma, who arrived in Byzantine lands most

probably in the thirteenth century (Demeter et al., 2000: 16; Hancock, 2002: 1). Others date the arrival of the Roma in Byzantine domains several centuries earlier, accepting that *atsinganoi* had always designated the Gypsy immigrants in Byzantium (Speck, 1997: 37–51; Marushiakova and Popov, 2000: 14–15). From the Greek *atsinganoi*, the Bulgarian "Tsigani," the French "Tsigane," the German "Zigeuner," the Hungarian "Cigányok," the Italian "Zingari," the Russian "Tsygane," and the Turkish "Çingene" have stuck as the external appellation of the Romani people.

The Roma remained in Byzantium for several centuries (two and a half at a minimum) before some moved on in the direction of Western Europe. It is inside the Byzantine cultural environment that the Romani identity and language were perhaps initially constituted. Many Greek words and grammatical forms were added to the Sanskrit base, and today the Greek influence is still prominent in the language. Having spent considerable amount of historic time in Byzantine lands, some Roma moved from the Balkans further on to Central and Western Europe in the fourteenth and fifteenth centuries, roughly the same time as the conquering Ottoman Turks. During Ottoman rule, much of the population of Albania and Bosnia, along with other peoples in other parts of the Balkans, including Roma, converted to Islam. Research has established that the Ottoman policy toward the Roma was in general more tolerant than Western European treatment during the same time (that is, the sixteenth to eighteenth centuries) (see Marushiakova and Popov, 2000: 56).

By 1417, Roma had already reached parts of Western Europe. The possible reasons for this movement westward include the general societal crisis of the Byzantine Empire under the pressure of the Ottoman Turks, and the demographic rise of the Romani communities; because they were nomadic or seminomadic service communities occupying a certain niche in the settled economy, they began to interfere with each other's area of functioning and thus needed new territories in order to maintain their sources of income.

The history of the Roma arriving and spreading in Central and Western Europe after 1417 is well

documented, despite some remaining mysteries.⁴ However, according to Demeter et al. (2000: 18), Western scholars have built their interpretation of Romani history chiefly on the basis of the westward expansion of the Roma in the fifteenth century. The simplest version of this narrative is that Roma were initially welcome in Western Europe, met as noble pilgrims and provided with privileges and gifts. When the European cities began, one after another, to fall victim to Gypsy crime, anti-Gypsy laws were gradually introduced throughout Western Europe, which led to four centuries of official persecution.

It would seem that this period has long been thoroughly researched, but it is precisely its wrong interpretation that caused all further errors. It is striking that no one asked the main question: What type of Gypsies left for Western Europe in the early fifteenth century? If this most important question had been at least articulated, current tsiganology would look different. Moreover, it has been taken for granted that these were ordinary tabors. The core of our theory is the view that the tabors that rode off in the so-called “great march” were untypical – a conglomerate of persons with a propensity for adventure (Demeter et al., 2000: 18).

It is well established that the Roma in Byzantium during the twelfth to fourteenth centuries were laborers – artisans, craftsmen, metal workers, artists. European documents from the first decades of the Roma arrival, however, contain no evidence of productive occupations and present Romani livelihood as based only on begging, robbery, deceit, and fortune-telling and do not mention such typical Romani professions as animal drill or blacksmithing. The extensively documented criminal activity of the Roma in Central and Western Europe in the fifteenth and sixteenth centuries thus must have been the catalyst of the lasting image of the Roma as parasitic no-

mads, fraudulent fortune-tellers, incapable of productive work, abusing the hospitality of those who provide them with shelter and food, unreliable, and, of course, and most significantly, remorseless thieves.

It is also well documented that, riding throughout the European West, the Roma spread a bizarre story to account for their appearance. They usually presented themselves as pilgrims from “Little Egypt,” sentenced by the pope to seven years of wandering as punishment for betraying the Christian faith following an alleged Muslim conquest. The pope had allegedly also ordered all bishops and abbots to pay a certain amount of money to them and provide shelter and other necessities (Clébert, 1961: 55–57). It seems that fifteenth-century Roma were trying to make use of the geographic ignorance and religious zeal of Catholic Europe, thus ensuring safe passage for their tabors. For a number of decades and despite the growing incidence of complaints against them, they were, overall, successful in spreading the myth of religious expiation.

A presence of nomadic groups from the enigmatic “Little Egypt” is noted in dozens of medieval history sources: in the southern Czech lands in 1411, Basel and Hessen in 1414, Zurich in 1418, Rome in 1422, Augsburg in 1424, Paris in 1427, Barcelona in 1447. In Rome the group led by one Andreas obtained or forged a papal safe-conduct – much more useful than safe conducts issued to the Roma by mundane princes that were valid only in the lands under their jurisdiction. Ironically, “Little Egypt” outlived its usefulness and gave the Roma their condemned misnomer: from the “Egyptians,” the word “Gypsy” and its derivatives, including Gitanes, Jitanos, Ijito, Gjupci, and Yiftos, entered European languages. According to one hypothesis, the strangers were in fact referring to a really existing area, in Peloponnesus or elsewhere, called “Little Egypt,” and since geography and cartography

⁴ For example, the so-called tinkers had already lived nomadic lives on the British Isles long before the arrival of the Roma in 1430. The tinkers were also Gypsy-like tribes, whose occupations (typically metal work) were similar to those of the Roma. They may also have been of Indian origin and, merging with the Roma who arrived in the fifteenth century, constitute today the Gypsy Traveler groups. Their language is so strongly anglicized that no interpretation to or from English is necessary; and the physical appearance of the Travelers is undistinguishable from that of the British, perhaps because of some mixing with the local inhabitants in a limited territory. Even today, many people in the United Kingdom and Ireland are surprised to hear that Traveler (or even Gypsy) is an ethnic identity designation and that Travelers consider themselves a separate ethnocultural group. There is a widespread misconception that “Traveler” and “Gypsy” stand simply for a lifestyle. This is reflected in the frequent spelling of the latter with a small initial “g”.

in medieval Europe were in a nascent state, this place of origin was identified with Egypt.

In any case, it is a historical fact that initially, the strange-looking pilgrims were met almost everywhere without hostility. The story of what exactly had caused their wanderings had many versions. It was even believed that they had been punished for their failure to help the Holy Family in the flight from Palestine to Egypt. Many rulers in medieval Europe issued safe conducts to various "Egyptian" chiefs and their company. Nobles and city authorities in France offered warm and sometimes generous receptions on religious grounds at first. For example, the king of France granted a safe conduct to Thomas, "count of Little Egypt of Bohemia." In this bizarre hybrid, the medieval confusion is most typical, an association with Egypt, while at the same time "Bohemian" was also gaining ground as a word designating the medieval Roma (Fraser, 1995: 92). In most places the arrival of the new tribes was soon followed by complaints of thefts, misbehavior, and fraud related to fortune telling. In the Rhône region, the practice of paying the "Bohemians" to leave the vicinity and go elsewhere became established in the second half of the fifteenth century (Fraser, 1995: 93). Finally, after many attempts to chase away the newcomers and their repeated return to obtain alms from the faithful, Francis I in 1539 introduced severe measures throughout his kingdom against "certain unknown persons who call themselves Bohemians" wandering everywhere "under the guise of a simulated religion or of a certain penitence which they claim to be making through the world." He decreed that "henceforth none of the said companies and assemblies of the abovementioned Bohemians may enter, pass or stay in our kingdom nor in the countries which are subject to us" (Fraser, 1995: 94).

In the Holy Roman Empire, during the reign of Emperor Maximilian I, the Imperial Diet issued three edicts (in 1497, 1498, and 1500) in which Gypsies were accused of espionage and singled out for expulsion (Fraser, 1995: 86). The accusation of espionage is among the typical charges against the newcomers, though not so routine as those of robbery. The 1500 decree ordered the Gypsies to leave German lands by Easter, after which time it was to be no crime to take violent action against them. These decrees set the tone for further ordinances promul-

gated by princes, dukes, and other rulers, especially throughout the German lands, which were preoccupied with alleged espionage of the Gypsies and ordering their banishment from a growing number of principalities. Overall, these measures seem to have had little practical effect in the following decades, since new safe-conduct papers continued to appear in the hands of Romani leaders. For example, in 1512 one such safe conduct was granted by the Polish Duke Bogislav X, ruling over parts of Pomerania, to Ludwig von Rothenburg, count of "Little Egypt," to help him on his way to Gdansk together with his "zyganisch" company. The Diet issued new expulsion acts in 1544 and 1548, and in 1551 it declared any pass carried by a Gypsy to be void, and banned all such documents in the future (Fraser, 1995: 88).

Events followed similar patterns in the Swiss regions of the Holy Roman Empire. In 1471 the Tagsatzung (Diet) in Lucerne ruled that Gypsies were not to be housed or sheltered within the Swiss Confederation; in 1477 the city-state of Geneva (outside the confederation) expelled a number of "Saracens." In 1510, again at Lucerne, after complaints that they stole and were dangerous, "Zegynen" were banished from the confederation and faced the penalty of hanging if they returned. Despite this, complaints against them continued; at a Diet at Berne in 1516, instructions were given to take special care in keeping them out at the frontiers. About the same time, Geneva had also banned all "Saracens." These measures did not have much effect, for in 1525 a new banishment act had to be issued, which was then reissued two years later. Yet at a Diet in Baden in 1530, it was noted that Gypsies were wandering about everywhere. They were once again outlawed, but then in 1532 the question was back on the agenda, with the same rulings reinstated (Fraser, 1995: 89–90).

Persecution of the Gypsies in Spain and Portugal developed according to similar patterns. In 1499, seven years after the expulsion of the Jews, a royal decree stated that the "Egyptians" could either become sedentary and find masters within 60 days or face expulsion (Fraser, 1995: 97). Similar measures were enacted in the Low Countries and Italy. In Hungary, the Gypsies were treated with a greater degree of tolerance than was usual for the time, although a form of bondage was imposed on some of them, especially in Transylvania, where serfdom was not abolished until

1848 (Fraser, 1995: 106). Apart from their metal-working skills, the Gypsies had also begun to acquire a reputation as musicians in Hungary.

Despite examples of initial welcoming policies in England, anti-Gypsy legislation began to appear toward the end of the reign of Henry VIII. The measures extended well beyond the Gypsies to vagrancy generally, which in Tudor England was a pressing problem. "Vagabondage" had been growing for years as a result of enclosure and the break up of the old system of farming, which put thousands of agricultural workers out on the roads. Vagrants were persecuted as a matter of national priority, for, at a time when the able-bodied poor were supposed to have masters, this large and growing unemployed and landless population appeared to the dominant classes to be a major threat. The most draconian Tudor statute against vagrants was that of 1547, in the first year of Edward VI, when the prospect of a lengthy period of rule before maturity by the boyking brought with it the possibility of factional feuds and made any increase in the size of the vagrant classes appear highly dangerous (Fraser, 1995: 114). According to a 1554 law, Gypsy nomad males had to be killed, and Elizabeth I introduced the death penalty also for anyone who befriended "Egyptians." In 1577, eight English were hanged under this law. In 1541 in Scotland an Order in Council revoked all letters of protection, safe conduct, and other privileges and banished Gypsies from the kingdom within 30 days, on pain of death.

In Scandinavia, the Roma were first thought to be Tartars. "Tattare" remained the most widespread designation for the Roma in Sweden until the seventeenth century, when "zigenare," under the influence of German, also came into use (Fraser, 1995: 120). Anti-Gypsy laws in Sweden (1637) provided for the hanging of males. Danish tolerance also came to an end a little more than 30 years after the first appearance of the Roma. In 1536, and again in 1554, Christian III of Denmark and Norway ordered all Gypsies to leave his kingdom within three months; as the enforcement failed, his son Frederick II renewed the ban and stiffened the penalties in 1561.

Approximately 148 anti-Gypsy laws were passed in German lands between fifteenth and eighteenth centuries. Mainz in 1714 passed a law mandating death for all Romani males and beating and brand-

ing of females and children (Kenrick and Grattan, 1972: 42–45).

Most authors agree that the anti-Gypsy laws were not enforced expeditiously and that it took quite a long time for repression to become the rule in the European treatment of the nomadic Gypsies. The same decrees had to be reissued many times in the course of decades before they began to be eventually implemented. In France, for example, anti-Gypsy laws banishing the "bohemians" and providing penalties if they were caught inside the kingdom were promulgated in 1504, 1510, 1522, 1534, 1539, 1561, 1606, 1647, 1660, and 1666. This delay may be the combination of a general negligence toward the Gypsies as a nonimportant and nonurgent issue, a nuisance rather than a threat to society, which resulted in a low-intensity terror that allowed the Roma to survive in Western Europe (Demeter et al., 2000: 27). Apart from the lack of high alert when it came to the Gypsies, slow and weak implementation of repressive measures in the fifteenth century was perhaps also the result of the feudal fragmentation of Europe, making law enforcement dependent exclusively on local lords.

With time, however, repression strengthened and anti-Gypsy laws began to be implemented more strictly and uniformly across the territory of sovereigns, in line with the process of nation building in modern Europe. Some of the Roma, specifically those in Germany, were forced back eastward to escape further victimization, crossing Poland and making inroads in Russia during the seventeenth century.

The root causes for the negative turn in European hospitality and the growth of repression against the Roma are not so much the harm caused by Romani crime (although this perhaps played a role) as the general change in the European cultural climate, driven by the rise of Protestantism. Anti-Gypsy laws and other persecution of the Roma are best understood in the context of the fight against vagrancy and other forms of idleness that surged in sixteenth-century Europe. Ethnicity played a lesser role. Antivagrancy moods were directed against the huge variety of traveling groups in medieval Europe that were protected by religious and mundane powers: crowds of pilgrims that had to be hosted as a matter of religious duty, minstrels, troubadours, knights, actors,

and traveling indigent monks (such as the Franciscans) living off alms. The Roma became victims of this new historic tide of Protestant work ethics that denounced clerical ceremonial luxury and greed but together with it purged patience for beggars and the like, condemning all forms of life that seemed nonproductive. The process of enclosures in England also added to the antivagrancy sentiment.

Even in the countries that remained Catholic, the influence of the Protestant worldview could be felt.

The Roma were swept along by this wave, since it was particularly difficult for them to adapt to the new cultural norms. Due to their distinct physical appearance, and the survival strategies consolidating their difference at the community level, it was

Celebration of the return of the Sulejmanović family, expelled from Italy on March 3, 2000 to Bosnia. According to the family members, at about 2 AM they were woken up by police officers and forced to leave their caravans. Once their identities had been established, they were taken to an airport, placed on a specially chartered aircraft and flown to Sarajevo. Altogether fifty-six Roma from the Casilino 700 and Tor de' Cenci camps in Rome were deported. The ERRC in collaboration with a local lawyer, Mr Nicolò Paoletti, brought a case before the European Court of Human Rights in Strasbourg against the Italian government on behalf of the Bosnian Romani families. Pursuant to the settlement, Italy agreed to revoke the expulsion decrees, return the plaintiff families to Italy, grant them humanitarian residence permits, and pay financial damages.

PHOTO: STEFANO MONTESI



much more difficult for them to find regular work and blend into the surrounding population. Internal kinship patterns and a distinct tradition also played a role. Additionally, integration was impeded by certain inertia in the nonproductive way of life in the first 100 years of their presence in Western Europe and especially by the real or perceived propensity for petty stealing from individual owners, which, in Europe, had long been treated as both sinful and criminal. Ultimately, the main difference that set the Roma apart was that they were the only ethnically distinct nomadic communities in a civilization that had been non-nomadic for centuries.

While Western Europe was trying with growing hostility to drive the Roma out, the Byzantine and later the Ottoman civilizations surrounded them with detached resentment but never tried to expel them. The negative stereotype similar to that in the West was in place. But the Roma were not subjected to official persecution and some categories (depending on religion, occupation, and geographic region) were even somewhat privileged in terms of taxation. Some were apparently regarded as useful service providers, especially blacksmiths and other types of metal workers. Gypsy craftsmen, for example, had privileges in Peloponnesus already in 1378 and Crete in 1386, as well as in the following centuries throughout the Ottoman Empire (Marushiakova and Popov, 2000).

Enslavement of the Roma in the vassal principalities of Wallachia and Moldavia during Ottoman rule of the Balkans lasted for almost five centuries and had a devastating effect on the prospects for societal integration. Specific forms of slavlike dependency (domestic serfs, serfs belonging to churches and monasteries, and nomadic serfs with fixed occupations) began to emerge in the fourteenth century as a result of the increasingly strict measures taken by the landlords, the aristocracy, and the monasteries to prevent their skilled and precious Romani labor force from leaving their domains (Hancock, 2002: 18). Slavery, which had deprived between 200,000 and 600,000 Roma of their civil rights, was officially abolished by

the Moldavian and Wallachian parliaments in 1855 and 1856, respectively, but complete legal freedom was established only in 1864, two years after the creation of Romania as an independent unitary state. Mihail Kogalniceanu, the leader of the new nation, introduced a land reform redistributing the land to the former serfs as free peasants.⁵ During the second half of the nineteenth and the beginning of the twentieth centuries, large groups of Vlax Roma migrated from Romanian lands to many parts of the world, including Russia, Ukraine, and the Americas.

For the Roma who live today in countries that were once part of the Habsburg Austro-Hungarian Empire, the forced assimilation policies of Maria Theresa, the empress of Austria, have left a lasting legacy. In late eighteenth century, speaking the Romani language and use of Romani names were criminalized and many Romani children were taken away from their parents to be socialized in non-Romani families. Because of the assimilation pressure, most Roma in Hungary today have lost their traditions and language. They have been affected in less tangible ways, too, by over two centuries of corrupting co-optation of their leaders and the inculcation of cultural attitudes that value cooperation and discourage protest.

In Russia, around the time of the 1917 October Revolution, the Roma living in the central and northern parts of the country were mainly horse-trading nomads or seminomads, renting village homes in winter but traveling during the warmer season. A relatively smaller number was settled and among them the musicians were the aristocracy. At the same time, in Ukraine and south Russia, the Roma were craftsmen (particularly blacksmiths) and many Romani women were fortune-tellers. The older Russian stereotype of Roma is dominated by the perception of Roma as dealers in horses and horse thieves; during the Soviet era this stereotype transformed, with the Roma seen as dealers in cars and car thieves.

It is not possible to fully explain the European majority stereotypes about the Roma on the basis

⁵ *Episodes of feudal personal dependency similar to enslavement were characteristic of other countries as well. In sixteenth-century England, King Edward VI passed a law according to which recaptured Gypsies who had previously been branded with a "V" sign had to be branded with "S" and enslaved for life. Some Gypsies were used as a slave-like labor force in the Spanish and Portuguese fleet; Gypsies were state property in Russia during the reign of Catherine the Great, as well as in Scotland (Hancock, 2002: 26–28).*

of history alone. However, the cursory glance into the history of the Roma offered earlier suggests that the formative historical event that forged the core of the anti-Gypsy stereotype is the fifteenth-century encounter of the nomadic Roma with Western European civilization. It was in fifteenth-century Western Europe that the poisonous tincture of anti-Gypsism was concocted. Later developments, both in Western Europe and in other regions where Roma were seen, served to spread the primal image and to vary it with local specificities related to their predominant occupation. When the Roma completed their journey from East to West, an opposite journey began, that of the fictional Gypsies from the West to everywhere.

Anti-Gypsism: Understanding Is Not Excusing

Understanding anti-Gypsy prejudice is deceptively easy. But, even though much has been said in the literature as well as by the anti-racism movements, a strong sense of dissatisfaction remains. What is it that makes the Roma such an eternal target for the racists? Why are Roma so universally despised? Why is the negative sentiment so entrenched? Why do the Roma remain Europe's most persecuted minority, even after so much energy has been poured into eradicating anti-Gypsism? Will the Roma ever become equal members of society? Everyone who has watched Roma-related developments over the years has experienced moments of confusion and despair at the magnitude of these questions.

The single most important concept that helps explain anti-Gypsy prejudice is *weakness*. To put it simply, Roma would not have been ignored, resented, insulted, humiliated, and repressed if they had *power*. Looking at the historic experience of the Roma, and comparing the Roma with other ethnic groups, suggests that the uniqueness of the Roma consists in an extraordinary historically rooted structural weakness. Because of their late arrival in Europe and strong cultural difference, the Roma have failed to use the quintessential empowerment strategy available to other groups: building a nation-state. Inhabitants of the margins and alien to political passions, the Roma have not used the sanctioning potential of the vote, either.

The fatal combination of a strong "otherness" and a historically very late arrival in a settled (non-nomadic) Europe impeded not only state building, but also integration, assimilation, and even extermination of the Roma. Otherness was physical as well as cultural: very dark skin (it is believed that the Roma were darker when they first reached European lands), distinct non-European features (again, it is alleged that their appearance was less European seven centuries ago than it is today); "odd" clothes and language; unintelligible and inaccessible customs that seemed even more alien because the Roma preferred to keep apart from the gadje. The visible cultural difference, especially the nomadic way of life, created a bias against the moral values of the Roma. The fact that the tabor is here today and gone tomorrow does not contribute to a reputation for responsibility. The departed are ideal suspects for all kinds of crime in the settled community. At times, in northern Europe, particularly in Scandinavia, Roma were also seen as a threat to Christendom and often confused with Turks or Tartars. Their religious life, too, has never been treated by the outside world without suspicion. Their alleged involvement with magic made their religious practices, whether Christian Orthodox, Protestant, Catholic, or Muslim, appear to be a hypocritical cover up for an esoteric spirituality or an irreligious cynicism.

History contains clues but they do not explain the longevity and the profoundness of anti-Gypsism. What cannot be grasped through historical interpretation can perhaps be elucidated from the point of view of the place of the Roma in the structure of twentieth-century European societies. The Roma continue to occupy a pariah place in twentieth-century and present-day European societies and remain a target for hate accumulation, as well as a perfect scapegoat.

If the key to understanding anti-Gypsism in a historic perspective is in the Weberian link between Protestant ethics and the spirit of capitalism, the perceived Roma noninvolvement (or very weak involvement) with modern industrial and postindustrial capitalism in Western Europe in the nineteenth and twentieth centuries is key to understanding the longevity of the prejudice. The Nazi extermination of the Roma during World War II was undoubtedly the greatest catastrophe in the history of this people.

Nazi racist pseudoscience defined the Gypsies of mixed, impure origin as an inferior race (despite ascribing “Aryan” ancestors to those Roma who had remained uncontaminated by racial mixing). The Nazis killed between 500,000 and 1.5 million Roma, according to different authors who are contributing to the growing body of literature on the Porajmos (the somewhat controversial Romani word that is becoming established as the Romani analogue of the Shoah; see Hancock, 2002: 34–51; Lewy, 2000; Kenrick and Puxton, 1972). Space constraints preclude even beginning a discussion of this most horrible chapter in the history of the Roma. But we should emphasize that, following World War II, anti-Gypsism, very much like anti-Semitism, did not disappear from European societies. Yet the attention the Roma Porajmos received in Western society and literature in the last few decades is not commensurate with the attention given the destruction of the European Jewry. This fact itself is symptomatic: it is one of the most revealing signs of the continuing political weakness of the Roma. At the level of racist prejudice, the core of the anti-Gypsist stereotype remained more or less the same: Roma continue to be seen, even after the Nazi genocide, as parasitic elements, alien to the principle of productivity and its underlying values.

But if the destiny of the Roma in the capitalist world after World War II can be seen as a continuation of their profound incompatibility with capitalist rationalization, what was the destiny of the much larger Romani communities that lived under communism? If the Gypsies were not fit for capitalism, did they not fit into a radically different social and political system?

The Soviet government created Gypsy production cooperatives, which enabled some of the Roma, notably Kalderara, to settle in big cities. In rural areas, Gypsy cooperative farms (*kolkhozy*) were also established. Both forms of collectivization, however, existed for a short time and disappeared toward the end of the 1930s. Only around 3 percent of the Gypsies were involved in the experiment. In the difficult postwar period, many Roma in the Soviet Union who had been already settled reverted to a nomadic lifestyle and stayed in large groups (*tabors*) in the suburbs of big cities. In 1956, a decree issued by the Soviet government outlawed vagrancy and ordered coercive sedentarization of the Gypsies. Measures

enforcing mandatory settling of the Gypsies duly followed throughout the communist countries of Eastern Europe and were based on similar decrees. As Marushiakova and Popov explain (2003: 8), these have to date been evaluated in ideological terms. From a communist point of view, they have been described as integration into the “socialist way of life,” while the West has seen them as violations of Roma human rights. In fact, the antinomadism measures mandating the inclusion of the Gypsies in the socialist labor force are better understood, at least in the Soviet Union, as recognition of the failure of preceding state policy regarding this minority. The Soviet 1956 decree made the Roma obey laws and norms that had been mandatory for everyone else in the Soviet society since the 1920s.

The Brezhnev era of economic stagnation is remembered today by the Roma in the former Soviet countries as an affluent, prosperous time. In the shortage economy of that period, people had money but there were permanent deficits of basic goods that shifted from item to item and from region to region, and deficit commodities appearing irrationally at some place immediately produced queues and speculation. This status quo was a result of the (inefficient) central planning system. It provided the highly mobile and flexible Roma with better opportunities to fill the niches of mediators and distributors in a parallel, unofficial economy of redistribution through what had been illegal commercial activities. The Roma bought in one place and sold many hundreds of miles away a variety of goods, from chewing gum to electronics smuggled from abroad. At the same time, in the non-Soviet communist camp, the Roma, though faithfully married to a pariah image, were well on their way to occupying the lowest strata of the working class.

A paradoxical situation thus emerged during the Cold War. In Western Europe, many Roma, whose numbers were considerably lower than in the east, preserved a nomadic way of life. Roma remained more distinct in cultural terms while almost invisible politically, and had no place, at the level of public imagination, in the productive classes contributing to the community. At the same time, under communism, they were too “capitalist,” often punished for “speculation” and illegal trading. Crime associated with the Roma also displaced them from the world of socialist productive labor. The Gypsies did not fit on either

side of the Iron Curtain. On both sides, they were despised as parasites, but for opposite reasons regarding what constitutes a valuable contribution to society. In both worlds, they occupied social spaces not captured by the dominant discipline, whether that of capitalist enterprise or socialist labor.

In recent years, it has become fashionable to underscore the deep difference between the social and political background of Roma in Eastern as opposed to Western Europe and North America. This is why it is important here, especially when trying to understand the ubiquitous nature of the anti-Romani bias, to grasp the essential element of anti-Gypsism that Western and Eastern European public opinions have in common: the perception of the Roma's parasitic existence and, hence, the deep-seated attitude that the Gypsies are subhuman.

It can be argued (as I do elsewhere: see Petrova, 2000) that the denial of racism is gradually becoming the most typical expression of racist attitudes. "Denial of racism" is meant in the sense that a) the suffering of victims of racism, b) the existence of attitudes in oneself or society that makes this suffering possible, and c) the existence of practices and institutions of racism, are denied.

The denial of racism is a reaction to the post-World War II sanction of racism. In my view, racism's presence is denied more vehemently in those cultures, which, following the Second World War, have done more to limit racism and related intolerance. Denial is a manifestation of a certain level of accomplishment in implementing a human rights and antiracism agenda in a society. In Western democratic societies, for example, most people who share racist opinions and act accordingly, would deny that they are racist, since racism is officially and culturally condemned, while tolerance, racial equality, and human rights are dominant ideological values. Thus, at present racism is rarely a self-description; increasingly, and under the influence of Western democracies and the international antiracism movement, it is becoming a label applied to groups or individuals as perceived by others. Although explicitly racist groups and parties exist, the larger part of today's racists, who hold people of certain ethnic background in contempt or hostility, at the same time oppose being described as racists. Austria's Freedom Party experienced a dramatic rise in popularity fol-

lowing a change of leadership in the mid-1980s, which brought the demagogic, charismatic Jörg Haider to its head and with him a newly invigorated populist, antiforeigner language, together with a renewed belittling of Austria's complicity in the racist crimes of the Third Reich. Nevertheless, most of the party members and supporters deny its racist character.

Anti-Gypsism, a powerful form of present-day racism, is also frequently manifested in the rhetoric of denial. Examples of the rhetoric of denial include:

- ◆ Arguing that race/ethnicity problems are social and economic problems: Government officials from Eastern Europe have said, in effect, that "We are not racist, and do not discriminate. We have no problem with the race or ethnicity of the Roma, but this group is economically and socially weak. The fact that its members are of the same, namely Romani ethnicity, is unimportant (irrelevant, accidental, etc.)." In this case, the government has an excuse for not dealing with race discrimination as an urgent issue;
- ◆ Posing the "equality before the law" argument: This argument lays stress on existing allegedly equal protection by the law. The claim is that "Roma are equal before the law, and therefore do not suffer discrimination in my country; anything that would favor them over others is unfair."
- ◆ Raising the "equal opportunity" (meritocratic) argument: "The members of the Roma ethnic group enjoy equal opportunities with everyone else in our society. How they use these opportunities is up to them. The fact that they do not make good use of their opportunities is not our fault. People ultimately get what they deserve."
- ◆ Blaming the victims: "The Roma must have done something wrong, if not the current generation then previous; otherwise they would not have ended up in such misery/in prison/on the street."
- ◆ Recasting race difference as mental disability: "Romani children are not ready for general public schools."
- ◆ Recasting race difference as a behavioral disorder.

- ◆ Emphasizing duties as a precondition for the enjoyment of rights: “If the Roma do not fulfill their duty X, they cannot claim their right Y.”
- ◆ Engaging in denial with the “positive example” argument: “Look at those Roma who made it to the top of society, the company, etc.”
- ◆ Engaging in denial by disclaimer: “Some of my best friends are Roma”; or “I am not racist, because in my building there lived a Romani family, and I had a very good relationship with them.”
- ◆ Employing the romanticizing stereotype: The romantic stereotype of Roma includes elements such as musical and dancing talent, capability of passionate love and other strong emotions, spontaneity, free and spiritual character, magical relatedness to nature, ability to enjoy themselves.

Almost none of these rhetorical forms of racist denial, taken in isolation, would be sufficient to describe a racist attitude. Racist statements are contextual. It is also noteworthy that most forms of denial are characterized by easy availability, comments on the causes of racially based disadvantage that, at the level of nonreflective everyday discourse, are never in short supply (for example, “Roma drop out of school because they are poor”). Yet, the person making this statement will say a moment later, “They are poor because they don’t study well.” Being “logical” is not among the qualities of “ideological” thoughts. Only upon reflection is it revealed that racist rationalizations are not rational and often form a vicious circle.

Even leaders of human rights NGOs tend to deny that Roma are victims of systematic, racially motivated violence. Despite dozens of cases of racially motivated violent crimes committed by law enforcement officials and nonstate actors, documented and broadly publicized by the *European Roma Rights Center (ERRC)* (see *ERRC*, July 1998), Human Rights Watch, and others, the chair of the premier human rights NGO in Macedonia could still write in

2002 on the treatment of the Roma: “The lack of an open discriminatory approach, violent behavior or attempts for forced assimilation is characteristic for Macedonia. There have been no cases of violence that had been caused by ethnic motivations or which would have elements of organized intolerance towards the Roma as a distinct ethnic group” (Najcevska, 2002: 84).

I would suggest interpreting anti-Gypsism as a set of misconceptions and myths, both expressing and reproducing the sociopolitical weakness of the Romani community. *Misconceptions* are false ideas about the Roma as they are today, even though misconceptions may have started in the past from some elements of truth. *Myths*, on the other hand, are not untruths: they are practical truths one can take as assumptions and reach pragmatic results, when acting upon these assumptions. But myths are not truths either: they would cease to be truths as soon as people cease to believe them.

Misconceptions about the Roma

The Misconception of Nomadism

Only some Roma in a few Western European countries (France, Ireland, Netherlands, the United Kingdom) are still nomadic, with large caravans having long ago replaced horse carts. The overwhelming majority of the Roma throughout the world have been settled for decades – some for centuries. But the association of Roma with nomadism nevertheless remains strong (on the manipulative misconception of official Italian policy, for example, see *ERRC*, October 2000: 8-12). As Fraser wrote, “Settled people, on the whole, do not trust nomads; and in a European society where the majority were pressed into a life of piety, serfdom and drudgery, Gypsies represented a blatant negation of all the essential values and premises on which the dominant morality was based” (Fraser, 1995: 126). On the other hand, in the European mind the nomad is wrapped in a cloud of romantic fantasy – a perception of freedom understood as carelessness.⁶ An intrinsic element of this fantasy is the unrepressed

⁶ *On the origins of romanticizing stereotyping, see Ascherson: The Greek tragedians, when they had invented the barbarians, soon began to play with the “inner barbarism” of Greeks. Perhaps part of the otherness of barbarians was that unlike the civilized, they were morally all of a piece – not dualistic characters in which a good nature warred with a bad, but whole. The “Hippocratic” doctors, the unknown writers of the Greek medical treatises wrongly attributed to the physician Hippocrates, asserted in* *Airs*,

Gypsy woman – “Carmen” or “Esmeralda” dancing in harmony with nature. In this context one can also see the economic element of the stereotype, encompassing the Gypsy attitude to money and accumulation of wealth. Roma are still believed to be uninterested in long-term security and to regard wealth as a means to show their status in the community. Their consumption patterns have also been explained as hand-to-mouth attitudes bordering on irresponsibility. The lack of saving strategies, which is caused by elementary poverty and discriminatory rejection by the official credit institutions, is misunderstood as a conscious choice.

The Misconception of Romani Crime

Historic sources do support the view that some of the Roma – those moving into Western Europe – resorted to stealing as a means of subsistence. Fortune telling and other forms of mystification, such as forging safe conducts, or the legend of the religious pilgrimage used by the Roma in Western Europe to ensure safety and extort privileges, money, and other benefits, helped congeal their reputation as a people with low sense of morals. But the construction of this reputation took place five or six centuries ago. Yet today, the Gypsies remain married to crime in the public mind. Crime is a form of social control. Different societies have different ideas of what constitutes a higher danger to their existence. Those actions and practices that are seen as dangerous are arranged in a hierarchy of crimes. Crime statistics in some countries have revealed a pattern of overrepresentation of Roma in several types of crime, notably petty stealing. But it should be remembered that crime statistics necessarily contain distortions. They are based on reported crime, and do not necessarily reflect the entire picture of committed offences. Robbery is a crime that has a high degree of reporting, while many other crimes, including cor-

ruption, fraudulent financial schemes such as pyramids, or domestic violence, go unreported. An act of petty robbery typically leaves behind one victim, while an act of financial fraud can destroy hundreds. Thus the visibility of robbery and of its individual perpetrators is much higher, while other, not less dangerous forms of crime lie below the surface of society. Roma are overrepresented in crime statistics especially when figures are not broken down by type of offence. Also, because of the kinds of crime reported to the police, the crimes in which Roma are suspects are investigated more vigorously. Of all pretrial investigations, those in which Roma are suspects are more likely to reach the court room; and of all court trials, those in which Roma are defendants are more likely to result in convictions. The convicted Roma are more likely to receive longer prison terms, with the result that they are significantly overrepresented in the prison population. Thus, it is misleading to claim the Roma have a “criminal propensity” based on crime statistics and the number of Roma in prison.

Still, one cannot deny the existence of Roma crime, as righteous proponents of the “Romani cause” sometimes do. It is more important to understand its nature and to realize that Roma are also victims, not only of ordinary crime but of crimes with racial animus as well.

The Romani crime stereotype includes other elements of prejudice, especially the bizarre and thoroughly unfounded “stealing of children” legend that has metamorphosed into the current public misperception that Roma are exploiting their own children by making them engage in begging; it is a fast growing belief that Roma are involved in trafficking in children and women. In the last few years, and especially in the aftermath of September 11, 2001, Roma migration has slipped into the realm of crime in public discourse.

Waters, Places that Scythians and all “Asians” resembled one another physically, while “Europeans” differed sharply in size and appearance from one city to another. Barbarians were homogeneous; civilized people were multiform and differentiated. The Greek tragedians thought this might be true about minds as well as bodies. If it was, they were not sure that the contrast between Greek and barbarian psychology – the first complex and inhibited, the second supposed to be spontaneous and natural – was altogether complimentary to the Greeks. Somewhere here begins Europe’s long unfinished ballad of yearning for noble savages, for hunter-gatherers in touch with themselves and their ecology, for cowboys, cattle-reivers [thieves], gypsies and Cossacks, for Bedouin nomads and aboriginals walking their song-lines through the unspoiled wilderness” (1996: 82–83).

The Misconception of the Roma's Unwillingness to Integrate

Scores of politicians, experts, and lawmakers have reiterated the widespread belief that the Romani minority's problems stem from their unwillingness to integrate into mainstream society. Is there anything true in this view? Undeniably, the Romani culture has historically been relatively closed and inaccessible to outsiders (Hancock, 2002: 67–68), which would be expected from a community constantly at risk. The period of persecution based on anti-Gypsy law in Western and Central Europe (sixteenth to eighteenth centuries) had immense consequences for later Romani history. It served to conserve a nomadic way of life for large groups of Roma in Western Europe and consolidated the Romani ethnic community on the basis of a victim mentality. While in Eastern Europe Roma were in the twentieth century well on their way to losing their traditions and becoming almost entirely sedentary, Western European Roma still remain more inward looking and protective of their tradition. This is most typical of the Sinti groups, which still express a strong preference to remain separate. However, the closed character of the Romani culture is no more. Research has consistently demonstrated that, given the choice, Roma prefer to integrate, rather than live in a segregated, parallel society. Roma today are struggling for equal and just participation in mainstream society, while wishing to preserve their unique culture.

The Misconception of the Romani Attitude to Education

As recently as 2002, scholarly articles continued to repeat – together with governmental officials and various educators – that “Roma parents frequently do not regard education as necessary and do not encourage their children to stay in school” (Friedrich Ebert Stiftung, 2002: 19). This is, perhaps, the most dangerous myth, since it hinders efforts of critical importance for the advancement of the Roma – namely, ensuring access to quality education for the current generation of Romani children.

Many other misconceptions are related to the Roma. European society needs to acknowledge these and develop a better understanding of the fact that Roma are our contemporaries and fellow citizens, defined

primarily by their link to the society in which they live, not those of nineteenth century literary fiction.

From the Gypsy Myth to Romani Reality

It is tempting to formulate a series of negations that express the weakness of the Roma when compared with other ethnocultural groups: Roma lack that which most other nations have. They have no state, no history, no army, no language, no religion, no ethnicity, and no spirit of solidarity. Let us look briefly at each of these composite parts of the contemporary Gypsy myth.

No state: Roma are thought not to have a sense of a common country of origin. Only in the last few decades has it become established that they originate from India. But there are even today many Roma who do not know this. Even more significant, Roma never attempted to establish statehood in Europe and are believed to have no territorial aspirations.

No history: Roma have no history in the sense of an official and institutionalized nationalistic, Romacentric grand narrative, complete with national heroes and a shared historic consciousness.

No military force: It is widely believed that Roma have never been involved in military activities, nor have they been freedom fighters taking up arms to achieve their collective goals.

No language: The language spoken by Roma is viewed as a set of dialects that do not allow fluent communication across geographic space. It is stressed that there is no normative vocabulary or grammar and no sufficient institutional framework by which to develop them.

No religion: The Roma usually adopt the confession of the surrounding majority, while some underlying beliefs and magic-related customs vary widely across their communities. Unlike Jews, for example, Roma have no sacred book to act as a unifying device.

No ethnicity: It is commonly believed throughout Europe that Gypsies are not a separate ethnic group at all, but a mix of people made up of the marginalized fringes of many different societies.

Hancock (2002: 31) even quotes a nineteenth-century belief that the Gypsies deliberately stain their faces with green nutshell to increase their ugliness and more easily induce naive people to believe that they come from the Orient. In 1633, the Spanish King Philip IV considered the Roma to be Spanish rogues who had made up an artificial language.

No solidarity: A frequently repeated observation refers to the fragmentation of Romani political efforts, resulting in a predictable inefficiency. “Gypsy work” in many languages is synonymous with quarrel, irrational communication, lack of trust among the participants, badmouthing and stabbing in the back, and ultimately, utter incompetence in handling any endeavor.

All these are elements of a myth. Romani nationhood (if not a territorial statehood), official history, armed power potential, normative language, solid ethnocultural identity, religion, and group solidarity are all possibilities, with each having reached a certain stage of its realization. However, at this time the myth is still a practical truth that participates in reproducing the weakness of the Roma in sociopolitical terms. The elements of the Gypsy myth spell out the non-Romani majority idea of what constitutes the power of a people.

Let us note, however, that the classical nationalistic idea of power is increasingly anachronistic. Nonclassical resources of negotiating and sanctioning power are developing in the world and the Roma have the chance to tap into them. Indeed, this is exactly what is happening with the advancing Romani movement: it is reaching out to economic, political, and cultural actors and alliances other than those existing in the context of a classical nation-state. Paradoxically, exactly because the Roma are latecomers to the nation-state universe, they may be the forerunners of new forms of the exercise of power and power participation.

Even the simple mention of the aforementioned absences as specific elements of the Romani experience is likely to be met with resistance by Roma themselves. For example, group solidarity is growing in the Romani movement and has become inherent in the rules of the struggle for power inside the community and in representing the Roma to the outside

world. The building of a Romani ethnocultural identity is under way. And we observe both internal homogenization and fortification of the borders of the Romani identity. The standardization of Romani language is also taking place. It is not historically accurate that Roma have never fought in armies. For example, in Sweden during the seventeenth and eighteenth centuries, in Russia and in other areas, Roma males served in the army and their families were sustained by the military as well (Etzler, n.d.: 83–84). There is no ground to believe that Roma are immune to the option of resorting to violent armed struggle only because no major uprising has taken place in the past. Romani historiography as well will soon progress to the point that a certain canon will prevail and the white spots will be included and encapsulated. Finally, self-determination has been the subject of recent discussions among Romani elites (Project on Ethnic Relations, 2003: 4). The controversial idea, launched in July 2000 by the International Romani Union, that Roma should be internationally recognized as an exterritorial nation and as a subject of public international law, is being debated among Roma. The prospect of Romani statehood seems utterly unrealistic, of course, yet a statist thinking pattern whose teleology is a state-like formation can be read between the lines of the Romani struggle for power.

Roma Rights: A Counterpoint to Anti-Gypsyism

Roma rights discourse, which was triggered in 1996 with the formation of the *European Roma Rights Center*, has identified racism, intolerance, discrimination, and exclusion as the daily reality of the Roma in Europe. The Roma rights discourse is developing according to the standards of international human rights discourse. It is a bridge to reality in the sense that its conceptualizations are seeking to deconstruct the Gypsy myth and, with minimal concessions to political correctness or other ideological censorship, point in the direction of a world in which being Roma is not in any way a reduction from general humanity. For example, if a full-time Romani employee does not come to her office for a number of days for no reason and if her supervisor pretends not to notice, in the name of affirmative action or political correctness, or for fear of being seen as racist, we have in place of the real person



Romani children in the outskirts of the city of Pskov, northwestern Russia, June 2003. The children, who live in deep poverty, have just received humanitarian aid organised and provided by St. Petersburg-based human rights organisation Memorial.

PHOTO: ERRC

another myth: the righteous Romani victim of discrimination. In activist organizations employing Roma or working with Roma, this occurs frequently. One day, a supervisor who is not a racist will treat an abusive Romani employee without prejudice and act exactly the same as if the person in question were not Romani. At this point, “Roma” will at last cease being an ideology and will become reality. (The example is somewhat artificial to make the point that Roma rights is a discourse and not a reality; it is a much more likely scenario, in Eastern Europe at least, that a racially biased boss would happily fire a Romani employee who failed to make the necessary excuses for not coming to work.)

The Roma, however, remain a pariah minority almost everywhere. In many countries they are not

officially recognized as a minority at all. In some countries, such as Greece and Turkey, the problem of the Roma status is compounded by the low level of recognition, within society, of its multicultural reality. Some states explicitly recognize the Roma as a national or ethnic minority (Hungary, Macedonia, Romania) or as a culturally autonomous nation (Russia), but there is no successful model of either autonomous self-government or equal participation in mainstream institutions.

The economic situation of the Roma deteriorated during the first decade of postcommunism at a speed that dwarfed that of any other ethnic group. Analysts who have described communist societies in terms of social equality, full employment, and obligatory education, as well as ethnic homogeneity, have

stressed that the rapid unraveling of the economic status of the Roma in the 1990s is due exclusively to the new forces of nationalism, racism, xenophobia, and other forms of intolerance specific to postcommunism. Anti-Gypsism features prominently among the new hate ideologies. A very large part of the Roma at present expresses nostalgic appreciation of the communist past and a tendency to divide the blame for their current economic disadvantage between capitalism and racial discrimination.

While both are indeed part of the root causes of today's Romani poverty, there is another factor less frequently invoked, namely, the disadvantaged starting position of the Roma at the threshold of the new system around 1990. Social equality never existed in the societies of "real socialism." The Roma in Central and Eastern Europe occupied the lowest strata of the working classes. They had the lowest levels of education and income, were mainly employed as unskilled workers in industry, construction, forestry, and in some unattractive occupations, such as garbage collection and slaughterhouse work. Thus, there was nothing close to an equal start for the Roma in the postcommunist economy.

This explanation, however, is inaccurate regarding the Roma and similar Gypsy groups in Russia, Ukraine, and arguably other former Soviet republics. Unlike Central and Eastern Europe, in the countries of the former Soviet Union the Gypsies, including the Roma, were never fully proletarianized. They largely remained outside the social engineering projects of the central authorities. As was mentioned earlier, they occupied the niches of unofficial intermediaries in the informal sector, profiting from their role as unregulated merchants and distributors in the shortage economy. This role was made possible by a preservation of a higher degree of mobility and self-reliance than was the case in Central and Eastern Europe. While the Roma in Hungary or Bulgaria were the poorest members of the communist labor force, those in the Soviet Union were relatively prosperous. Their rapid decline after the fall of communism is the result of a different dynamic. In the Brezhnev era, large sections of the Roma community were part of the socioeconomic elites, their living standards higher than the Soviet average, because of their positions as profitable mediators in a shortage economy. After the end of communism, the Roma in the 1990s

found the stores filled with a variety of goods and a market that quickly developed services at the same time that the average consumer lost her purchasing power. The need for mediation between money holders and commodities disappeared, and Roma were set on a path to economic decline. Most tried to legalize their business activities, but regardless of whether they operated legally, semilegally, or illegally, the Roma simply lost their competitive edge in the face of the new financial oligarchy and its numerous mafia-like branches (Marushiakova and Popov, 2003). Still, many Romani families in the former Soviet Union retain to date their economically stronger position, as compared with the Roma of Central and Eastern Europe, for whom rampant poverty is the rule.

Although reliable economic statistics on the Roma's situation in these countries are not available, abundant evidence can be found that the image of the Roma is increasingly worsening. Anti-Gypsism appears to be extremely high in the former Soviet countries as well, judging from the increasing number of racist attacks targeting the Roma in Russia and Ukraine, and the yet unchallenged portrayal of Roma in the media as bandits, drug dealers, and traffickers.

Recent economic and social statistics testify to the overall low status of the Roma in European societies. For example, over 40 percent of Roma in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia are unemployed (UNDP, 2002: 2), compared with one-digit unemployment figures for the general population. Only 10 percent of Romani schoolchildren in Croatia eventually finish elementary school (Radakovic, 2002: 57). In Serbia and Montenegro, the Roma are the ethnic group with the highest illiteracy rate, 34.8 percent, and the largest percentage of people who have not finished elementary school, 78.7 percent. The share of Roma who have graduated from college is just 0.4 percent (Mitrovic, 2000: 161). According to a survey on the health conditions of the Roma in Borsod County in northeast Hungary, published in November 2002 (Czene, 2002), the life expectancy of the Romani population is approximately 10 years lower than that of other groups. Ninety percent of Romani households in the county are without natural gas and between 40 and 50 percent are without water. One-quarter of the Roma between the ages of

19 and 39 have not graduated from primary school. According to this Hungarian survey, 75 percent of Romani men and 90 percent of Romani women in the county are permanently unemployed. The survey reveals that a substantial portion of the Romani population suffers from illnesses that can be traced back to their extremely poor living conditions. The prevalence of tuberculosis among the Roma is 10 times higher than the national average. The incidence of malignant tumors is also higher. According to the survey, iron-deficiency abscess, said to be a typical disease in developing countries, afflicts the Roma 10 times more often than the national average. Approximately 8 percent of the Romani population suffers from illnesses of psychological origin (stress, despair). Since, in general, drugs are too expensive, Roma tend to use cheap organic solvents and other psychoactive substances. As a result of this, drug-related illnesses are four times more frequent among the Roma than the rest of society. This could be a snapshot of the economic and social disadvantage of Roma in almost any corner of any country where Roma live.

Roma are more likely to have suffered the consequences of natural disaster, especially floods and fires, because their settlements and homes are cheap and unsafe. The floods in the Czech Republic in the summer of 2002 left many Roma homeless, and the authorities were slow to provide decent accommodation, thus adding to the pattern of disproportionate disaster outcomes from flooding of Roma settlements in the entire Central and Eastern European region.

The documentation on Roma human rights has grown to fill dozens of volumes. The European Roma Rights Center has been the catalyst for this documentation (see the *ERRC* report titles listed in the references). This paper has invoked the Roma rights paradigm not in an attempt to present a complete picture of rights abuses, but to identify those patterns of human rights violations of which Roma are the typical and almost exclusive victims in today's Europe, and in which anti-Gypsy prejudice is clearly a major factor. These are not isolated cases of human rights violations but widespread social practices that may or may not be a result of adopted official policy. School and housing segregation, evictions, coercive sterilization, police raids and identity checks,

police harassment, and collective deportation are broadly reported.

Racially Motivated Violence

In general, many reports confirm observations that Roma, together with immigrants, are particularly at risk of abuses at the hands of law enforcement officials. In Greece, for example, "the pattern is sufficiently clear to leave little room for doubt that xenophobia and racial profiling have played a part in the human rights violations suffered by members of these groups, whose complaints have sometimes included specific allegations of racist verbal abuse by police officers" (*Amnesty International and International Helsinki Federation for Human Rights*, 2002: 6).

Evictions

A randomly chosen piece of news from the *ERRC* database illustrates that Roma are unwelcome neighbors and therefore can be subjected to forced eviction, abusive police raids for identity checks, and police harassment:

On September 24, 2002, the local police force evicted around three hundred Roma from their temporary settlement in an abandoned pensioner home in a Sarajevo neighborhood in Bosnia, according to the Banja Luka daily *Nezavisne novine* of the same date. The Roma had lived in the building for around two years, and most of them were internally displaced persons who had come to Sarajevo from the regions of Republika Srpska or parts of the Federation of Bosnia and Herzegovina. Apparently, the eviction took place as a result of a meeting of canton and municipal authorities acting upon complaints of "noise and disorder" that the Roma allegedly created.

The inhabitants of this settlement had been subjected to an abusive police raid several months earlier. On June 29, 2002 the Sarajevo daily *Dnevni avaz* reported that, late in the evening on June 27, 2002, 76 police officers from Sarajevo Canton raided the pensioner home. Police reportedly surrounded the temporary settlement and performed an intensive identification check on the approximately three hundred Roma living in the settlement. The police violently searched through the belongings of Roma living

there. The police were wearing masks and did not provide an explanation for the search. On July 27, 2002, the Bosnian radio station Radio BORAM reported that the police claimed the search had been conducted following reports of drug trafficking in the settlement. However, according to *Dnevni avaz*, the police stated that no drugs had been found during the search. Just before the raid, on June 25, an unspecified number of police officers from the Ilidja police station visited the pensioner home to “warn” the Roma. According to the Sarajevo daily *Oslobodjenje* of June 26, 2002, the Ilidja municipality police had sent a detailed report on the Romani settlement to the Ministry of Interior of the Sarajevo Canton, urging that the Romani inhabitants be moved to another location, due to noticed “criminal activity of the Roma and their jeopardizing of the local traffic through begging.”

Fortress Europe Policies

As Central and Eastern European countries with the largest Romani minorities are negotiating their way into the European Union, Roma are being demoralized by the hypocrisy and double standards of the Western democracies when they attempt to travel to the West. The inclusion of respect for Roma rights in the political conditionality of EU membership has served as a powerful leverage for addressing if not significantly improving the situation of the Roma. Yet the message coming from the West has a shamelessly racist twist: although Roma are admittedly frequent victims of racist persecution, they are expected to stay at home and not attempt to move to Western Europe, Canada, or the United States. To those coming from EU candidate countries that are nearing accession, even a consideration of asylum claims is

being denied. Hundreds of Roma were deported from Western Europe to Eastern European candidate states in 2002 by the immigration authorities of Belgium, France, Italy, Norway, Spain, Switzerland, and the United Kingdom. The Roma are subject to humiliating forms of discrimination in accessing their right to travel abroad, no matter for what purposes.

The *European Roma Rights Center* has brought a lawsuit against the United Kingdom Home Office because of the British immigration checks at Prague airport that discriminate against Czech Roma trying to travel to the United Kingdom. Pre-check in clearance was installed in July 2001 as part of a special arrangement with the Czech government, allowing British immigration officials to turn back passengers before they even reached the plane to travel to Britain.⁷ In October 2002, Justice Burton ruled at London High Court that the 1951 Geneva Convention on Refugees did not prevent United Kingdom authorities “from taking steps to prevent a potential refugee from approaching [the UK] border in order to be in a position to claim asylum, or [making it] more difficult for them to do so” (Travis, 2002). He said that the existence of an “anti-Roma diatribe” and other criticism in the Czech press did not amount to evidence of racial discrimination. The *ERRC* immediately lodged an appeal, and in January 2003 was granted leave to appeal.

Coercive returns of refugees from the former Yugoslavia have been under way since the mid-1990s. Recently, German police began to break into the flats of Yugoslav Roma who had been seeking asylum in Germany during the last 12 years in order to deport them to their homeland. According to the testimonies of returnees, German police, shouting that they

⁷ *An authorization under the Race Relations (Amendment) Act, signed by Home Office Minister Barbara Roche in April 2001, specified seven ethnic or national groups whom immigration officers were empowered to refuse entry to the United Kingdom outright on the basis of their race or nationality. These included Afghans – even while Britain was at war with the Taliban regime and denouncing its abuses against the Afghan people – Kurds, Tamils, Somalis, and Roma. The European Roma Rights Center has since conducted a study involving “white” and Roma Czech citizens of similar circumstances and found a marked difference in their treatment at the Prague airport. The United Kingdom secretary of state admitted in court that this was a policy designed to prevent asylum seekers from reaching the UK, where their claims would have to be properly considered. We believe this clearly contravenes the Geneva Convention on Refugees and risks driving people toward less open and legitimate means of entry. Our six clients in this case all went to the Prague airport to catch flights to London during the course of July 2001. All had valid airline tickets. All are Czech nationals – and so did not need a visa for travel to the United Kingdom. Yet all were singled out for extended questioning apparently by reference to the color of their skin. They were prevented from traveling to the United Kingdom.*

are a fire brigade, break into flats of Romani families in the middle of the night; they then show the occupants a recent agreement on the read-mission of Yugoslav citizens from Western Europe, and give them 25 minutes to pack that which they want to take with them. The families are taken to the nearest airport, and deported to Belgrade with Yugoslav Airlines charter flights.

Segregation

Like numerous ethnic minorities around the world, Roma live in considerably segregated housing and most attend separate schools. In the case of contemporary Roma, the separation is not their choice. Evidence suggests that most Roma want to live, study, and work together with the rest of society, but are vehemently rejected. Segregated settlements, schools, and hospital rooms are not just physically separate – they are generally much poorer in quality. In the case of the Roma, these facts, seen in the context of entrenched and harsh racist attitudes toward this pariah minority, define a case of racial segregation: a particularly egregious form of racial discrimination, an assault on human dignity condemned by international human rights law.

Racial segregation of the Roma in education exists in a variety of forms. The various types of segregated schooling in Europe can be divided into two main patterns: 1) Roma attending “special schools” or classes for the mentally retarded, where the official curricula are based on inferior academic standards; 2) Roma attending separate or predominantly Romani schools or classes, where the official curricula are based on the same academic standards as in the rest of the national school system, but the quality of education is nonetheless lower. In the second case, residential segregation of Roma is one of the factors in school segregation, but is not sufficient to explain its existence (Surdu, 2002: 11). Both forms of segregation are an expression of a large social distance and constitute racial segregation, in violation of international antidiscrimination law.

The “special schools” for Roma are most obvious in the Czech Republic, Hungary, and Slovakia, but can be found in a number of other countries as well. In the Czech Republic, more than 70 percent of all Romani

children of school age go to inferior “special schools” and are stigmatized for life as mentally handicapped (European Roma Rights Center, June 1999). In the Czech “special schools” system, the educational standards for a given school grade correspond to those of two grades lower: a pupil who has graduated from fourth grade in the “special school” is expected to demonstrate the scholastic achievement of a second grader in a normal school. There is less emphasis in the curriculum on mathematics, science, and language, and more on music and applied art. The situation in Slovakia is similar. A Romani mother from Letanovce told the *ERRC* in October 2002, “My daughter was transferred to special school after the 1st grade – she is there already for 2 years and doesn’t even recognise the letters of the alphabet – if she were in the normal primary school, I am sure she would already have learned that.”

In Hungary, the *ERRC* has documented cases of abuse of parental consent in allocating Romani children to “special schools.” On September 13, 2002, a Romani mother told the *ERRC*:

My daughter started primary school in a normal class, but she felt that she received no attention from teachers as compared to her non-Romani classmates. Due to the negligence of the teacher she failed one time. She was taken to the remedial special class immediately. I was not even asked or informed about it in time, only after the transfer. They said that she could not keep up with the others, so they transferred her. I suffered because my child felt very bad. She was labeled stupid, although she might have just needed some more attention.

Nor is the testing procedure for special schools racially neutral. A non-Romani teacher in a remedial “special school” in Budapest stated to the *ERRC* on November 18, 2002:

“Romani children are usually enrolled in remedial special school without seeing the normal school. The transfer, in fact, is often based on the single opinion from the 30-minute long examination of the expert committee. Non-Romani children usually get two or three chances and have already failed the second or third year of the school several times when they are transferred to a remedial special school. Many Roma are placed there immediately.”

Unlike the special schools, the “normal” segregated schools, in which Roma are either overrepresented or constitute the only ethnic group educated there, follow the same mandatory national curricula and in theory should apply the same standards of academic achievement. But it is the case that they provide a poorer education because of poorly qualified and motivated teacher body, crowded classrooms, inadequate materials, and racist prejudice about Roma attitudes to education. Teachers often blame Roma pupils for this result, exploiting the myth of alleged low interest in school performance. The vice director of a school in Alexandria, Romania, told the *ERRC*: “We have to simplify very much the school program for Romani pupils so that they understand. Usually they are only taught the main ideas in the lessons. And still this is sometimes too much for them.”

It is unclear whether the emerging political will in Bulgaria and Hungary to desegregate the schools will continue, and whether desegregation has a chance to become official policy in the region. It is still less clear whether European courts will one day agree with the reasoning of the United States Supreme Court in 1954 when it decided the case of *Brown v. Board of Education* and ruled that “separate but equal” is not “equal.”

In the case of Romani ghetto schools, however, it cannot be said that the physical facilities and other “tangible” factors are equal with mainstream schools. The following excerpt illustrates the inferiority to which there are rarely any exceptions in Central and Eastern Europe (and those exceptions are a couple of elite Romani ethnic schools in Hungary and the Czech Republic):

October 11, 2002. We visited Gura Văii, outside of Onești. All of the Roma in Gura Văii live on Morii Street, away from the Romanians in the town. The roads were dirt, and due to morning rain, were very muddy. This settlement was not among the poorest that we saw. ... The school that the Romani children attend was in the middle of the settlement. We entered the school, which had to be opened by one of the teachers after repeated knocking because it was locked from the inside. There were only two rooms in the school. In one room, there was seating for twenty-two children, and in the other, there were twenty-four seats. It was a cold day, and

there was no heat in the school, although there was a wood stove in the corner of one of the classrooms. There were no lights in either of the rooms or the entrance, and in fact, no electricity in the school. The Romani children were in class while we were in the school, and there were no books in either of the rooms. There were no textbooks for the children that I saw, no notebooks in front of any of the children, no pencils, no pens or any school supplies of any kind. There was no sign of a learning environment. One of the teachers, who would not give her name, told us that one hundred and sixty children were registered in the school. She also told us that there were four teachers. At around 2:00 PM when we went in the school, it was already dark inside and hard to see. From the outside, there was glass in all the windows, but I could see up under the roof the structure was not solid. This would likely allow much cold air in during the winter months.

We also visited the school that the Romanian children in Gura Văii attend. The school was much larger, with at least four classrooms. The school had electricity and heating and the children were not forced to sit in their jackets to stay warm as in the Romani school. There were no Romani children, although the Mayor had said that there were some. The classroom was large, the desks were in much better condition than those in the Romani school. The children in this school all had textbooks, notebooks, pens and pencils in front of them. There were plants all around and artwork that the students had produced, as opposed to the barren walls in the Romani school. There was a playground in the schoolyard (there was no yard at the Romani school) with soccer and basketball nets. There was also a caretaker for the school.” (From *ERRC* archives: Report from field trip to Romania, filed October 2002).

Sterilization

From the 1970s until 1990, the Czechoslovak government sterilized Romani women as part of a policy aimed at reducing the “high, unhealthy” birthrate of Romani women. The policy was condemned by the Czechoslovak dissident group Charter 77, and documented in the late 1980s by dissidents Zbenek Andrs and Ruben Pellar. Human Rights Watch addressed

the issue in a comprehensive 1993 report on the situation of Roma in Czechoslovakia, concluding that the practice had ended in mid-1990. Criminal complaints filed with Czech and Slovak prosecutors on behalf of groups of sterilized Romani women in each republic were dismissed in 1992 and 1993.

Throughout the late 1990s, there have been periodic indications that the practice may be continuing. In Slovakia in particular, the purported high birthrate of Roma is a regular feature in public discourse on the Roma, frequently in the context of right-wing rhetoric warning that “they will outnumber us by 2050.” We believe Slovakia is allowing contraceptive sterilizations of Romani women absent acceptable – and in many cases even rudimentary – standards of informed consent. Our findings indicate that women are often coerced by doctors and nurses to give consent to sterilization. In Slovakia, women who give birth through a caesarian operation for a second or third time are offered to exercise their right to contraceptive sterilization, based on the outdated theory that a third or fourth caesarian will lead to grave harm to or even the death of the woman or the fetus. We found many cases of women who underwent their second or third caesarian section and were sterilized because of the purported “risks” involved in another pregnancy. The Slovakian sterilization law supports this practice by listing consecutive c-sections as a medical indication for sterilization. In the case of abusive sterilizations, we believe we are looking at a very wide variety of factual issues, broadly within the following parameters: 1) cases in which consent has been secured, and such consent meets medical, ethical, and legal standards of full and informed consent; we believe such cases constitute approximately 10 to 20 percent of the cases we have seen; 2) at the other end of the spectrum, cases in which there may be criminal malpractice: a woman has been sterilized, although she has not given any form of consent; 3) cases in which some form of consent has been given for sterilization, but that consent has not been “informed”: misinformation, manipulative information, pressure, tricks, bluster, etc., have been applied so authorities can secure “consent,” or clear and understandable information has not been pro-

vided to the patient prior to seeking her consent. The overwhelming majority of the cases we have recorded fall into this “grey zone.” On the basis of preliminary research, we believe similar concerns can be raised in the Czech Republic and Hungary.

Lack of Personal Documents

Roma in the countries of the former Yugoslavia face significant difficulties in obtaining basic personal documents, such as birth certificates, identity cards, local residence permits, documents related to (in most cases, state-provided) health insurance, marriage certificates, work booklets, death certificates, passports, internally displaced person and refugee registration documents. Exclusionary obstacles created by a lack of documents can be daunting and in many instances, the lack of one document can lead to a “chain reaction” in which the individual at issue is unable to secure a number of other documents. In an extreme case, a Romani person without a birth certificate may face complete exclusion from the exercise of basic rights: precluded access to basic health care, freedom of movement hindered (including the right to leave one’s own country), denial of the right to vote, exclusion from state housing provided to persons from socially weak groups, and denial of access to other rights and services crucial for basic human dignity.⁸

Conclusion: The Romani Movement

Although in several countries Roma cannot formally create political organizations based on ethnicity (Albania, Bulgaria, Russia, Turkey), Roma political organizing is developing. In Bulgaria the courts effectively ignore the constitutional limitation and allow the registration of Romani parties. Almost everywhere, numerous Roma groups are emerging at all levels, at the grassroots as well as the national. International umbrella organizations are also taking shape.

In the last few years, the Romani movement in Central and Eastern Europe has entered a period of

⁸ See the information on a workshop organized by European Roma Rights Center in Igalo, Montenegro, in September 2002, on the theme of “Personal Documents and Threats to the Exercise of Fundamental Rights among Roma in the FRY” <http://www.errc.org>.

consciousness building along identity lines, aimed at mass mobilization and political participation (see “The Romani movement,” 2001). But as with other identity movements in other times and places, we have observed the disturbing characteristic trends: an emphasis on ideological tenets, a construction of cults of personality, and conversely, creation of “enemies of the struggle.” The “ideology” emerging within the Romani movement contains an emphasis on defending the ethnic line, as well as a preoccupation with poverty as a mode of solidarity. Romani leaders in Hungary have sought alliances with, for example, groups that defend the homeless. This political cosmology has discovered, in non-Roma defenders of Roma rights, a convenient bogey. These and other non-Roma working on various aspects of Roma-related issues currently provide a convenient medium through which the members of an otherwise fragmented and contentious Romani leadership can overcome their differences.⁹

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⁹ I am indebted to Claude Cahn for formulating this point.

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Fighting for the Rights of Roma – A Productive Effort in the General Struggle for Human Rights

In February 2004, the ERRC spoke with Mr Nicolae Gheorghe, Advisor on Roma and Sinti issues at the Contact Point for Roma and Sinti Issues of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, based in Warsaw.

ERRC: *What does the concept of Roma rights mean to you? Why was there a need for breaking down the concept of human rights into more specific fields of human rights – to Roma rights in particular?*

Nicolae Gheorghe: Your journal is called *Roma Rights*. Your organisation is called *European Roma Rights Center*. I was a member of the first board of directors, established in the mid-1990s. At that time I thought that it was an accurate name. At this point, however, I have questions about it, in particular, I think that the wording “Roma Rights” is questionable. When I read the report on abuses of the Roma reproductive freedoms in Slovakia,¹ my reaction was: “Well, it seems to me that we have reached a frontier of language. I do not think there are reproductive rights/freedoms of Roma different from the reproductive rights in general. When we decided to have children with my wife, we did not exercise Roma reproductive freedoms.” I expressed this view when I met with the authors of the report. I do not argue about the substance of the report and I do not wish to diminish the role of this report in a particular context of human rights and political activism. Indeed, in the report the authors write about “...violations of Romani women’s human rights, more specifically reproductive rights...” which, in my opinion, is more accurate. My argument is about the effects of using the term “Roma rights” in general and/or making reference

to particular standards of human rights preceded by the name “Roma”, frequently used in an adjectival form by speakers of English, the *lingua franca* in international communication. The meaning may become increasingly blurred when we refer to particular fields of human rights, such as in the expressions “Roma health rights”, “Roma housing rights”, etc. The effect is both semantic and practical.

I think that we have to rediscover at the level of thinking the idea underlying wonderful efforts such as the eight-year work of the *ERRC*. In my understanding, we speak about “Roma rights” to indicate the access of individuals and/or particular groups self-identifying as “Rom”, “Romni”, pl. “Roma”, in a non-discriminatory way, to general human rights. States should respect human rights and basic freedoms agreed upon through international treaties and political documents, and incorporated in national legislation. They have the obligation to fulfil all these rights for all citizens and residents on their territories in a non-discriminatory way, irrespective of race, ethnic origin, colour, sex, religion, etc. We are not there, for sure, and that is why we need specific tools of action in order to promote (and/or to restore) the rights of various individuals and groups.

The term “Roma rights” and the political action based on it are just one particular tool for rights-oriented action under certain political circumstances, and not so much a particular field of human rights in itself.

¹ *Editor’s note: The publication referred to is the report “Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia”, by the New York-based non-governmental organisation Center for Reproductive Rights and the Košice-based Poradňa pre občianske a ľudské práva.*

For example, in 1995, in Romania, we (the activists at that time) protested against an administrative act, which recommended the use of the words *țigan/țigani* (Gypsy, Gypsies), instead of *Rom/Romi*, when referring to our ethnic group in the public discourse.² We disputed this act of the public administration, and we argued for the right of members of ethnic groups to identify and to be publicly identified according to the names agreed upon with representatives of the respective ethnic groups. That political protest of ours was part of the larger process, which had started in the 1990s, for democratisation of governance practices inherited from the previous totalitarian regimes. It took a couple of years to settle the issue of the use of the terms “Romi” (“Roma”) vs. “țigani” (“Gypsies”, which we regarded as very pejorative), in the public administration of Romania. A number of non-governmental organisations used the formula “depturile romilor” (the rights of Roma) to highlight our dispute with the administration of the time and the lines of alliance/opposition among ourselves, the rank-and file activists, some of whom continued to use publicly “țigani” not only as part of the “vernacular” language of the inter-ethnic relations of everyday life, but also to indicate their allegiance to the Establishment. Eventually, we have initiated some coalitions with other activist groups in the emerging civil society of Romania in the mid-1990s – such as “former political prisoners”, homosexuals, or even “human rights activists” (who have been branded by part of the public and the media of that time as being “paid from abroad”), proposing to them to challenge the “stigmatising identities” imposed by the practices of authoritarianism and totalitarianism in our society.

To the best of my knowledge, these local circumstances are also reflected in a number of documents adopted, among others, by the Organization for Security and Co-operation in Europe (OSCE, at that time the CSCE – the Conference on Security and Cooperation in Europe) and the Council of Europe such as, for example, Resolution 16/1995 “Towards a Tolerant Europe: The Contribu-

tions of Roma (Gypsies)” and Resolution 44/1997 “Towards a Tolerant Europe: The Contribution of Roma”, adopted by the Council of Europe’s Congress of Local and Regional Authorities in Europe (CLRAE). In one of these documents we find the wording “respect for Roma (Gypsies) right to their own cultural identity.” Through these and other examples (for example the documents of the Council of Europe and the European Union of the 1970s, 1980s and the beginning of the 1990s) we notice, the hesitations, somewhat painful, of the public discourse (including ourselves) with regard to the ethnic name of our people.

Evoking this episode of the activism in the mid-1990s in Romania, I would like to stress that the formula “the rights of Roma” has meaning in specific political circumstances, in connection to cases of abuse of well-defined sets of human rights. This formula is also part of a discourse and practice aiming to enhance the mobilisation of Roma and foster coalitions with different interest groups in a given society, in order to promote changes in political life and in the work of the public institutions (at a later stage I discovered the English word *mainstreaming* to describe or “reconstruct” part of our agenda ten years ago). It was during that particular episode of activism, (which took some years) that some of us (grouped around the non-governmental organisation *Romani CRISS* and other NGOs) have articulated other grievances and focused on the combat against discrimination by the state administration as an alternative to other platforms, which perceived the issue of *țigani* as a “social problem” (understood in terms of marginality and criminality), or as part of the “combat against poverty”, or as a matter of national-minority-folklore shows, etc. We have made our choices: Our associations are much more part of the emerging Romanian civil society than part of the electoral/parliamentary platforms advanced for the benefit of particular national minorities (with precise provisions in the Romanian Constitution and Electoral law and policy making); we are much more an element of the civil society building within the Romani communities than an actor

² Editor’s note: By Memorandum No. H (03)/169 of January 31, 1995, the Romanian Ministry of Foreign Affairs decreed that the Romanian Roma should be called “țigani” and not “Roma” as the latter name “was likely to be confused with the Romanians.” The memorandum provoked protest by Romanian Roma as the word *țigan* bears intensely negative associations in Romanian society.

in the ethnic-identity-building process (there are other groups militating for this platform); we are more related to other associations and interest groups, involved in articulating the human rights approach to the issues affecting Roma, Sinti, Gypsies, etc. at European level than an agency for local community development.

An evolution of the word *Roma* has taken place in the past 15 years of public action and discourse about rights, reaching the complex meaning of the political categorisation embodied in the term “Roma rights” as used in current discussions, projects, institutions, etc. One direction of this evolution has been to generalise the meaning of this expression by disconnecting it from the particular circumstances in which it has a clear meaning and power of mobilising a variety of actors (including representatives of public institutions, grass-roots human rights activists, etc.). Another development has been the understanding (and use) of the Roma rights discourse in the context of (ethnic)-identity-building rather than in the context of combating discrimination, racism, intolerance, and xenophobia. The process of ethnic-identity-building is also a legitimate practice and is protected by the rights of national, ethnic, linguistic, religious, cultural groups.

Therefore, in the group of human rights activists and/or officers (at least those, who communicate in the English language), we have to re-examine our language, as a pre-requisite for a better focus of our attention and practices, and make sure that when we use the term “Roma rights” we deal with combating discrimination in the access to general human rights of persons belonging to a particular group. If we privilege generalisations over the description of and producing of evidence about concrete instances of human rights violations (including the technicalities of the legal dimension of the human rights violations), we face certain risks. Namely, we risk jumping (or rather falling) into some form of ideological discourse, which, in my opinion, may diminish the power of the rights discourse and may lead us to distorted practices resulting from the reification of notions such as “Roma rights”.

My message in this interview is that we should think about clarifying the terminology of our rights-oriented practices and institutions; they had a meaning

in the 1990s as “Roma rights” (as, for example, in the title “European Roma Rights Center”) but, I think, they will start losing their meaning in the next decade. How to accomplish this? We must be critical and creative at the level of thinking and at the level of talking. We need a more in-depth analysis of the various meanings and legal-political contexts in which the expression “Roma rights” has been constructed, pragmatically used, debated, distorted, etc. Then we have to bring these conceptual levels to the level of an ever-developing practice – quite remarkably achieved by the *ERRC*, which has made serious progresses and contributions to the rights movement.

I am being self-critical, because I also feel responsible for some of the confusion, which was generated among people with whom I work. We wanted to give a voice to the Roma but without informing them of what is the context of human rights, the legal context of the human rights. We went too far in generalising “Roma rights”, taking them out of context, and making “them” an object of the discourse. This may degrade the original rhetoric of “Roma rights” in demagogy, ideologies, etc.

At the level of practice, we are much better. I read about the success of the *ERRC* case before the European Court of Human Rights in its ruling on *Nachova vs. Bulgaria*. This is an important success. This is mainstream, solid, human rights work in favour of persons who are Roma and who usually stay at the margin of the democratic institutions. This is the way that I think we have to go forward.

ERRC: *What are the major rights issues that make the rights of Roma in Europe different from the rights of other minorities? Do you think that the problems of Roma in Europe need a more urgent intervention than the problems of other minorities?*

N. G.: Here we need clarification of the processes by which we define priorities. There is a big catalogue of human rights, and there are groups of people dispersed throughout the European states, categorised as *Roma in Europe* and/or *Europe's Roma*, whose access to these rights is often much

more limited in comparison to the majority population and/or to “major national minorities” within the given states. In most of the European states public recognition of the mere existence of groups self-identifying as Roma is a very recent and still fragile development. Then, we have the phenomenon of the non-acknowledgment (or insufficient acknowledgment, to sound more “moderate”) in Europe of racial and racist mentalities and practices associated with the categorisation of individuals and groups as “*řigani*”, “Gypsies”, “Zigeuner” and other derogatory names, which carry with them the seeds of the open or more subtle forms of discrimination in various institutional and social activities. There is a “racial fracture” in many European societies and the incorporation of this unacknowledged, non-tackled fracture in the practices related to the variety of groups generally designated with the names Roma, Sinti, Gypsies, Travellers, etc., makes the rights-oriented actions of these groups and/or on behalf of persons belonging to such groups both different and more difficult than the actions promoting the rights of persons belonging to other ethnic or national minorities.

At the policy level, there is always a need to prioritise in order to ensure the effective access of particular individuals and/or groups of people to particular sets of rights, in particular circumstances. The instruments and the resources for action are dramatically scarce and both the activists and the policy-makers have to choose an “entry strategy” in coping with the complexity of needs. For example, one of the priorities of the recently adopted Action Plan for the Improvement of the Situation of Roma and Sinti in the OSCE Area is to legalise the housing of Romani individuals and families, so that people can realise their voting rights, their rights of protection of the family by the State and other social rights.

ERRC: *In terms of respect for human and/or minority rights, do you see a difference between Roma and other ethnic minorities in Europe? Do you believe Roma are more vulnerable to discrimination than other minorities, and if yes, what do you think are the reason(s)?*

N. G.: If we consider the rights of the national minorities, the answer is simple: In many European states the Roma and Sinti populations have not yet been acknowledged as an ethnic group and their minority rights (linguistic, cultural, etc.) are not protected on an equal basis with other ethnic groups enjoying the status of national minorities according to national laws. If we consider the “Roma and Sinti issues” as issues of combating and eliminating various forms of discrimination, xenophobia, and racism, I would answer your question in the affirmative: there is a greater vulnerability of persons and groups belonging to populations categorised as Roma, Sinti, etc. It is not a coincidence that in the Action Plan for the Improvement of the Situation of Roma and Sinti in the OSCE Area, the OSCE participating States commit themselves to “eradicate discrimination against them [Roma and Sinti].”

I may elaborate my quick answer with a reference to a world-wide survey with between 300 or 400 groups, whose vulnerabilities were assessed on a multi-dimensional index of political, economic, demographic, environmental, and human rights factors. This study was done in the early 1980s. Based on this world-wide framework, the Roma of Europe had a rather high risk of vulnerability to abuse of human rights, and in particular during conflict situations. At the end of the 1990s, the group updated their research and found that the vulnerability risks of Roma in Europe were much higher. The results of these studies are reported also in an article by Edward Bakker, published in a recent issue of the *Helsinki Monitor* – a quarterly on Security and Cooperation in Europe, published by the *Netherlands Helsinki Committee*, and *International Helsinki Federation of Human Rights*.

Since we work exclusively with groups categorised as Roma and we have NGOs and institutions like yours, we sometimes leave the impression among Roma that they are not only more vulnerable to discrimination than other groups, but also that they are some kind of “special victims”. Often activists ignore the fact that there are other groups in similar situations of vulnerability. If we want to promote human rights, we have to promote universal human rights and must be aware

about the abuses of the rights of other individuals and peoples in India, Africa, or even here in Europe. There is an understanding among some Romani activists that they can reinforce their fight and agendas by claiming that this or that Roma group or “the Roma” in general are the most discriminated people, and that discrimination is the very condition of being Roma. Raising awareness about the discrimination suffered by individuals and groups racially identified as *řigani*, *Zigeuner*, *Gypsies*, has been the dominant agenda of the human rights and political activism over the past years. We tried to encourage and empower these activist groups by telling them, “You’re much more discriminated against than the others”. In the years to come, I think, we have to balance this feeling and discourse in order to put the human rights work on a more solid, mature basis. You can reach this maturity when you also take care of the “other” and not just of yourself. It seems to me that internalising too much the victim mentality may lead to a lack of critical thinking and to undermining the process of political mobilisation among the Romani activists and among the members of the grassroots communities.

Let’s take an illustration. Following the riots sparked off by electricity power cuts in a Romani neighbourhood in Plovdiv, Bulgaria, about two years ago, the Contact Point for Roma and Sinti Issues commissioned a study about such riots to a young analyst and activist, who was himself Romani. One of his findings was that some Roma with whom he spoke didn’t make the distinction between human rights, which should be respected and protected by the states, and social services, which are provided by private companies. Some Roma consider that they are entitled to receive electricity, gas, and water without necessarily paying for these services. The study argues that such way of thinking may put some particular groups of Roma at odds with the development of the post-Communist societies striving for transition to and consolidation of democratic institutions. Moreover, in these societies the privatisation of some services and the market economy in which people pay for services are a priority.

Or, trying to answer your question from a different angle. What about raising awareness among the variety of groups designated by the word *Roma*

on the role of the “colour” in the racial and “racialised” perceptions by the public and in particular cases and forms of discrimination by public bodies? Building on this awareness, how can our activism and political action be strengthened and how can we form coalitions not only around ethnic identities (whose dynamic may evolve toward “marked” and exclusive boundaries), but also based on the shared interests with other “peoples of colour” in local/national societies, in Europe and world-wide? Actually, this is one of the messages of including Roma issues in the World Conference Against Racism and its documents. Do we follow and act upon this message enough?

ERRC: *Do you think that affirmative action is needed? How do you think the negative impact of affirmative action can be overcome, i.e. what should be done to prepare our societies to accept affirmative action as a measure which would eventually benefit everyone and not only the specific group to which it is targeted? How should we avoid intensifying negative attitudes towards Roma as a result of the implementation of certain affirmative actions?*

N. G.: Yes, some forms of affirmative action are needed. But we should try greater intellectual discipline when recommending and using specific measures of affirmative action in policy making on particular Romani groups, in particular local/national contexts. The concept of affirmative action came from a very specific political context, which is that of the Civil Rights Movement in the United States in the 1960s. Now we are using it somehow indiscriminately, without trying to adapt the concept to the particular contexts in which we live. I followed a recent discussion of positive discrimination, or affirmative action, in France, in connection to the status of the Muslims, the controversies around the headscarf, etc. Here there is another political context, a different history of public institutions, and the concept of affirmative action discussed in this context has a different meaning. When applying this concept to populations categorised as *Roma* in Central and Eastern Europe, or generally in

Europe, I think we are using the word somehow uncritically.

There are already *Roma*-related practices in affirmative action in various states. In Romania, for example, there is a quota for students in colleges claiming Romani descent. There is an increasing diversity of college programmes open to such quotas, and there is a “build-up” with quotas to the level of vocational training. There are also reserved seats for national minorities in the legislature, so there are members of parliament claiming a “Romani political identity”. Since 2000, the position of “Roma experts” in the district administration and in local municipalities was introduced in Romania. I use Romania as an example, because such quotas have been implemented since the early 1990s and because it is the situation that I know a little bit better. But, in Bulgaria, in the Czech Republic, Slovenia or Slovakia, we can provide similar comparisons. In Slovenia, for example, there is some kind of affirmative action enacted by law. There are reserved seats for Roma representatives in the local councils of municipalities with Romani settlements.

So, first of all, we should ask specifically what the situation and context is, then we can better discuss the effects and/or the ethics of making use of group rights. One side-effect of affirmative action for Roma is that it created a group of persons who tend to interpret affirmative action as some sort of permanent entitlement to group rights. Entitlements (read as “group privileges”) are connected with a different social history, with the feudal aristocracy, which had hereditary rights. We have a group of people right now, among the younger generation, including some of your co-workers and some who are very close to me, who benefited from the quota system to enter colleges and who seem to remain for the rest of their lives marked by that fact. They consider that all the time they have to be under some kind of quota, and are in some protected market for jobs, for payments, for participating in political life, and so on and so forth.

From my point of view, this is the side effect of having special measures to compensate a group for previous discrimination. The special measures

(as defined by the International Convention on the Elimination of All Forms of Racial Discrimination) are designed as temporary and task-oriented. The side effect is the distorted perception of special measures for compensation of abuse and/or lack of specific rights as some kind of particular rights, which people may think will last forever and will be hereditary (in some particular families, larger kinship groups, etc.). Another side effect that I noticed in Romania is that some of those who are benefiting from the quota in education do not come from the most disadvantaged groups/families among the Roma. I have found that many of those who benefit from the quota system are middle-class persons, from well-established families (within Romani society), quite advanced in their integration in Romanian society, up to the point of being culturally assimilated.

On the other hand, many people who are blocked in their access to education rights, living in oppression and discrimination in their daily life, and who are not from well-off families, do not enjoy the benefits of the quota system. There is a distortion here. Those who have access to the quotas in colleges and then to better job opportunities, requiring college education, are not the most disadvantaged/discriminated. Well, I am aware that these phenomena are connected with the dynamic of political mobilisation, with the formation and the role of the middle class or the “modernising elite” among populations who experience social exclusion, under-development, class subordination (up to experiences of slavery as it is the case of *țigani* throughout the social history of the Romanian principalities). Currently, we may notice that the quota system is one of the factors reproducing a kind of social inequality among Roma in education, in which those who have the experience of cultural integration are now privileged over those who are really discriminated against and disadvantaged. And the former group speaks in the name of the latter group, although there is a huge gap between the two groups.

Thus the affirmative action discourse, which has emerged with a view to compensating deprivation of rights and abuse of rights, may become a sort of rhetoric, lacking context. Actually, I have noticed the alienation of some young, highly educated

Roma, who have been to national or European universities like the Central European University, for example. They don't like any more to be in contact with grassroots communities. They do not like to be around the uneducated, who don't have computers or emails and who don't speak English. This lack of communication is widening, in my view. We have to think about that, and to correct this situation. I don't think that the quota system is for people coming from families, which are already integrated in society. I think it's for those who are discriminated, the disadvantaged, those who don't have access to such rights. However, when we speak about "Roma rights", whoever is presented as being Roma – and sometimes identity is interpreted in a purely subjective way, is entitled to the rights and resources provided under the name of affirmative action. We have to be very careful about that.

Addressing another part of your question – how should we avoid intensifying negative attitudes towards Roma as a result of the implementation of affirmative action? I do not have a quick answer, or a "recipe". It is a serious issue needing an in-depth analysis and a lot of open talks. I may sketch a beginning of an answer, in the logic of this discussion, reminding that the human/civil rights action in favour of particular Roma persons and groups may be also connected with the rights of other particular persons and groups in particular local, national, international contexts and circumstances. The "Roma rights"-oriented practice may be more productive as a basis for confidence- and coalition-building among various groups in given local and/or supra-local contexts, rather than for building identities and reinforcing interests rooted in a particularistic, sometimes exclusive, group ideology (be it ethnic-kinship groupings, national, communitarian, etc).

Take the programmes for combating poverty and/or for community development: Fund-raising for "Roma programmes" may be part of programmes for the support of coalitions of local Romani families/groups and other persons/groups experiencing social exclusion, deprivation of rights, various forms and levels of poverty, etc. in a given local context. In this way, having Roma-related programmes in a given society may be perceived as an asset, as a resource, rather than an exclusive

right or a burden. I know that such an answer is far from being complete or convincing. I think that we better look into existing practices here and there... maybe we may find the embryo of a "good practice" and of a better answer to your question. Let's go to Plovdiv and try such a practice in connection with the recently built social houses with the financial support of the Council of Europe's Bank for Development. Or, even more challenging, try to find a solution to release the recent tensions in eastern Slovakia, while maintaining a level of social support for the impoverished, segregated Romani families in the localities of the region.

ERRC: Governmental programmes on Roma are emerging in many European countries. How important do you think their role is in fighting for Roma rights?

N. G.: The governmental policies that I've read and witnessed are political documents. I think their use is to create a basis for lobbying inside the government of a particular country. The connection between these policies and the realities of everyday life, however, is still very loose. Take the case of Roma in Slovakia, for example, because of the recent unrest in the country and the debates in the international media. There are a number of Roma-related policy documents adopted since early 1990s. It is easy to claim that most of these documents are highly ineffective. Nevertheless, I would be a little more moderate, saying that there is a level of effectiveness, at least in generating a political basis for lobbying and advocacy within the government structures. The Plenipotentiary Commissioner for Roma communities of the Slovak Government may take advantage of these documents to negotiate for more resources (political, human, expertise, finance, etc.) with the various Ministries, etc., who usually do not think about Roma as part of their agenda, and even less so when they allocate budgets for housing, infrastructure, schooling, etc. Sometimes, rights activists may find more open-minded ministers – let's say, from fresh memory, the Deputy Minister of Labour in Albania, or the Minister of Education in the previous government of Romania, or the State Secretary currently in charge of national minorities. They can lobby more easily, though

still with a lot of difficulties, to mainstream (this is the magic word!) Romani-related issues in the agenda of the public administration which is usually completely unaware of, and reluctant to acknowledge the gravity of these issues.

Recently, I took part in a meeting organised in Skopje, by the US-based non-governmental organisation *Project on Ethnic Relations* with the Ministry of Labour and a number of Roma activists, to discuss the drafting and adoption of a governmental “Roma strategy”. I saw that we are going to reenact in (the Former Yugoslav republic of) Macedonia a process, which had been enacted in Hungary, Romania, the Czech Republic, Bulgaria, etc. during the mid-1990s. And I understand now, looking back and looking forward, what may be the role of these documents. They can create a political platform for lobbying for Roma-related interests within the political class of a given country. Take the Programme for the Equal Integration of the Roma in Bulgaria. It was adopted in 1999, and only in September last year did the government adopt an action plan to implement it. For a couple of years the Framework Programme was a purely political document, quite advanced as a rights-oriented “text” in comparison to similar documents in other countries at that time. But that document was rather difficult “digest” for the mainstream political culture of Bulgaria. In informal talks, even some Romani representatives (who otherwise, have been involved in the NGOs round-table process which drafted the Framework Programme), did not agree with the statement in the document that the main problem of Roma in Bulgaria was discrimination rooted in the institutions and in public life; they thought that such a statement is detrimental to the “national interest” of their country. But, nevertheless, in five years, the Programme has proven to provide a good basis for the next steps – the adoption of anti-discrimination legislation in Bulgaria, and I think that was remarkable. That was the first goal formulated in the Framework Programme.

This Programme also provided a good basis for advocacy on the part of the NGOs, as well as on

the part of some segments of the government, and of parliament too, which eventually adopted the law. And this law is undoubtedly stronger than the governmental strategy on Roma itself.

ERRC: *What is the future for Roma and Roma rights?*

N. G.: We are faced with both opportunities and challenges – on the one hand, there is a more explicit political commitment to address the rights of Roma and Sinti, in some particular countries, on the other, there is a lack of political vision. It would not be easy, and we have to be aware of that. I notice among the activists and the experts or governmental officers, some scepticism and confusion now as compared to the 1990s. You can interpret this in different ways. I interpret it as being a sign of maturation. Now we better realise that the scale and the complexity of the problem are immense. We have to change the mentality of the political class in many countries, and not only in countries that are new democracies. It is a huge, huge change in the political mentalities in general that should take place. Fighting for the rights of persons belonging to Roma groups, is a productive entry in the general combat to raise the quality of the human rights work and of the human rights fight in the coming decades, not only for Romani persons, but for human rights practices in general.

There are a number of short-term prospects and long-term initiatives directly and/or indirectly connected with the betterment of the situation of Roma and Sinti, among others – the enlargement of the Europeans Union and the inclusion of countries with large Romani communities; the launching of a European Forum for Roma and Travellers, in connection with the Council of Europe, and possibly with other inter-governmental organisations; the implementation of the OSCE Action Plan on Roma and Sinti; the launching of the Decade for Roma Inclusion, 2005-2015;³ and at a more modest level, the Roma-related human rights work of various NGOs.

³ *The Decade of Roma Inclusion is an international initiative launched in June 2003 by the World Bank and the Open Society Institute with the goal to “accelerate and frame progress in improving the situation of Europe’s Roma populations” and “move beyond declarations and to create a coordinated framework for*

I see some promising developments, your organisation is a frontrunner in this process of maturation of the human rights work, taking the case of *Roma*, as individuals or as groups, as a test case, to generate innovation in the implementation of human rights in particular areas of government and society. We need new energies for this kind of human rights work, which has to generate a mass movement. We are still, with the human rights work for Roma, very few people, and I'm a little bit worried that it becomes increasingly officers' work, or administrative work, or "project-oriented" work. Well, I belong to the "older generation" of activists for the rights of Romani groups, I recognise my limits, I am maybe too critical or "grumbling". Sometimes, I think that we are about to lose the element of what we anticipated to become a mass civil rights movement

if we are not careful in the next couple of years. Of course, a civil rights movement has always an element of spontaneity, resulting from a combination of human energies and political circumstances. In preparation to achieve that spontaneity (difficult "to project" or to "plan"), we need thousands of people who are trained in the human rights as a collective mentality, and a morality; and in the technicalities of advocating human rights for particular individuals and groups. We need to amass a higher level of human resources, and have ten thousand, twenty thousand of people regularly involved in this fight to implement the human rights for those categorised (even "racialised") as Roma. I think that then we are moving to another stage of the movement, perhaps we will have a better slogan than the current "Roma Rights".

actions to improve the economic status and social inclusion of the Roma population". For more information see <http://lnweb18.worldbank.org/eca/ecshd.nsf/0/5acb3fb63019d944c1256d6a00438015?opendocument&Start=1&Count=1000&ExpandView>.

What is Roma Rights?

Ronald Lee¹

AS A NON-EUROPEAN ROMANI ACTIVIST AND EDUCATOR born in Canada and working in the area of Roma rights outside of Europe, I might begin by saying that while I am not working in Europe, I am familiar with the situation of Roma in the former communist countries of Central and Eastern Europe and with that of the Roma in the EU Member States. This is due not only to my ongoing research, but also from daily contact with hundreds of Roma who have arrived in Canada both before and after the end of communism. Our non-governmental organization in Toronto, the *Roma Community Centre*, involves Canadian-born Roma, former European Roma long resident in Canada, and Romani refugee claimants who arrived after the demise of communism from the former communist countries, the largest numbers being from Hungary and the Czech Republic with lesser numbers from Romania, Bulgaria, the former Yugoslavia including Kosovo, Poland and other “new democracies.” Many of these Romani refugees speak Romani dialects mutually compatible with Canadian Kalderash Roma, while others can communicate in English.

From my knowledge of the situation of Roma in the Americas, including Latin America, the EU countries and the former Communist countries of Central and Eastern Europe, I would not hesitate to state that nowhere do Roma have what might be considered equal rights with non-Romani citizens, nowhere are their rights as set out under the Universal Declaration of Human Rights guaranteed or fully provided,

and nowhere are their interests represented in public affairs. The violation of Roma rights between various countries differs only in degree, not in kind. In some Western European countries, such as Britain or France, the right to camp sites for Romani itinerants and the right to undertake traditional economic practices based on commercial nomadism is not guaranteed and in Britain, persons attempting to maintain nomadic practices may even find themselves criminally prosecuted, for example for violating draconian trespass laws. In the United States, there are no laws against nomadism as such, but Romani commercial nomads are subjected to racial profiling because of their ethnicity by many municipal and State law-enforcement departments.² In Canada, the standards used by Canadian Immigration (CIC) and the Immigration and Refugee Board (IRB) to judge the eligibility of Czech Romani refugee claims in 1997–98 are not the same as those used to judge the eligibility for refugee status of Hungarian Roma from January 1999 to 2004, although the reasons for the Roma from the two countries to seek refuge in Canada are exactly the same! Why should the Czech Roma receive 89 percent positive decisions in all claims heard by the IRB Adjudication Board and the Hungarian Roma a pathetic rate of around 12 percent overall?

In Central and Eastern Europe, Roma do not receive the same schooling as non-Romani citizens and are commonly sent to schools for the developmentally disabled. In the US, Romani families are condemned in the media for not sending their children to school, where their parents fear they will be assimilated.

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² See, for example, <http://fraudtech.bizland.com/News>.

In the refugee camps in Italy, thousands of Romani children, whose parents want them to be educated cannot even get to school since no school buses are provided. In many countries, especially in the former communist countries and now in some EU countries, where Roma have managed to somehow gain temporary status, children face massive discrimination in school and soon develop a fear of school. Unless the parents are willing to see their children assimilated into mainstream culture, there is no educational programme for Roma in any country that will guarantee them an education as Roma.

In the former Communist countries, where the formerly independent, self-employed Roma were forcibly turned into members of the “proletariat” by Communist regimes which saw their historic and traditional free enterprise economy as “reactionary”, there is now massive discrimination at the workplace thanks to this past injustice and Roma are everywhere unemployed or underemployed. In the USA, Roma who are self-employed as itinerant tradesmen and have been earning a decent living for generations are now penalised, prevented from earning an honest living, stigmatised as “con artists” (people who work frauds by misrepresenting themselves) and “scammers” (swindlers) and even criminally prosecuted by racist members of the law enforcement agencies. These and private consultants hired by them write books and create Internet web sites full of reports where the evidence for Roma criminality is too often based on fictitious novels and movies. The American Romani population is described by self-appointed “experts” as “secretive”, thus implying that the population in general has “something to hide”. Such ethnic profiling of Roma as criminals is not done with any other minority in the US, but because Roma are not generally viewed as an ethnic group in the US but as “gypsies”,³ this is a gray area for US civil rights organisations. In many cases, these sites report news about Romani suspects who have been implicated in certain crimes but who have not yet been arrested or convicted and in some cases are innocent or who later are acquitted.

This erroneous belief that Roma are criminal by heredity was a popular theory in the 19th and early 20th century when both Roma and Jews were considered to be non-Europeans by “race” and criminal by heredity and thus “potential polluters” of the “civilised” European (Aryan) population. When this hypothesis fell into the hands of the Nazis, it resulted in the Holocaust. Unfortunately, the hypothesis is alive and well in the United States, in 2004, among a number of people with neo-fascist views, who are allowed to publish their false eugenic theories openly both in the public media and on American-based web sites. Thus, Roma rights should not be considered just a Central and Eastern European issue nor even a European issue. It is a world-wide issue since, as already stated, in no country where Roma live do they have their rights as guaranteed under the Universal Declaration of Human Rights. Of course, the flagrant abuses of Roma rights are most serious in the “new democracies” where “democracy” has been legislated into existence and is more of a word than a historical system of government, and where there is little widespread understanding of democracy as it is known and practiced in countries that have had a long tradition and history of democracy. The concept of multiculturalism, as defined under post-1960s Canadian law, where all minorities have rights to ethnic culture and language as part of the Canadian mosaic is problematic in Europe where the nation states are based on ethnicity rather than on birth or citizenship and citizens not of the national ethnicity are somehow second-class because they are not ethnic Magyars or Romanians, Bulgarians or Serbs. However, the Magyars in Transylvania can look to Hungary for protection against persecution, or the Romanians in Hungary can look to Romania for protection. The Roma, on the other hand, being non-territorial, are everywhere defenseless against persecution.

While the EU countries willingly admit that there is persecution of Roma in these former Communist countries, they conveniently forget this when faced with Romani refugees seeking asylum from persecution who have arrived at their borders and refuse

³ *Most North Americans believe that anyone can become a “gypsy” just like anyone can become a “hippie” or a “hobo” by a simple change of lifestyle and/or a way of dressing and acting unlike the situation in Central/Eastern Europe, where “cigan” or whatever local equivalent of English “gypsy” Roma may be known by are primarily seen as an ethnic group.*

to accept them as members of a persecuted minority group in their countries of origin as defined by their own admission. Canada, on the other hand, with the single exception of its shoddy treatment of Hungarian-Roma refugees, has a much better record and regularly accepts around 50 to 60 percent of Romani refugees from any former communist country other than Hungary.⁴ To date, no EU country even comes close to this record.

But just what are Roma rights and should some rights be given to Roma because of their culture that are not automatically given to non-Romani citizens of the country in question? This is a difficult question to answer. One might look at the situation of Canada's Native Peoples where Native Peoples on some reserves are granted hunting and fishing rights not available to non-Native Canadians. In many cases these rights have become irrelevant where the reserves are surrounded by urban development and the only potential game left might be squirrels and pigeons. In more isolated areas, these rights are in force and enable the Native Peoples to follow their traditional culture to some extent despite the objections of non-Native Canadians who complain that they have to buy a license to hunt or fish and can only do so in the limited legal hunting and fishing seasons.

But since the rights that might be claimed by Roma would differ greatly from one area to another a standard set of rights cannot really be defined other than the basic rights that every citizen in every country should have under the Universal Declaration of Human Rights but which are still not readily available to millions of people throughout the world, including the Roma. Obviously, the Universal Declaration, while it may be an aim to strive for, is not a reality for most of the Third World nor for the Roma in too much of the so-called "civilized world." In countries where this Declaration is generally applied to the non-Romani population, it should also be extended to the Roma. Unfortunately, in many of them, it is not. The application of this Declaration to Roma would certainly help alleviate the problems of unemployment,

sub-standard or total lack of housing, equal access to education and other rights enshrined in this Declaration, including equal access to legal protection. The passing of hate-crime laws, for example, such as exist in Canada can eliminate violence against minorities or if not eliminate it, at least ensure that the perpetrators will be arrested and charged under these laws. Such laws have yet to be passed in the "new democracies" and still are not enforced in many EU countries where Roma are concerned.

One problem in this area is that too many national governments do not consider the Roma to be equal citizens of the country despite the fact that the original group of indigenous Roma may have arrived centuries ago. One glaring example of this is Hungary. In 2000, a lengthy report, worthy of George Orwell's Ministry of Truth, was compiled by Dr. Rudolf Joó, then Deputy state secretary at the Ministry of Foreign Affairs (Budapest, 2000) with the grandiose title of: "Measures taken by the state to promote the social integration of Roma living in Hungary." To see what is wrong with this report, let us create a hypothetical similar report that might be issued by the Canadian Deputy State Secretary of the Ministry of Foreign Affairs about the federal government's work to date and future plans for the social integration of French-Canadians in Canada: "Measures taken by the state to promote the social integration of the French living in Canada." This would be totally unacceptable to French-Canadians who are a founding Nation of Canada and have been here since the early 17th century long before the British Conquest of New France in 1759 (ratified in 1763). It should be equally unacceptable to Hungarian Roma. Roma have been living in Hungary since the 15th century and thus predate the French arrival in Canada by 200 years. If they are not considered Hungarian-Romani citizens in the report dated 2000, will they ever become so? They are not "Roma living in Hungary" like one might describe a herd of migrating buffalo temporarily grazing in Hungary on their annual trek from Austria to Romania but an integral part of the Hungarian population since the 15th century.

⁴ In 2002, there were reportedly around 8,000 Hungarian Roma refugees in the refugee system in Canada. Now there are around a thousand and they are being deported almost every day. This has not been the case with Roma refugees from other countries. Published figures for Czech nationals show an acceptance rate of 89 percent of all cases heard by the Immigration and Refugee Board (IRB) and most of these reportedly were Roma. The figure for Hungarian Roma is around 12 percent since January, 1999.

Here we might see the root of the problem facing the Roma – non-acceptance as equal citizens in their countries of birth by national governments and by most non-Romani citizens.

The report referred to was circulated by the Hungarian Consulate in Canada to Canadian Governmental agencies to convince Canadians that Hungary was planning great things for its Roma, much like a Canadian government report on the homeless in Canada and how great plans are afoot in Ottawa to eliminate homelessness in Canada while people are still sleeping on the streets and are likely to be doing so 20 years in the future. Government reports such as this, without positive action, are little more than so much hot air and accomplish nothing. They are routinely issued by bureaucracies to whitewash the true situation which is that nothing concrete has been done or is likely to be done. Until the “Roma living in Hungary” or Romania, or Poland, or elsewhere in the “new democracies” are considered citizens of Romani ethnicity, nothing will ever be done, since the prejudice is still evident at the highest governmental level by elected government officials who pay lip service to human rights but realise that programmes that go against the wishes of the average voter are not likely to assure them of reelection.

The position of Roma, as a minority, in the “new democracies” is really much closer to that of aboriginal people in former colonial countries such as Canada, the US, New Zealand and Australia, to give some examples, than it is to the ethnic Magyars living in Romania or the ethnic Romanians living in Hungary. These groups have more in common with French-Canadians living in Canada. While Roma, of course, are not aboriginal to these countries, the paternalistic approach taken towards the Roma by these “new democracies” is reminiscent of the treatment of aboriginals in the former colonial countries – beans and blankets rather than self-determination and equal representation in the government.

Since most Roma in Europe have never experienced any political leadership beyond that of the usually self-appointed clan leader or “big man” otherwise known as the *baró*, *sherengero*, *shero Rom*, *bulabasha*, *voivod*, etc., political organization at a national level is not part of Roma history. The national governments in the “new democracies” know

very well which Romani leaders are the most easily controlled and the most easily bought and play their usual game of divide and conquer while the Roma spend far more time arguing and fighting with one another than devoting time and energy to organising effective self-representation and social activism. Those Roma who do get to become part of the governmental mechanism, albeit at a lower level, then become more concerned with hanging onto their positions and their incomes to dare to rock the boat. Having the model of the aboriginal cultures and their treatment by the governments of their respective countries previously mentioned, these governments of the “new democracies” have an effective and workable model to emulate in order to “keep the natives in their place.”

Rights to culture are generally understood to be part of the Universal Declaration and if we include language as a vehicle of culture, then we find that Roma are denied this right almost everywhere they live. If Romani culture and history were to be included in the general school system of countries where there are significant Romani populations, this would go a long way to help eliminate the roots of prejudice and the resulting discrimination and persecution. I have seen what has been accomplished in Toronto to date in this area through our work as an NGO with the Toronto District School Board and ESL teachers and Principals as well as in my own course at New College, University of Toronto and while much more needs to be done, what has been done shows that such a policy would go a long way to eliminating stereotyping and prejudice. Young adult Roma, brought up in these “new democracies” during and after Communism arrived in Canada knowing little or nothing of Romani history and culture. After becoming fluent in English, they began to read books in English about their history in Europe and were amazed to learn what many educated Roma in North-America have known for years. They then began to see themselves and the Roma in a much different light. Their first question was usually: Why is there nothing like this in Romania, Hungary, Poland, or whatever country they grew up in. I might ask the same question. The right to know their own history and culture should be one basic Roma right.

The Romani language or more properly, its modern dialects, have survived centuries of ethnocide

designed to eliminate these dialects from the edicts of Kings to Empress Maria Theresa in Austro-Hungary and the former communist governments of central and eastern Europe. Roma have the right to language and in countries where they are a significant percentage of the national population, which includes all of the “new democracies,” this should be done on a massive scale. Admittedly, some schools do exist but this is a drop in the bucket to what is really needed. To ensure the survival of Romani dialects as vehicles of Romani culture what needs to be implemented is nationwide education in Romani and acceptance of Romani as a national minority language as is the case with other national minority languages in most of these countries. Efforts should be made to educate young Romani-speaking Roma as teachers who can then work in the national school system.

Romani nomadism, so overplayed by non-Romani writers, is really no longer a major issue in Central and Eastern Europe, where the vast majority of Roma are sedentary, but in those countries where significant numbers of Roma or Sinti still travel to earn a living, it should be addressed and given legal status. In Britain, Gypsies and Travellers cannot even camp on land they legally own. On the other hand, nomadism can be a double-edged sword as we see in Italy where Roma are seen as “*nomadi*” and forced to live in quasi-legal camps, not allowed to settle despite the fact that most of these Romani refugees are from Kosovo, Bosnia and elsewhere in the former Yugoslavia and others from Romanian settlements and ghettos who were never nomadic in the first place.

One of the main areas where basic Roma rights are ignored is the law. At present, in most countries, there is a law for non-Roma and a law for Roma. All too often Roma are seen as “guilty in principle.” Innocent Roma are all too often railroaded into confessing to avoid beatings or when families are threatened if the suspect does not confess to a crime he or she did not commit. Numerous reports dealing with specific countries published by the European Roma Rights Center deal effectively with this issue but I and many others are eagerly awaiting the booklet on Hungary which has not yet appeared. But it is not only in some former communist country in central and eastern Europe whose legal and penal system is reminiscent of that shown in the movie *Midnight Express* which shows

the brutal treatment of an American student incarcerated in a Turkish prison for possession of drugs, as far as Roma are concerned that we find Roma denied justice under the law.

The United States is becoming another country where American-Roma are too often racialised and criminalised under some municipal and State laws and are not able to obtain the same access to a fair trial as most other Americans because, being identified as “gypsies” (the word Roma is unknown in the US except among scholars, some Government agencies and the Roma themselves), they are automatically seen as “guilty in principle” and thus prejudiced in the eyes of the court. Itinerant Roma tradesmen who have worked honestly have been arrested and forced to repay money they earned to the homeowners they allegedly “swindled” because they were identified as “gypsies” and thus assumed to be “guilty in principle.” Such reports have appeared on the Internet on the sites dealing with the alleged “Gypsy crime wave in America.” The booklet about the US justice system and the Roma also still remains to be written. Added to this, there are some countries in Latin America where according to Internet reports by Romani activists, Roma do not receive the same rights under the law as non-Romani citizens. Some of these abuses were discussed at the Forum of the Americas for Diversity and Plurality in Quito, Ecuador in 2001 by the Romani delegates from various Latin American countries, Mexico, Canada and the USA. Here, it was estimated that there are at least three million Roma of various groups in the Americas. This now raises another question. Are Roma to be considered a European population whose rights should be guaranteed by the European institutions or are they a world-wide minority whose rights should also be guaranteed at the international level?

While the situation of Roma rights in Europe has been described in many books, reports and in documentary films, that of the Roma in the Americas for the most part remains undocumented. What has been published to date is mainly material dealing with the culture and lifestyles of certain North-American Romani groups. Data on Roma in Latin America is mostly non-existent in English. There are also an unknown number of Roma of various groups in Australia and New Zealand, South Africa, former European-Roma now living in North-Africa and elsewhere

including Russian Roma who have been living in China since the Communist era. The large Romani population of Turkey also suffers from lack of human rights and this has not been well-documented either. If all these totals are added up, it might well be that one-third of the world's Romani population lives outside of Continental Europe and Britain. This being the case, Roma can hardly be considered to be a strictly "European minority."

Another area of Roma rights not often discussed is the situation of Romani women. While this is more of an internal issue for the Roma themselves to resolve, we are still faced with the forced sterilization of Romani women in former communist countries and still practiced in Slovakia and allegedly in other non-EU European countries, including Hungary. Another area of abuse is forced prostitution of Romani women and girls by the European underworld. Not only Romani women are victims of this but little seems to have been done to even document this abuse let alone combat it.

One of the most tragic examples of denial of Romani rights is the situation of the Romani orphans in Romania. The vast majority of these orphans, victims of Ceausescu's policies, are children of Romani parents. I have met a few of the lucky ones who were adopted by Canadian parents but most of them remain in Romania, unadopted and neglected, suffering from AIDS

because of unsterilised hypodermic needles, underfed and with no hope for the future. The orphanage authorities press Romanian children on the would be adopters and tell them not to adopt Roma children usually saying they are "thieves by heredity." North-American Romani families who have tried to adopt these Romani children have not been successful and the racketeering involved in the Romanian adoption system by Romanian lawyers, adoption officials and even some government employees is a disgrace and warrants investigation and massive condemnation from the world community.

These are just some of the main issues that I see as Roma rights but there are obviously many others. Much has been done to redress some of these and much remains to be done. But no matter what laws are passed at the national level, what programs are implemented, which former communist countries manage to join the EU, in the end, it will be we Roma who redress the situation. We must learn to work together and with non-Romani organizations that are sincere in their aims to help us obtain these rights. As the old Romani adage says:

And 'ekh than te beshas, ame zuriavas
And 'ekh than te na beshas, ame meras

Standing as one, we shall grow stronger
If we do not stand as one, we will die out.



Emerging Romani Voices from Latin America

*Druzhemira Tchileva*¹

THIS IS AN EFFORT to have your attention on the Roma presence in Latin America. I want to achieve something more than simply adding a very welcome intercontinental flavor to Romani issues, as some have interpreted the participation of the Romani delegation from Latin America at the World Conference against Racism in Durban, South Africa. The Conference itself has been important for the Roma from this part of the world in their attempt to emerge from invisibility. In March 2001, in Quito, Ecuador, there was a preparatory meeting for the Conference in Durban at which Roma from Colombia, Ecuador, Chile, Argentina, Canada and the USA worked on the Quito Declaration entitled “The Other Son of Pacha Mama (Mother Earth): Declaration of the Roma People of the Americas”.²

The Roma in Latin America have a presence in most of the states in this part of the world. When the cultural and ethnic diversity of the American continent is discussed, however, the existence of Roma as an ethnic group is systematically ignored. The Romani groups present in the Americas have been arriving from Europe since the beginning of the colonisation as well as with the migration processes, continuing up to the present. The biggest wave of Romani immigrants came at the end of the nineteenth and the beginning of the twentieth century. As Rena Gropper says in her book *Gypsies in the City: Culture Patterns and Survival*, written in 1975, the Roma “made themselves at home in the new territories they moved to”.

Romani settlement in Latin America took place along with the settlement of huge masses of Euro-

pean immigrants. Like the Roma who came with their cultural heritage, language, traditions, the European immigrants also “transported” their prejudices and stereotypes for Roma, absorbed from the European societies. Nowadays, Roma in Latin America are faced with the effects of the ridiculous and biased tales of child kidnapping, stealing, cheating, sorcery and witchcraft. While Roma have preserved their distinct culture, however, little is known in society about them. The vast majority of the non-Roma are not aware of our origins, group diversity, migration processes, as well as of the persecution of Roma during and after the Nazi regime. While the Romani presence in Europe is often mentioned in public discourse, the existence of Roma in Argentina is covered by silence. Official information about Roma in this hemisphere does not exist. They are not included in any census as Roma. Usually, Roma hide their Romani background if they have to get a decent job, better qualification, or better living conditions. Saying “I am Romani” diminishes the chances for integration within the non-Romani society. The situation of Roma in the Americas is summarised by Ian Hancock as follows: “Housing is not a problem in the Americas, but health is; anti-Gypsyism is less rampant in South America, but education remains a serious issue. Roma everywhere share the concern that the children will not know enough of their own language and culture tomorrow”.³

The Roma-related problems on these territories have to be seen in the context of each particular state. To date only Brazil and Colombia have recognised Roma officially as minorities. A representative of the Brazilian government stated at the Working Group on Minorities of the UN Sub-Commission on the Pro-

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² *The Declaration is available at: http://www.philology.ru/liloro/romanes/declaration_eng.htm.*

³ *See The Romani Movement: What Shape, What Direction? In Roma Rights 4/2001, p. 24.*

motion and Protection of Human Rights in Geneva, in 2003, that there are about 600,000 Roma in Brazil. In reality, however, their number in Brasil is higher.

The hidden discrimination against Roma is escalating in real anti-Romani actions in some places. Here I have to mention the marginalisation of the Brazilian Calo Nomads (Roma of Portuguese origin in Brasil), who have also been subjected to attacks in their encampments by the “fazendeiros” (landowners).⁴ Moreover, 29 families of Romanian Roma were deported from Brasil in 2001. In Colombia, as a result of the operation of armed groups (groups operating in opposition to the official government) for many decades, Roma live in permanent insecurity. In Chile, within some of the Xoraxane groups the drug addiction problems are rooted in the group marginalisation both by Roma and non-Roma.

In Argentina, as in the majority of the countries in Latin America, as early as school age, Roma start to experience the effects of the cruel stigma of being “Gypsies” and the attitudes, which associate Roma with genetic criminality. “Gypsy crime” was the focus of the TV series “Soy Gitano” on the Argentine channel 13 in the TV prime-time for almost 10 months until January 2004. On behalf of the Romani community in Argentina, AICRA denounced the soap opera as anti-Romani, and complained before the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) – an institution created in 1988 with the task to implement the Argentinean anti-discrimination law. In their response to our complaint, INADI claimed that it was not the purpose of the TV series to present documentary facts about Roma but rather it was a fiction that had nothing to do with reality. INADI then advised the TV to avoid using sentences like: “Never believe Romani women.”

Argentina is a country with a strong presence of Jewish, Armenian and Arabic communities. Those communities have been an example of preserving their cultural identity. And in that sense the Romani

community is not an exception. Awareness of their own Romani background and cultural heritage determines their self-esteem as Roma. By unofficial estimates there are approximately 300,000 Roma in Argentina, who belong to the following Romani groups: Greek, Moldavian and Russian Kalderash, some Lovari families and some Chilean Xoraxane families (all these groups speak Romanes); there are also Argentinean and Spanish Kalé and Boyash Roma (descendants of Roma from Serbia and Romania). Only about 5% of the Argentinean Roma have a semi-nomadic life. As a matter of fact, in the 1950s the nomadic life was forbidden by law by General Perón and Roma in Argentina were forced to settle. Since then, Roma in Argentina live mainly in the big cities, all over the country, in mixed middle class neighborhoods. Despite the anti-discrimination law in Argentina, discrimination against Roma can be observed in everyday life. A 2000 Gallup poll revealed high levels of prejudice against Roma, commensurate only with the levels of prejudice against the Mestizos (people of mixed European and Amerindian descent).

The first Romani organisation that appeared in Latin America was established by a Brazilian-born violinist, of Serbian Romani descent – Mio Vasite in 1987, in Rio de Janeiro, Brazil. In the meantime, other organisations focusing on Roma, created by non-Roma were also established in Brasil, such as the *Center for Gypsy Studies (CEC) Minas Gerais* and *CEC – Sao Paulo*. In 2002, a Colombian Romani organisation, *PROROM*, was established, modelled on Spanish Romani organisations such as the *Union Romani*. From this, two more organisations were born – one is called *ASOROM* in Ecuador and the other – *Union Romani de Colombia*. All of these took shape under the authority of the Romani Kris and the Kumpanias.⁵ The first two organisations *PROROM* and *ASOROM* played an important role as mediators, making possible for many Roma, including myself, to participate in the conference against Racism and Xenophobia in Quito. This contributed

⁴ See Cristina de Costa Pereira. “The Social Situation of the Gypsies in Brazil” and Virginia R.S. Bueno “Regional and Local Policies Toward The Gypsies in Brazil”, papers presented at the International Study Conference, Rome 20-26 September 1991, organised by the Italy-based Centro Studi Zingari. See also *Pavee Point*. Roma, Gypsies, Travelers, East/West: Regional and Local Policies. Dublin, Ireland, 1997.

⁵ *Kumpania* is a Romani language word meaning a group of Roma who have economic relations and are organised on a residential basis; a grouping together of families not necessarily united by kinship ties, but all belonging to the same group and the same subgroup, or to related subgroups.

to the first step of creating *SKOKRA* (a federation of the Roma NGOs of the Americas). Meanwhile, in Chile Xoraxane Roma are making steps to establish their own organisations.

The idea of the mobilisation of Roma was brought to Argentina in 1989. Argentinean Roma informally set up a Romani organisation *Narodo Romano*. This organisation, however, was not registered as a legal entity and at a later stage, its work has been taken up by the *Association of the Cultural Identity of Roma in Argentina* (AICRA), established in 2000. AICRA is the initiator of the first Roma radio programme in the American continent called “Amaro Glaso” (Our Voice). The programme started in March 2002 with the goal of promoting the Romani ethnic identity, language and culture. There are blocks of news about Romani events taking place in the different European and American states, blocks with Romani music from all over the world, and fairy tales in Romani language with a translation in Spanish. We use this radio pro-

gramme as a tribune for raising awareness among the different Romani groups as well as a tool for educating the non-Roma about our Romani values.⁶

The Quito Declaration proclaims the Romani unity beyond the group cohesion between the distinct Romani Kumpanias in the Americas. The emerging partnership is a delicate equilibrium, which will require flexibility and imagination at all levels to maintain. The development community will have to revise its mindset and think not just in terms of “focusing services on a target population”, but of creating space and opportunities for representation. Roma from the Americas are looking forward to learning of new options, making decisions, exercising leadership, resolving differences and making their voices heard. There are apples of distinct colours – green, red, yellow; of different tastes – acid and sweet; the apples come from distinct soil, and have a different price. They differ in many things but they are all apples. For one thing, our best tutor has always been nature.



⁶ The programme is aired on the local “Radio del Pueblo” every Friday between 8–9 PM, and since November 2003, it has also been on the Internet, at: www.750am.com.ar. The program has received financial support from Minority Rights Group, as well as from some Romani community members.



Human Rights Protection is Unavailable to Those Most in Need of It

In December 2003, the ERRC spoke with Mr Jenő Kaltenbach, Parliamentary Commissioner for the Rights of National and Ethnic Minorities in Hungary.

ERRC: *In this issue of Roma Rights we are looking for an answer to the question “What is Roma Rights”. Could you explain for us what this means to you?*

Jenő Kaltenbach: First of all, let me say that I don't think we can differentiate between the rights of persons on any basis. I think that the rights which are recognised by international law and which are described as minority rights are absolutely human rights, in spite of the fact that many people refuse to recognise minority rights as human rights. The only reason to refuse to recognise minority rights as human rights is that international human rights documents as well as other documents such as the constitution and other national legislation, were created by nation states. The fundamental fault of this whole human rights building is that it is extremely partial, so to say, discriminatory. It does not acknowledge that disadvantaged groups exist. The genetic problem of the whole human rights system is that human rights protection is unavailable exactly to those who are most in need of it. And, this is all based on political considerations. For me, it is not a question at all whether minority rights are human rights, since the latter are the most original human rights. If the task of human rights is (and I am convinced it is) to stop the despotism of nation states in violating human dignity, then the question should be the opposite – apart from minority rights, what other human rights exist?

ERRC: *What, in your opinion, makes Roma rights different from other minorities' rights?*

Jenő Kaltenbach: To tell you the truth, I do not really like the expression “Roma rights” since it might give the impression that different nations have different rights. I would rather say that Roma, as subjects of minority and human rights, differ from other minorities in the sense that their situation is one of the most problematic. They are the most disadvantaged group and they are the targets of the most intense prejudices. Therefore, they are the most vulnerable minority group as well at least in Hungary. However, other states have their own “Roma”. For example, the North Africans in France, the Sudanese in Denmark, the Turks in Germany, etc. Each country has its own vulnerable group, which is often held responsible for all problems in the country. “Blame the victim” is an old, well-functioning method when we do not want to face a problem because it is too sensitive or costs too much money. Then it is easier to say that they, the victims, are responsible for their own situation. Such an attitude is especially characteristic for Hungary and for the countries of Central and Eastern Europe.

Let's see what happened after World War II. The atrocities committed during the war had been the most serious crimes in the history of humanity but none of the countries of Eastern Europe have been willing to acknowledge responsibility for those crimes. The view that only Hitler, the Nazis and their followers have been responsible for the events of World War II still exists, whereas in reality, a whole bunch of Eastern European countries (including Hungary) contributed to these horrible events. We simply do not want to face this and to see our own role. Moreover, the opposite happens when somebody raises this issue. We feel hurt and we become angry, saying that Hungary has not committed any sins

and that we had to suffer enough. This way of thinking remained the same after World War II.

ERRC: *Do you think that the solution of the problems facing Roma is more important than the solution of problems facing other minorities?*

Jenő Kaltenbach: It is different in each country. I think that most nation-states care about their own nations first. In Hungary, the focus is the ethnic Hungarians in the neighbouring countries and if there exists any consensus among the elite — then it is this issue. What makes me feel really sad is that the political elite seems to have a double standard: On the one hand, it is the issue of Hungarians abroad which is dealt with as an absolute priority, and on the other hand, there is the issue of the minorities inside Hungary which tends to receive less attention. Take, for example, the issue of registration by ethnic origin. The 2001 the Hungarian Status Act, which accords certain benefits to ethnic Hungarians abroad, provided for registration of ethnic Hungarians as a means to prove belonging to the Hungarian nation. Persons registered have access to the benefits envisioned by the Act. As far as minorities in Hungary are concerned, however, debates in the past few years failed to result in consensus to amend the Hungarian Minority Act to require declaration of the belonging to a minority group of the candidates for minority self-government.¹

As I said, I think that Roma are the most vulnerable group in Hungary. First, they are less integrated in most of the societies in Central and Eastern Europe, not only in Hungary. Therefore, their ability for self-defence is much weaker. Usu-

ally, they do not have or have just a tiny elite and are not capable of promoting their interests because of the lack of material and intellectual resources. Moreover, they are exposed to the most intense prejudice. These factors taken together, make Roma quite vulnerable and, due to many different reasons, Roma have not really been able to become a community to date. Other minority groups are better organised and have relatively consolidated communities. This is not characteristic of the Roma, who are in an early stage of becoming a community. Roma in Hungary are extremely divided — also from the inside. Of course, those who want can easily use this and make [the Romani community] even weaker.

ERRC: *The Hungarian Minority Act was attacked many times for allowing majority voters to vote for minority self-governments. What do you think about the possibility of registering Romani voters for the minority self-government elections?*

Jenő Kaltenbach: The situation is that in Hungary (and I am sure that not only here) there is never enough time and capacity to prepare an act properly. We are making acts without examining what is needed and what is the reality. As for the registration: One Romani politician says that it is good for Roma, others say it is not acceptable. It is understandable that many have misgivings about the possibility of registration conducted by the state regarding self-determination. That is why we are trying to arrange for minorities to do registration themselves, within the community and in this way reduce hostile feelings. As I can see, this would be acceptable for most of people.

¹ *Editor's note: In the context of the debates on the amendment of the Hungarian Minority Act, it was proposed that the right to vote and stand as a candidate in minority self-government elections could be enjoyed by members of national minorities who declare their belonging to the respective minority and who are registered in minority electors' register. Minority Ombudsman Jenő Kaltenbach also proposed that one should become a candidate only if he/she is a member of or supported by a minority organisation and that the candidate should also meet certain objective criteria for belonging to a certain minority to be determined by law after minority consultation. It is believed that such measures would preclude the occurrence of situations in which the majority circumvents the minority will by putting up candidates in the minority elections who would meet the approval of majority voters. A situation in which the majority population outvoted the Romani minority in minority-self government elections has occurred in the village of Jászladány in the October 2002 minority-self government elections. For more information, see Anita Danka and Nicole Pallai. "Legal but Illegitimate: The Gypsy Minority Self-Government in Jászladány". In Roma Rights 4/2003 at: http://www.errc.org/rr_nr4_2003/noteb4.shtml.*

ERRC: *Do you think that affirmative action is needed?*

Jenő Kaltenbach: Yes, absolutely. And it should not mean only legal instruments. I think primarily non-legal instruments should be used – various programmes should be implemented that are able to improve the situation of disadvantaged groups. There should be a policy aimed at abolishing the differences in employment and education. However, such programs have a chance only if they target the whole society, since a change of society’s perspective is needed. In a hostile environment, all kinds of Roma programmes will be rejected and killed.

ERRC: *What should be done to make such programmes work?*

Jenő Kaltenbach: The whole education system, the media, churches, trade unions and other bodies should take part in establishing a wide social co-operation. At first sight, achieving such co-operation would appear to be a difficult task, but in reality it is very simple. If the country’s elite wants something, it can always happen. There should be a consensus in the elite that the disadvantages facing Roma are a serious problem in society, affecting not only Roma, but also the society as a whole. The recognition of this fact is a big challenge for Hungary, but without the acceptance of this, we cannot be a modern European country, a consolidated civil democracy. Unfortunately, we are in a vicious cycle because today’s elite could only recognise this need if their predecessors had been aware of it, that is, if they had grown up in an environment where promoting Roma and other minorities had been a part of national policies. Another problem is that, generations of lawyers graduate without acquiring any knowledge about human rights law, which is still considered of low value. I think that separate human rights departments should be established in Hungarian universities. But again, to achieve this, the elite should recognise its importance.

ERRC: *How much do you think “soft law” can work?*

Jenő Kaltenbach: I think that some goals can be achieved by “soft methods” and others cannot. I think that the Roma topic belongs to the latter category. Compulsory methods and the straight and clear standpoints of the state should be used simultaneously. Sanctions are needed too. The state should not be afraid to make clear what values have to be acknowledged and promoted.

ERRC: *Do you think Roma trust and use your office?*

Jenő Kaltenbach: Two-thirds of the complaints my office receives come from Roma. This fact indicates that we deal mainly with problems affecting Roma. I have personally often been invited to various communities to meet Roma as well as other minorities. As I can see, they trust the Minority Ombudsman’s office. However, it is [the Roma] who should be asked about this rather than me. As for the results, our main weapon is publicity. We are often in the press and media sending the message to a wider society. I could provide a number of examples from the last 8 years, which made people think about minorities’ problems. Of course, reactions were not always positive. However, the fact that the people have had to face these problems is a big step compared to the situation 10 years ago, when the Romani issue was absolutely marginal.

ERRC: *What is the future for Roma and their rights?*

Jenő Kaltenbach: I do not think that I should answer this question, since I don’t want to speak about the situation of Roma for the Roma themselves. I think that all over Europe an emancipation process has started, which includes the recognition of Roma as one community and the codification of their culture and language. If this process continues, we may expect that the prejudice against them would decrease. The alternatives, however, are clear: Roma will integrate and will become equal members of society or they will start along the way to “becoming a nation” because of the refusal of the environment to accept them.



The Romani Claim to Non-Territorial Nation Status: Recognition from an International Legal Perspective

Morag Goodwin¹

THE ROMANI MOVEMENT and the international claims to recognition which have issued from various parts of it should be seen in the context of changes in the nature of global society and governance. The term “globalisation”, as is frequently noted, is used to describe a wide series of transformations connecting all of us in previously unimaginable ways. A plurality of sites of governance has emerged, at the local, regional, national and global level, and the way in which we are governed is being incrementally transformed, even if this transformation is not necessarily wholly understood. It is in the space created by these changes that an increasing number of identity-based groups are staking a claim to political recognition. In this play of flux and uncertainty there is arguably room for a reassessment of the way in which we recognise and deal with group-based differences. The unusual nature of the Romani claim to non-territorial nation status provides an interesting test case for re-conceptualis-

ing international law and participation in the international legal system.²

I. The Claim Being Made

The claim to non-territorial nation status was first clearly articulated by Romani groups in the “Declaration of Nation” produced at the Fifth Romani World Congress held in Prague during the summer of 2000.³ While the Declaration does not explicitly renounce any claim to territory as such – the word territory does not appear anywhere in the document – it is understood that the repeated calls for recognition as a non-*state* nation should be read as a rejection of the basic unit of the international system: effective control of territory.⁴ The claim has been repeated in numerous fora since, particularly in the context of the 2001 United Nations World Conference Against Racism, and now forms part of the main ideas being discussed by Romani leaders as a political strategy

¹ The author, a former intern at the ERRC, is writing her Ph.D. in Law on the concept of a non-territorial nation at the European University Institute, Florence. The ideas and understandings expressed here represent work in progress and comments would be very welcome: morag.goodwin@iue.it.

² This article will attempt to sketch the international legal implications of making such a claim and is very much the author's own idea about how non-territorial nationhood should be conceived and rendered in the international system. The resentment by many within the Movement of so-called “authoritative” pronouncements by gadje “experts” on Romani issues is duly noted; the author is neither Romani nor an expert and the ideas contained within are merely offered up to the debate. Moreover, a number of key assumptions are made in the arguments that follow which the space accorded here does not allow to be discussed with anything approaching the usual academic rigour; this is done, however, in order to present a piece that it is hoped offers some interesting points for discussion.

³ This document was reproduced as an appendix to the article by Acton and Klimová detailing the events of the Prague congress. Acton, Thomas and Ilona Klimová. “The International Romani Union: An East European answer to West European questions?” In Guy, Will (ed.), *Between Past and Future: the Roma of Central and Eastern Europe*. Great Britain: University of Hertfordshire Press, 2001.

⁴ Such an interpretation is borne out by the subsequent meeting of the Romani leadership at Jadwisin, Poland, 15-16 April 2002. Project on Ethnic Relations (PER). Roma and the Question of Self-Determination: Fiction and Reality. Available on-line at: http://www.per-usa.org/Jadwisin1_12_03.pdf. The paper by Nazerali, Sean. “Democracy Unrealised – The Roma – A Nation Without a State” also offers this understanding; paper delivered at the ‘Democracy Unrealized’ conference. Academy of Fine Arts. Vienna, 23 March 2001 (on file with the author).

for gaining recognition.⁵ Although the current articulation of the concept of a non-territorial nation is the brain-child of the International Romani Union (IRU), the organisers of the Prague Congress, and as such does not necessarily command acceptance from all sections of the Romani Movement, the belief that Roma constitute a nation has been a mainstay of Romani political organisation, at least at the level of organisation in which international claims are being articulated; that there is agreement within the Movement on the fact of Romani nationhood is taken as a given here, although it is acknowledged that this is by no means unproblematic.⁶

The claim to non-territorial, or non-state, nationhood by members of the international Romani leadership is not quite as radical in terms of its novelty as some appear to believe it to be. The concept has a

history, albeit a largely forgotten one. It has its roots in the model of national-cultural autonomy developed by two Austrian statesmen, theorists and socialists at the turn of the last century: Otto Bauer and Karl Renner.⁷ Although it was developed within a socialist discourse concerned with resolving the national problems bedeviling the Austro-Hungarian empire, the concept was picked up and adopted by the Jewish Bund (or, formally, the General Jewish Workers' Union in Lithuania, Poland and Russia) – an organisation founded in 1897 by young intellectual Marxist Jews to provide a socialist response to the attempted assimilation and repression of Jews within the Russian territories.⁸ That Roma should be reviving a concept associated with Jewish organisation is not surprising; however, while the situation of Jews and Roma has been similar throughout much of their history, those advocating a non-territorial nation status

⁵ For example, the following paragraph formed part of the statement of recommendations by non-governmental organisations from Central and Eastern Europe, including the countries of the former Soviet Union, addressed to the United Nations World Conference Against Racism, produced at the meeting in Warsaw, 15-18 November 2000. Part of Article 5 of the statement reads:

“...we recommend that the UN confers the status of a non-territorial nation to the Romani people, providing for adequate representation in relevant international governmental organizations. The Roma should, *inter alia*, receive a seat in the United Nations, participate as elected officials in the European parliament, the Parliamentary Assembly of the Council of Europe and in the constitutive organs of these organizations...”

The statement is reprinted in full in Roma Rights 4/ 2000, available at http://errc.org/rr_nr4_2000/advol.shtml.

⁶ The influence on the Movement of the discourse of nationalism is clear and on the international level Romani political organisation has been concerned with claims to nationhood throughout its brief history, from the designing of a flag to attempts at standardising the Romani language, as well as clearly repeated statements of demands for recognition as a nation. For a history of Romani political mobilisation on the international level, see Klimová, Ilona. *The Romani Voice in World Politics*, unpublished thesis. University of Cambridge, 2003. Moreover, that the assertion that Roma constitute a nation is accepted by all sides of what can loosely be described as the Romani leadership is suggested by its acceptance by all participants in the Jadwisin seminar, *supra* n. 4. However, the sheer diversity of groups coming under the umbrella “Roma” suggests the need for caution in any attempt to articulate a unified identity, a point that has been well made by several members of the Movement.

⁷ For a useful summary of the relation between the thought of Bauer and Renner and ideas similar to “non-territorial nationalism”, see Nimni, Ephraim. “Nationalist Multiculturalism in Late Imperial Austria as a Critique of Contemporary Liberalism: The Case of Bauer and Renner”. In *Journal of Political Ideologies* Vol. 4 No 289, (1999). Although it was Renner who first developed the concept, Bauer adopted it and integrated it into his theory of nation, advancing a model for its implementation.

⁸ On the history of the Bund, see Tobias, Henry J. *The Jewish Bund in Russia. From Its Origins to 1905*. California: Stanford University Press, 1972. According to Tobias, the tension between the two aims of resisting assimilation and of being true to socialist ideals, and the consequent threat the tension posed to the unity of the movement, led the Bund to consider and adopt the compromise ideology of non-territorial nationalism. This view has been contested and some have seen the organisation, despite being a Marxist-social-democratic movement, as being committed from the outset to Jewish cultural autonomy based on the Yiddish language. Cf. Gitelman, Zvi. “A Century of Jewish Politics in Eastern Europe”. In Gitelman (ed.). *The Emergence of Modern Jewish Politics. Bundism and Zionism in Eastern Europe*. University of Pittsburgh Press, 2003, p. 4.

for Roma have taken the claim one step further. National-cultural autonomy as developed by Renner and Bauer and adopted by the Bund was to function within the borders of existing states or empires. It was not, so it seems, intended to reach out to a global diasporic community nor was it a claim for international recognition. However, this is precisely how the claim articulated in the Declaration of Nation is understood here, as a claim to recognition of Roma as equal to other nations on the international level.⁹

Moreover, the concept of recognition is understood here within the context of the politics of difference and of the belief, as articulated most popularly by Charles Taylor, in the dialogical nature of identity – the belief that who we are as individuals is shaped by other’s reactions to us.¹⁰ Briefly, where one’s identity is intrinsically bound up with that of the group, the self-respect of the individual is deeply affected by the esteem in which society holds the group. If this identity is denied, denigrated or misrecognised, genuine harm is caused and it is arguably this harm which the call for recognition seeks to mitigate and overcome. I have chosen to understand the concept of misrecognition as a form of oppression in terms of positive freedom – the idea that one aspect of liberty

consists in being free to become oneself – a conception that arguably goes beyond the positive/negative dichotomy to form a third pillar of freedom.¹¹ The claim to recognition is thus understood here to be a claim to such a form of positive freedom, to self-government, a claim to be able as a group to determine together one’s future in negotiation with others. The ability of a group to determine its own future is understood, furthermore, to be predicated upon full participation in society, which includes *inter alia* the right to participate in public fora, the right to equality in access to goods and services and the right to freely practise one’s own culture, language and to decide upon the education of one’s children.¹²

Fundamental to the understanding of recognition presented here is the work of the political philosopher James Tully, who places at the core of his approach the understanding that culture is “an irreducible and constitutive” component of politics.¹³ One cannot remove culture from politics or law because it is by definition ever present in the language we use, through the inherent understandings and hidden conventions that govern the way in which we use language.¹⁴ Thus, the “conversations” that are politics and from which law springs, while on the face

⁹ *The debate within the Movement as to the various strategies and levels at which to pitch the claim for recognition is acknowledged – the most interesting of the current alternatives being the originally Finnish (now Franco-Finnish) initiative to form a pan-European Romani consultative assembly – and the concern of this article solely with the international level is not to suggest that there are not better approaches nor that claims at the different levels (including the national) cannot co-exist; indeed, it is the contention of the author that a form must be found in which claims to recognition at different levels of governance are not competing but can co-exist. For details on recent developments with the European Roma Forum, see Miranda Vuolasranta at http://errc.org/rr_nr4_2003/noteb5.shtml. The similarity of claims by the RNC in terms of recognition of nationhood at the international level in the European Charter of Romani Rights should be noted. Report on the Condition of Roma in the OSCE Region, OSCE/ODIHR, Warsaw, October 2000; available online: http://www.romnews.com/a/RKreport.htm#_Toc496896328. Rudko Kawczynski, Speaker of the Roma National Congress (RNC), is the author of the report and uses it to outline the concept of the Charter.*

¹⁰ Taylor, Charles. “The Politics of Recognition”. In A. Gutmann (ed.). *Multiculturalism: examining the politics of recognition*. New Jersey: Princeton University Press, 1992. For the vital importance of the well-being of the identity of the group on the ability of the individual to flourish, see also Margalit and Raz. “National Self-Determination”. *Journal of Philosophy* 87/1990, p. 439.

¹¹ Berlin, Isaiah. *Liberty*. Edited by Henry Hardy. Oxford: Oxford University Press, 2002. Skinner, Q. “A Third Concept of Liberty”. *London Review of Books*, Vol. 24 No. 7, 4 April 2002.

¹² *United Nations, Study by the Secretary-General on Popular Participation in its Various Forms as an Important Factor in Development and in the Full Realization of Human Rights, UN Doc. E/CN.4/1985/10 (1984).*

¹³ Tully, James. *Strange Multiplicity*. Cambridge: CUP, 1995. *Politics is used in its more comprehensive meaning, so as to include the basic laws and governing institutions of society.*

¹⁴ *The use of the term “language” throughout refers to this thick conception of language.*

of it neutral, are governed by such layers of cultural understanding.¹⁵ Groups seeking recognition do so against institutions and rules governing the way society is structured which are conducted in a language and are the product of a culture other than their own.¹⁶ In this way, lack of recognition or misrecognition is the failure to acknowledge the cultural bias of the language we use and the conventions it represents, and to make room for other languages.

II. Recognition Claims in International Law: a Right to Self-Determination?

The right to recognition exists on the individual level; indeed, the preamble to the Universal Declaration of

Human Rights opens with the paragraph, "... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."¹⁷ As human beings, Roma are of course entitled to the protection offered to all under individual human rights measures, without discrimination; equality and non-discrimination are considered the foundations of the human rights regime and as principles have clearly attained the status of custom and are thus binding on all. Moreover, a range of human rights treaty provisions apply to minority groups.¹⁸ Individual and minority rights are not, however, considered here; rather, it is simply asserted that both are unable to provide in full the recognition being sought, and the claim shall be considered solely in terms of self-determination.

¹⁵ In Tully's own account, his thinking is based on applying Wittgenstein's method of resolving philosophical dilemmas by revealing the unseen conventions that govern language and arise in any discussion of a problem and its possible solutions. Tully explores this in *Strange Multiplicity*, supra n. 13, pp. 35-57.

¹⁶ The dominance of European culture is illustrated by attitudes towards those Romani leaders that tread the international stage; leaders whom governments and international organisations feel they can do business with, who 'speak their language', are sought out and feted at international conferences and workshops, irrespective of their level of support at the grassroots level. There is little attempt to understand the traditional position of leaders in Romani culture and if such leaders wish to be taken seriously they are expected to conform to the image of western politicians; those who have consciously adopted the language of internationalism have experienced quite different degrees of acceptance by the international community as a consequence. This is also true of wide sections of the international NGO community and a number of academic commentators; for example, Bárány's hostility to Romani leaders whom he brands militant is marked in comparison with his clear admiration for soft-spoken, multilingual Romani academics. Hence, what those who condemn as the "Gypsy industry" are objecting in part to is arguably this insistence on spending millions of dollars teaching Roma our rules of participation. Rudko Kawczynski's comment when faced with a lecture by western experts flown in for an American-funded seminar in Stupava in 1992 is insightful: "Roma are sitting, gadje are speaking. They are telling us what to do, which language to speak. They want to teach us how to speak our own language." (cited in Fonseca, Isabel. *Bury Me Standing: The Gypsies and Their Journey*. New York: Alfred A. Knopf, 1995, p. 298.) Perhaps more insightful is that Bárány cites this quotation as an illustration of what is purportedly wrong with most Romani leaders (Bárány, Zoltan. *The East European Gypsies: Regime Change, Marginality and Ethnopolitics*. Cambridge: CUP, 2002, p. 264.).

¹⁷ The non-binding nature of the UDHR is acknowledged, although there is perhaps a case for suggesting that such a provision constitutes customary international law.

¹⁸ Notably, Article 27 ICCPR as well as the non-binding 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 27 recognises and guarantees the right to an identity that is not that of the majority. It has been described by Thornberry as a hybrid right, which benefits only individuals but can yet only have meaning through collective exercise. (See Thornberry, Patrick. *International Law and the Rights of Minorities*. Oxford: Clarendon Press, 1991, p. 135 and p. 173.) However, the Human Rights Committee has been clear that the article does not grant collective rights, and communities have been denied locus standi under the optional protocol. (See General Comment No. 23 (50) (art. 27) (Fifteenth Session, 1994), IHRR Vol. 1, No. 3 (1994), para. 1.) In denying a collective interpretation, the substance of Article 27 is virtually indistinguishable from the rights enjoyed by all.

The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities goes further on the issue of representation and control over issues of importance to minority groups. The most important advance for considering claims to recognition is to be found in

The Romani Movement chose to take on the language of self-determination surprisingly late in its history – surprising as the combination of vague legal status and emotive power has made it the claim of choice for embattled groups seeking a voice on the international stage. The author is at a loss to explain this but it is perhaps the failure of individual and minority rights to deliver that has nonetheless witnessed widespread agreement in recent years among the Romani leadership on the need to stake a claim to self-determination.¹⁹

No principle of international law is more contested or controversial than, nor perhaps as important as, that of self-determination. Short of the agreement on the fact that the principle of self-determination has forced its way into the lexicon of international law, there is no consensus on whether in the post-colonial world it constitutes the law as it exists (*lex lata*), the law as one thinks it should be (*lex feranda*), or special law (*lex specialis*), i.e. not a general principle of international law.²⁰ Part of the confusion arises from the overlap between two disciplines and the different criteria they apply. The sketch presented here is not, however, concerned

with the work of political scientists but rather with the current status of self-determination as a legal principle. The crucial issue is whether the principle may be held to apply in post-colonial situations and, if so, when and to whom.

Article 2 of the 1960 Declaration on the Granting of Independence to Colonial Territories (G.A. Res. 1514) famously provides: “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” However, later clauses determine that it is applicable only for colonial peoples within existing colonial boundaries, the so-called principle of *uti possidetis*. The 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (G.A. Res. 2625) repeats almost exactly the wording of the earlier resolution but famously provides three legitimate outcomes in the exercise of the right to self-determination: “The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status determined by

Article 2 of the Declaration. Article 2(2) provides the right “to participate effectively in cultural, religious, social, economic and public life.” Moreover, Article 2(3) grants minorities the right “to participate effectively in decisions on the national and, where appropriate, regional level”; it is however somewhat undermined by the sub-clause that follows, “... in a manner not incompatible with national legislation”. Article 5 furthermore states that national policies be designed and implemented with “due regard” for the interests of members of the minority. It does not, however, provide a right of minorities to be consulted in the drawing up of policies and programmes affecting them, even where the programme specifically concerns them. Nothing in the Declaration provides for the right of a group to determine their own future, and although the rights of participation represent an advance on Article 27 ICCPR, even putting its legal status to one side, the right to participate at the bidding of the majority and according to majority rules does not compensate for the inability of minority groups to take decisions in regard to their own vital interests. Moreover, even the modest advances the Declaration represents are of little value to a group claiming the participation rights therein; while it may constitute soft law, its non-legal status means that groups cannot make a claim against it.

¹⁹ For the agreement of nearly all the participants at Jadwisin on self-determination as the frame within which to conceive their claims, see PER, supra n. 4. While Pietrosanti has very recently in this journal denied the relevance of self-determination, his understanding that self-determination “is less important than the freedom to choose the democratic organisation of co-habitation with others” is itself a good description of the principle he seeks to deny. Pietrosanti, Paolo. “The Romani Nation or: ‘Ich Bin Ein Zigeuner’”. In Roma Rights 4/2003, at: http://www.errc.org/rr_nr4_2003/noteb6.shtml.

²⁰ White, Robin C.A. “Self-Determination: Time for Re-Assessment?” In Netherlands International Law Review 28/1981, p. 147. It has been proclaimed a right erga omnes and probably constitutes a peremptory norm of international law, for all the light that such an observation sheds upon it. Barcelona Traction, Light and Power Co. Case, ICJ Reports (1970), 32. Brownlie appears to be the accepted cite for the contention that self-determination constitutes a peremptory norm of international law (jus cogens). (Principles of Public International Law. Oxford University Press, 4th edition, 1990).

a people...".²¹ The other much quoted part of the 1970 Declaration concerns a limitation clause offering protection to the territorial and political unity of "...States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." The inclusion of this clause, as Crawford points out, would have been superfluous if self-determination applied solely to colonies and colonial people.²²

The interpretation that self-determination applies beyond the colonial context is supported by Article 1(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 1(1) of which states that "All peoples have the right to self-determination". Ordinary treaty interpretation ensures that it cannot be considered limited to colonial peoples nor simply to those subject to subjugation or alien domination. There is no attempt to limit the provision thus and the singling out of the peoples of colonial territories in Article 1(3) suggests that the "all peoples" of Article 1(1) is intended to mean just that.²³ Thus, there is a strong case for suggesting that self-determination is applicable in situations other than those of decolonisation; indeed, the

ICJ ruled in 1995 that self-determination "is one of the essential principles of international law".²⁴

However, it is precisely when self-determination is taken out of the colonial context that much of the uncertainty arises. While the principle of non-intervention, as found in Article 2(7) of the UN Charter, is not applicable in situations of colonial oppression²⁵, the ordering of international legal principles becomes much less clear outside the certainties of decolonisation. Simply stated, the right of self-determination conflicts with a number of well-established and much cherished principles, such as those of territorial integrity and of non-interference.²⁶ It is the de-stabilising potential of self-determination and the obsession with the fear of secession that has seen States determined to limit its application in the post-colonial world.

The means by which States have primarily chosen to justify the limitation is, as is well known, through a restricted interpretation of those entitled to it, so that a 'people' is understood only in terms of the population of an already constituted State.²⁷ As one leading international lawyer has stated emphatically, "[self-determination] does not extend to claims for independence by minority groups in a non-colonial context."²⁸ There is one possible exception, however,

²¹ *United Nations G.A. Res. 2625 (XXV), 1970. Res. 2625 was adopted without a vote. While most former colonies opted for independence, examples of integration with another state include the decision of North Cameroon to join Nigeria; an example of free association could be the Cook Islands and New Zealand. Some dependent territories chose to remain so; for example, Gibraltar with the United Kingdom.*

²² *Crawford, James. "The Right of Self-Determination in International Law: Its Development and Future". In Alston (ed.). Peoples' Rights. Oxford: OUP, 2001, p. 31. The inclusion of this phrase suggests by 1970 it was already accepted that self-determination was applicable outside the context of salt-water colonialism.*

²³ *For more details, see Crawford, Ibid., p. 27.*

²⁴ *Case concerning East Timor. ICJ Reports (1995), p. 102. It is however worth noting that this case, as all the others considered by the ICJ, concerned the situation and status of a former colonial territory.*

²⁵ *See, G.A. Res. 2625.*

²⁶ *It can also be seen as possibly conflicting with the right of others within a state to self-determination; for example, Article 1(2) of the ICCPR/ICESCR, provides for the right of a people to freely dispose of its wealth and natural resources.*

²⁷ *The link of self-determination with equal rights in Article 1(2) of the UN Charter is generally interpreted as implying only that the right of self-determination belongs to the peoples of states as it is the equal rights of states which are being referred to and not of individuals. Higgins, Rosalyn. Problems and Processes. International Law and How We Use It. Oxford: Clarendon Press, 1994, p. 112.*

²⁸ *Harris, David J. Cases and Materials on International Law. London: Sweet & Maxwell, 1998 (5th edition), p. 113.*

to this seemingly clear-cut solution. The 1970 Declaration on Friendly Relations has, as noted above, specified other peoples beyond the colonial context as being entitled to self-determination: it includes those subjected to alien subjugation, domination or exploitation. There is an on-going debate about whether oppressed minority groups could come within these terms and thus be entitled to independence, so that where they are prevented from a meaningful exercise of their right to self-determination as part of a larger unit, they become bearers in their own right – the so-called ‘positive’ aspect of the safeguard clause.²⁹ Most commentators, however, suggest a high threshold of abuse before a group or ‘people’ could be considered ‘internally colonised’ and thus entitled to invoke the provisions of G.A. Resolutions 1541 or 2625.³⁰

Thus, the right to self-determination, as established by the 1966 Covenants, applies outside the colonial context only to peoples defined as the whole people of a given state. Self-determination has arguably emerged as a continuing entitlement of a people “to freely pursue their economic, social and cultural status”.³¹ This is the aspect of self-determination which has come to be known as ‘internal’ and has taken

inspiration from other provisions in the human rights stable, which guarantee to all the right to choose their government.³² To summarise, self-determination is both a principle of customary international law, where it applies to colonial-like situations, as well as a right enshrined in treaty, although of course applicable only to parties to them. Where it is applicable in post-colonial situations, it is a continuing entitlement of peoples and is understood to offer the bearers the freedom to choose both their external and internal political status. The accepted practice of the last forty years has been, however, that a ‘people’ can only be understood as referring to the people of a state in its entirety. Minority groups are not included within the definition of a people in this context and are hence not entitled to self-determination except as part of the larger population of which they form a constituent part.³³ There is a possibility that groups within a state that are oppressed and thus prevented from exercising so-called internal self-determination may have the right to external self-determination, and the right to secede; this is, however, not well-established, if at all.

It is clear, therefore, that Romani groups within state boundaries are not entitled to self-determination,

²⁹ *Weight has been lent to this theory by the actions of the UN, authorised by Security Council Resolution 688, to intervene in Iraq on behalf of the Kurdish population in May 1991 in a clear breach of Iraq’s territorial integrity and political unity. Moreover, the establishment of the so-called ‘safe havens’ by the United States and the UK could constitute further evidence in this direction. In addition, there is evidence that some states encouraged secession from the former Yugoslavia. Such examples, however, suggest that an already existing situation of instability and upheaval may be required to persuade the international community that secession is an option.*

³⁰ *For example, White, supra n. 20. Moreover, several commentators have also noted the possibility that recognition of the different groups within a territory may actually constitute a breach of the safeguard clause in the Declaration on Friendly Relations, which requires states “to represent [...] the whole people belonging to the territory without distinction as to race, creed or colour.” Hence, the existence of the right to self-determination under such circumstances remains highly controversial; see for example, Nazerali, supra n.3, where he suggests a right to secession.*

³¹ *Article 1(1) of the 1966 Covenants.*

³² *For example, Article 21(3) UDHR commanding that “the will of the people shall be the basis of the authority of the government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage...” Article 25 ICCPR translates this into a legally binding obligation and right. The seeming duplication of Articles 1 and 25 ICCPR is normally considered resolved by asserting that Article 25 provides the detail of the free choice guaranteed by Article 1 (see Higgins, supra n. 27, p. 121). The equating of self-determination and democracy was apparently the philosophical underpinning of President Wilson’s understanding of self-determination; see Hannum, Huirst. “Rethinking Self-Determination”. *Virginia J. Int’l L.* 1, 34/1993, p. 8.*

³³ *Moreover, the clear definition of a ‘people’ solely as the whole of a given state means that a transnational Romani grouping does not constitute a people in international law. See, for example, Nazerali’s claim that GA Res. 2625 provides Roma with the right to freely determine their own political status; this is not the case.*

but only recognition as individual Roma as citizens of a country. Furthermore, internal self-determination provides no answer to the claims that have been made, being unable to provide for recognition of a transnational group as one entity. Thus, self-determination in its current form, whether external or internal, is incapable of providing the recognition sought.

III. Re-Conceiving Self-Determination as Participation

It is in realising how far the Romani claim to non-state nationhood is outside the bounds of established international law that it becomes most interesting. Those making the claim are thus not mistaken in the potential they see in their claim for radicalising the principle of self-determination and, through it, offering up an alternative vision of the international system.

Despite the efforts of lawyers to find a way in which to modernise the concept of self-determination, nearly all have felt forced to attempt to reconcile the conflicting principles of self-determination and territorial integrity.³⁴ My work, however, rather seeks to re-examine self-determination not through the lens of democracy³⁵ or of participation, although the lat-

ter may be the outcome, but from the perspective of freedom. Underpinning the notion of positive freedom is the belief that human nature has an essence and that “we are free if and only if we succeed in realising that essence in our lives”.³⁶ As noted earlier, if we determine our identity, our essence, in dialogue with others – both privately and publicly – the positive recognition of others in the public sphere is thus crucial in enabling one to be free. A consequence of such an understanding of liberty is that even if all the rights set down as ‘human rights’ were to be realised in our everyday lives, we still may not be free where public recognition of a fundamental aspect of our identity is withheld. Moreover, we are not free where we are dependent upon the arbitrary power of others, which is the case where the decision to recognise a group is the whim of those who hold power in society. Such withholding of recognition arguably constitutes a form of domination.³⁷ The denial of recognition also denies one a voice in the apparatus of society and thus the ability to govern oneself. By seeing self-determination as intimately tied to freedom, it becomes clear that it is not a right to democracy – simply being able to vote in periodic elections does not make one free – and nor is it subsumed by existing rights. It should perhaps be seen instead rather as a right to recognition. So if a crucial

³⁴ For example, by re-developing ideas of territorial autonomy. In the words of Benedict Kingsbury, “[f]undamental conflicts exist between values of justice and the hitherto dominant values of order”. Kingsbury, Benedict. “Claims by Non-State Groups in International Law”. In *Cornell International Law Journal* 25/1992, p. 481. In terms of self-determination, autonomy is understood as stemming from the “any other political status” stipulation in the 1970 Declaration. Hannum has gone so far as to suggest that a new norm of international law has already been created from the intersection of sovereignty, self-determination and human rights, guaranteeing minority groups and indigenous peoples the right of meaningful control over their own affairs, what he has termed “less-than-sovereign self-determination”. (Hannum, Huirst. *Autonomy, Sovereignty and Self-Determination*. Philadelphia: University of Pennsylvania Press, 1996). There is moreover evidence that governments are taking a more nuanced approach to the problem. For example, the statement by the Minister of State at the Foreign Commonwealth Office to the House of Lords in 1993 concerning the position of the UK Government on the status of Tibet; Baroness Chalker declared that, “The Government’s view is that all peoples have a right to self-determination but that this right can be expressed in several different ways”. (Hansard, H.L., Vol. 542, col. 5, (1993); emphasis mine.) Hannum’s suggestion is, however, purely aspirational and no right of autonomy can be said to exist. Moreover, even were this not to be the case, territorial autonomy is not suitable for a transnational group, where possession of territory and geographical concentration is clearly required.

³⁵ Most of the recent attempts at breathing new life into self-determination have sought to bring it more firmly within the human rights stable, under the so-called emerging right to democratic government. See Hannum. “Rethinking”, supra n. 32, p. 58; Franck, Thomas. “The Emerging Right to Democratic Governance”. *American Journal of International Law*, 86/1992, p. 6.

³⁶ Skinner. “A Third Concept of Liberty”, supra n. 11, p. 16.

³⁷ Pettit, Philip. *Republicanism: A Theory of Freedom and Government*. Oxford: OUP, 1997.

part of realising one's essence is recognition, what would recognition look like?³⁸

Crucial in this re-conceptualisation of self-determination is the notion that recognition is active and continual. It is not, for example, a reserved seat in a parliament, a title of status laid down in an agreement, or the right to positive discrimination, but rather the right of one's culture or identity to participate as an equal in society with others. For the political philosopher James Tully, a people can only attain freedom by following two principles: the rule of law, by which all are equally subject to the law, and self-rule. Self-rule is only achievable where all are what he terms 'free citizens'. A 'free people' achieves the status of 'free citizens' only in so far as all have a voice in government. The key element of citizenship is participation and freedom is to be found in the act of participation itself.³⁹ The legitimacy of any system of governance thus depends upon both the rule of law and self-rule being applied equally. Where a group in society, either national or international society, are equally subject to the law, but do not have the opportunity for an equal say in the formation of those laws, they are not free. They cannot be citizens, if citizenship is achieved only through engagement in the process. Thus, democracy in itself is not enough and can actually perpetuate a system of unfreedom where not all participate as equals in the democratic system.

If citizenship is an activity, then one can only fully become a citizen through discussion, with disagree-

ment flowing throughout and at every level of politics. Agonistic negotiation⁴⁰ is the only means by which all voices can be heard, through which one can experience the others' position, and through which genuine participation can be realised and thus the principle of *quod omnes tangit*, of self-rule, be fulfilled. The crucial guiding principle in these negotiations is that of *audi alteram partem*, that one must listen to the other side and treat identity- and culturally-related differences with respect. Nothing is fixed or pre-decided before the parties come to the negotiating table. Instead, even the rules of the game, indeed especially the rules of the game, are open to discussion and dissent. Such necessary flexibility flows from Tully's understanding of citizenship as something one 'does' and not something that one 'is', as well as from the belief, discussed above, that culture permeates everything we touch through the conventions of communication; to negotiate in the dominant culture is to establish a monologue and to deny groups the opportunity of genuine participation. Thus, there is no definitive form of recognition sought in negotiation, no fixed *telos*, so that true dialogue is not a means to a consensus, but rather the end in itself. Agreements are understood as links in a chain, permanently open to negotiation through interpretation. The lack of a search for consensus is predicated on the understanding that there are no shared norms and no universal principles to which either side can appeal and the purpose of negotiations are to bring the different sides together to uncover the differences and similarities and to find institutions and processes together which can accommodate

³⁸ It is also true however that there are as many different 'essences' as there are moral standpoints, so that where Aristotle viewed man as a political animal, for others, as Skinner points out, man's essence may be religious. (Skinner, n. 10). This suggests the need for considerable flexibility in how one visualises recognition and thus self-determination.

³⁹ Tully's conception of self-rule is based upon the principle of ancient constitutionalism, *quod omnes tangit* – that what touches all must be approved by all. Tully, James. "The Unfreedom of the Moderns in Comparison to Their ideals of Constitutional Democracy". *Modern Law Review* 65/2002, p. 204.

⁴⁰ An agonistic theory of politics is one that sees disagreement as irreducible and the nature of politics as essentially combative. Agonistic negotiation differs though from antagonism. The latter, according to Chantal Mouffe, takes place between enemies who share no common symbolic space; agonism, however, takes place between "friendly enemies" who share a common symbolic space, but who wish to see this space organised in a different way. Mouffe, Chantal. *The Democratic Paradox*. London: Verso, 2000, p. 13. Agonism is a radical theory of politics that cannot be accommodated within liberal theory, including recent attempts to reformulate it via theories of multiculturalism; in this regard, see the work of Will Kymlicka among others.

both.⁴¹ As one definitive meaning of a term is forever unobtainable, understanding through connections created in the dialogical contrast and comparison of concrete examples is sought. We negotiate from the position of our own experience in the knowledge that it is unique to us. Viewed in this light, self-determination is not an outcome but a place in a continual dialogue; through participation in the process of negotiation one achieves self-government.

Conceiving self-determination as the achievement of recognition through the right to participation in an agonistic process removes the need for distinctions between peoples, nations and ethnic groups; rather all those who claim recognition will be deserving of the right to negotiate their status and rights with those around them. In practice, self-determination thus considered could grant all groups the right to the political institutions necessary to govern their own affairs, but it is the place at the table and not the institutions themselves that constitute self-determination.

IV. The Impact on International Law

If self-determination is re-conceptualised as a claim to the freedom to express our ontological self in the public political arena, while the impact at the national level is radical but relatively straightforward, its application to the disparate nature of international law and society is much less clear.

While states are the traditional subjects of international law and in classical international law sover-

eignty has traditionally meant independence⁴², in the proceeding eighty or so years, and particularly since World War II, the international community has moved on considerably from Oppenheim's famous position in 1912 that states constitute the sole and exclusive actors in international legal society. The last fifty years has seen a proliferation in the numbers and types of entities considered as bearing international personality. The international community is now more heterogeneous than it has ever been, incorporating a plurality of non-states entities, such as dependent territories, international organisations⁴³, insurgents and national liberation movements, individuals, non-governmental organisations⁴⁴ and others that defy simple classification. The international legal system has long coped with a variety of subjects, all with differing rights and duties, all interacting with one another. Moreover, although it would be foolish to deny the continuing dominance of states, the power of states relative to other actors in the international system is undergoing considerable change. While the theory underpinning the international order is still very much predicated upon the principle of non-interference – the traditional interpretation of self-determination – it can be argued that notions of independence, indeed of sovereignty, are themselves undergoing radical re-conceptualisation.⁴⁵

It is within the above context that the reconceptualised principle of self-determination must play a role and where an attempt to establish a genuine 'multilogue' must be made. Self-determination understood as the right of participation and not non-interference⁴⁶ would acknowledge the inter-connectedness

⁴¹ In this way, agonism differs significantly from the Habermasian presumption that different groups can agree on shared constitutional principles and unite under a constitutional patriotism. Habermas, Jürgen. *The Inclusion of the Other*. Cronin and de Greiff (eds.). Cambridge: MIT Press, 1996. As Tully succinctly puts it, the search for universality is a dead-end alley; the world is a multiverse, and hence dialogue on the organisation of society must also be. Tully, supra n. 13.

⁴² Crawford, James. *The Creation of States in International Law*. Oxford: Clarendon Press, 1979.

⁴³ There is no doubting the international personality of international organisations; see *Reparations for Injuries, Advisory Opinion, ICJ Reports (1948)*.

⁴⁴ For example, the *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (1986)*.

⁴⁵ The literature concerning the apparent demise of sovereignty and of attempts to breathe new life into it is huge; for one of the most interesting, Walker, Neil. "Late Sovereignty in the European Union". In Walker (ed.). *Sovereignty in Transition*. Oxford: Hart, 2003.

⁴⁶ Iris Marion Young has suggested that our understanding of independence can be re-conceptualised not as non-interference, but in terms of non-domination. Young, Iris Marion. *Inclusion and Democracy*. Oxford: OUP, 2000, pp. 255–264.

of all actors in the international system and reflect the relational nature of our identity. In this way, self-determination as participation is concerned with inclusion rather than the exclusionary nature of sovereign independence. Moreover, it could serve to liberate identity-based international personality from territory, opening up the possibility for granting groups varying forms of autonomy as actors in the international system defined by their identity-sustaining function and not by their territorial base. This would arguably continue a trend in this late- or post-sovereign era in which a wide variety of non-territorial entities are laying claim to the ultimate authority to determine the boundaries of their own legal personality without deference to and alongside states.⁴⁷

The implications of an agonistic system of international order for Roma, would be to listen to their claim for self-determination without pre-conceptions of the defining characteristics of 'nations' or 'peoples', and

without pre-determining the outcome of the status itself. Rather, Roma themselves would be allowed to determine the nature of their status at the table according to the terms of their own culture, through negotiation with other members of the world community. Hence, no solution is imposed and no concessions sought. Moreover, the continual nature of agonistic negotiations dictates that any status agreed could not be the end-stage – a settling for a form of official acknowledgement from the United Nations, a seat in the Parliamentary Assembly of the Council of Europe, the European Parliament and/or in other pan-European fora. Rather, recognition, whether one terms it non-territorial nation status or not, is the means to effective Romani citizenship at any level. To be satisfied with a title and its accompanying concessions would be to become bound to a single agreement and to its interpretation by others, and, it is contended here, would not see Roma achieve recognition and thus realise freedom and their unique essence.

⁴⁷ One thinks particularly of the European Court of Justice's (ECJ) well-known doctrine of the supremacy of EU law over the national law of EU Member States and of apparent moves in the same direction by the World Trade Organisation Appellate Body. There have, however, always been international actors whose personality has not been connected to territory – the Knights of Malta (see Nanni v. Pace and the Sovereign Order of Malta (1935-37) 8 A.D. 2. Italian Court of Cassation), for example – and legal systems unattached to either state or territory – international commercial law (lex mercatoria) being the best examples.



Romani Men and Romani Women

Roma Human Rights Movement: A Missing Element

Azbija Memedova¹

“In order for us as poor and oppressed people to become part of a society that is meaningful, the system under which we now exist has to be radically changed. This means that we are going to have to learn to think in radical terms. I use the term radical in its original meaning – getting down to and understanding the root cause. It means facing a system that does not lend its self to your needs and devising means by which you change that system”.

Ella Baker, 1969²

IF YOU ARE ALREADY WONDERING why I’m starting this article about Roma and the Romani women’s human rights movement with a quote from Ella Baker, the answer is very simple: Ella Baker (1903-1986) is one of the most important African American leaders of the 20th century and perhaps the most influential woman in the Civil Rights Movement. She was an activist whose remarkable career spanned fifty years and touched thousands of lives. Her life story allows us, on the one hand, to understand how other oppressed people fought for their rights and on the other, to learn how she and her female counterparts fought for changes within the predominately male civil rights leadership circle!³

The effort to learn and understand more about the Civil Rights Movement is especially needed in this historical moment for Roma and Romani women when we are finally on the “agenda”. Yes, a lot of interest from the international community is directed to us. There are lots of efforts for systematic changes (mostly because of EU accession requirements) to integrate Roma into the mainstream societies. Simultaneously, however, racial discrimination against Roma is more intense than ever.

Reading about Ella’s life, I was surprised when I read the following: “...the period that is most important for all of us is the period when we began to question whether we wanted in...?” They realised that the struggle was much bigger than getting a hamburger at the lunch counter. It was not enough for “black people” to acquire education and be accepted in the American society. It was about full dignity as human beings.

I hope that Romani intellectuals and strategic thinkers will soon be focusing on the current development of the Romani social and political movement in the context of the global changes taking place in our lifetime and will articulate the basic concepts of our struggle. Do we want to “go in” and are we ready to overcome the existing diversities in approaches and visions for integration? Do we have the “required” capacities defined by the majorities? What is our definition of different, more inclusive societies?

Or do we have other ways of getting in?

We, the Romani men and women, believe that we are part of the (Roma) civil rights movement, which

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² Grant, Joanne. Ella Baker. Freedom Bound. John Wiley & Sons, Inc., New York, 1998.

³ Ransby, Barbara. Ella Baker and the Black Freedom Movement. Chapel Hill & London: University of North Carolina Press, 2003.

is seeking to change the position of Roma in society. If the radical change for Ella was an ongoing process of debate, consensus-building, reflection and struggle, what is the Roma definition of a radical change? Maybe it is similar to Ella's conception in the U.S. Civil Rights Movement context? If so, we are not there yet.

In addition to the many other aspects of Roma rights, it is worth mentioning the role of the women in this movement. As you can see from the first sentence, Ella Baker is not described as a women's human rights activist or leader, but as the "most influential woman in the Civil Rights Movement". Around 1965, those who were fighting for freedom started a great deal of questioning about what was the role of the women in the struggle. Ella believed that "...wherever there has been a struggle, black women have been identified with that struggle..."

The first generation of Romani activists (men) and/or "leaders", according to their professional and ideological discourse, have spoken about discrimination and racism against Roma but without a gender perspective. Baker and her colleagues were convinced that "*racism had infected every major social problem of the 20th century, among which is the oppression of women*".

After long years of (Roma) civil and political movement, unfortunately, the absence of the gender perspective is still all too evident. Gender issues remain very under-emphasised in human rights discourse about Roma. I deeply believe that when one genuinely believes in the human rights cause, he or she should recognise (and address) every violation of the rights of the human being, man or a woman.

Why have Romani (men and in some cases women) human rights activists not been able to (and some of them still cannot) appreciate the specific situation and needs of Romani women? Is it because of lack of understanding of the human rights philosophy? Is it because of lack of knowledge about the distinction between individual and collective rights? Or is it because of the segregation of Roma which did not allow any influence from the modern world to challenge the so called "Roma tradition" that in many cases is oppressive for Romani women and especially for Romani girls? Is it about fear of

losing something like, for example, the male supremacy?

Once somebody told me that the real loser is the one who doesn't give but selfishly keeps everything for him/herself. If we cannot deal with selfishness, we cannot be "winners".

Also, there is a tremendous need for both Romani men and women activists to look back and not only to remember where we have been but also to understand why we have been there. Only in this way can we see where we are going. Why and how have Romani women activists started their work?

The first Romani women activists who had their background in the Romani political and social movement started building, step by step, and from the bottom up, the national and international Romani women's movement and a new kind of leadership that aims to create a space for a better life for those "marginalized among the marginalized"!

During that growth, the Romani women activists had (and still have) to explain to both the larger society and their own community why they need to organise themselves and address their rights situation!

It was very hard to speak about violence and other human rights violations of Romani women at the beginning. There was a fear that when speaking openly about these issues, the community in general would be blamed by the non-Roma. Ella Baker's life can also help us understand this phase of our movement: She has refused to talk about certain aspects of her life and according to the explanations of some psychologists, in her case, the "*shielding was from public view and scrutiny, not only from her oppressors but often from friends and colleagues as well*".

Time and knowledge were needed to address the real "root causes" and to speak openly. In some countries (Macedonia, Hungary, Serbia) there are some progressive waves coming mostly from younger Romani activists. These up-and-coming activists have begun to confront the patriarchy and oppression coming from inside. However, there are still cross-generational barriers that remain a challenge for all of us.

Where do we go from here, Romani men and women? First of all, we have to review our understanding of human rights. I'm convinced that always when I advocate for Romani women's rights, I advocate for the rights of Roma! We cannot achieve much in our struggle if we don't recognise that Romani women are victims of intersectional discrimination based on sex as well as ethnicity. Therefore, we have to overcome the existing misunderstanding between the Romani women's rights defenders and Romani men (and in some cases women) activists who think that Romani women's rights are an undistinguishable part of Roma rights and do not need separate attention. A step forward should be a wider understanding of the fact that when we speak about gender, we don't speak about women but about the relations between men and women in all aspects of life, including the fundamental rights of the individual.

We, the Romani men and women, are part of a struggle for a better life. We have the same goal – a better life for Roma, men and women. It is not just about a better status in society, better education for all, but it is more about the respect for human dignity as Ella said. And respect should first come from inside the community. Romani men have to recognise the multiple factors contributing to Romani women's inequality and address them at all levels as the Romani women activists do. Only in this way can we speak about a real human rights movement. There are some positive steps in this regard, but we have a long way to go.

The second issue that needs immediate consideration is the attitude of the international organisations and donors towards the Romani women and the place of Romani women's rights issues within their programmes. The latest developments in this regard are not promising: the lack of cooperation among the donors creates confusions and conflicts among different Romani women's groups both on national and international level. Do we feel responsibility for this situation? I hope that we all do. Can we find another way or other ways? I think that we have only two possibilities: to advocate for "centralisation" of donor's power (which I don't think is a manageable and democratic approach) or to find a way to coordinate our own work in order to have (in)direct impact on the international community. The second one requires personal development (capacities) for understanding and integrating new concepts.

Another challenge that we all (men and women) have to deal with personally, is the issue of honesty about our own weaknesses and strengths and responsibility (in its deepest, religious sense) for the path that each of us is leading.

Allow me to conclude as I have started, with Ella Baker:

"...one of the things that has to be faced is the process of waiting to change the system, how much we have got to do to find out who we are, where we have come from and where we are going..."



**SNAPSHOTS
FROM
AROUND
EUROPE**

News Roundup: Snapshots From Around Europe

The pages that follow include Roma rights news and recent developments in the following areas:

- Ethnic cleansing of “Gypsies” in **Kosovo**;
- European Court of Human Rights condemns **Bulgaria** for Discrimination against Roma;
- Police violence in **Bulgaria, Czech Republic, Serbia and Montenegro, and Slovakia**;
- Racial killing, attacks and harassment by skinheads and others in **Hungary, Romania, Serbia and Montenegro, and Slovakia**;
- Discrimination in the criminal justice system in **Bulgaria and Hungary**;
- Access to justice issues in the **Czech Republic, Moldova, and Slovakia**;
- Access to education issues in the **UK**;
- Denial of fundamental social rights in **Greece, Macedonia and Romania**;
- Health care officials cause serious damage to a Romani woman in **Romania**;
- Eviction threats in **Serbia and Montenegro**;
- Italian court stops the expulsion of Roma to **Bosnia and Herzegovina**;
- Denial of citizenship in **Croatia**;
- European Commission against Racism and Intolerance reviews **Bulgaria, Norway, Slovakia and Switzerland**;
- United Nations bodies review **Germany**.

BOSNIA AND HERZEGOVINA

◆ Romani Refugee Girl Escapes Sexual Abuse Nightmare in Bosnia and Herzegovina

On November 7, 2003, the *ERRC*, in partnership with the Bijeljina-based non-governmental organisation *Helsinki Committee for Human rights, Republika Srpska (HCHRRS)*, spoke with Ms Svetlana Šaćirović, a 17-year-old Romani refugee from Serbia living in the Salakovac Collective Centre near Mostar. In October 2003, Ms Šaćirović escaped, for the second time, the home of her kidnapper and sexual abuser.

Ms Šaćirović, who settled in the Salakovac Collective Centre in spring 1999, was kidnapped for the first time by Mr G.A. in Mostar shortly thereafter and taken to his flat in Sarejevo, where he lived with his common-law wife and son. According to Ms Šaćirović, she was held for more than a year, during which time Mr G.L. physically abused and raped her repeatedly. She was also reportedly forced to beg for money, all of which Mr G.L. took for himself. Ms Šaćirović testified that she managed to escape to the Salakovac Collective Centre, but in July 2003, Mr G.L. again kidnapped her from the street in Mostar. Mr G.L. held Ms Šaćirović for another three months of physical and sexual abuse, beating and raping her daily, according to Ms Šaćirović. Ms Šaćirović reported that Mr G.L. repeatedly hit, kicked and beat her with thick cables, as well as extinguished cigarettes on her arms until she escaped for the second time at the end of October 2003. Ms Šaćirović also stated that she gave birth to a child

fathered by Mr G.L. which she left with him in Sarajevo when she escaped for the second time. When Ms Šaćirović arrived at the Salakovac Collective Centre, her brother reported the case to the police in Mostar. The police brought Ms Šaćirović to the Juzni Logor Hospital for medical treatment where doctors confirmed her injuries and medicated her. At the time of her interview with the *ERRC/HCHRRS*, Ms Šaćirović was living with her brother's family in the camp again. On the same day, Mr Srecko Bosnjak, a spokesman of the Ministry of Interior of Hercegovacko-Neretvanski Canton, informed the *ERRC/HCHRRS* that the case had been sent to the police in Sarajevo Canton where Mr G.A. resides. Two days earlier, the Ilid•a Police Department of the Sarajevo Canton had taken Mr G.A. into custody. As of March 8, 2004, a police investigation into the case was ongoing. **UPDATE AS WE GO TO PRESS** Additional information on Roma in Bosnia and Herzegovina is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/bosnia.shtml>. (*ERRC, HCHRRS*)

◆ Roma Experience Difficulties Accessing Housing in Bosnia and Herzegovina

On December 1 and 2, 2003, a group of Roma from Prijedor were prevented from commencing construction of housing on municipally provided property in the Kozarusa settlement near the town of Kozarac by Bosniac and Serb residents of the area, according to

the testimony of Mr Redzep Hatić, president of the Roma Association of Prijedor, to the *ERRC/Helsinki Committee for Human Rights, Republika Srpska (HCHRRS)*. Mr Hatić reported that the Bosniac and Serb locals dug a ditch around the site, which formerly housed a school, to prevent trucks from delivering materials, allegedly because they wanted to reopen the school. However, Mr Hatić was of the opinion that the reason the Bosniac and Serb locals took actions to prevent the commencement of construction was that they did not want Roma to settle in their town. As of March 10, 2004, the Prijedor municipal authorities had decided on a new location for the housing project and construction has started. The Ministry of Refugees and Displaced Persons in the Republika Srpska was to provide funding for the hazardous housing project, according to *ERRC/HCHRRS* research.

According to Mr Hatić, the Roma for whom the new housing was intended were long-term residents of Prijedor before the war at which time they were expelled from the area and all but three of their homes were destroyed. Prijedor municipal authorities should provide sites for the construction of thirty homes for the Romani returnees. However, Mr Hatić stated, the location of their former homes is now slated for commercial development and apartment projects despite the fact that the Roma reportedly owned the land. In November 2003, when they were informed of the municipality's intention to move them to the Kozarusa settlement,

the Roma agreed, feeling they had no alternative.

In other news related to housing and tensions between Romani returnees to Bosnia and Herzegovina and non-Roma, in October 2003, Mr Paso Muratović, a Romani man who lived in Sweden for 15 years, found his home in the Veseli Brijeg Romani settle-

ment near Banja Luka destroyed by fire when he returned to Bosnia and Herzegovina, according to the Banja Luka-based daily newspaper *Nezavisne Novine* of December 6, 2003. Mr Muratović alleged that the former tenant of his house, Mr M.S., threatened to set fire to this and another house owned by Mr Muratović after being told to move out, as Mr Muratović was

returning to the country to live in his home. According to the daily, Mr Muratović reported the fire to the police, who were investigating the cause of the fire. **UPDATE AS WE GO TO PRESS – RESULTS OF POLLICE INVESTIGATION? M.S. CHARGED?** (*ERRC, HCHRRS, Nezavisne Novine*)

BULGARIA

◆ European Court of Human Rights Condemns Bulgaria for Discrimination against Roma

On February 26, 2004, the European Court of Human Rights announced its judgement in the case of *Nachova vs. Bulgaria*, in which it unanimously found the Bulgarian state responsible for the deaths of two Romani men as well as its subsequent failure to conduct an effective official investigation, in violation of Article 2 (right to life). For the first time in its history, the Court also found a violation of the guarantee against racial discrimination contained in Article 14 taken together with Article 2, and in doing so stressed that the Bulgarian authorities have “failed in their duty [...] to take all possible steps to establish whether or not discriminatory attitudes may have played a role” in the events at issue.

The *ERRC* provided written comments regarding the application of Article 14 of the Convention, which were incorporated in the Court’s decision.

The Court explained its historic ruling under Article 14 taken together with Article 2, stating:

“The Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. [...] In order to maintain public confidence in their law enforcement machinery, contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing [...] the Court considers that in cases where the authorities have not pursued lines of inquiry that were clearly warranted in their investigation into acts of violence by State agents and have disregarded evidence of possible discrimination, it may, when examining complaints under Article 14 of the Convention,

draw negative inferences or shift the burden of proof to the respondent Government [...].”

The full text of the Court’s decision is available on the Internet at: <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=19&Action=Html&X=310124616&Notice=0&NoticeMode=&RelatedMode=1>. (*ERRC*)

◆ Police Abuse of Roma in Bulgaria

On January 20, 2004, *ERRC* Sofia-based partner organisations *Romani Baht* and *Bulgarian Helsinki Committee (BHC)* conducted an independent investigation in the Romani neighbourhood *Fakulteta* of Sofia, which documented the following:

According to the testimony of Ms Assen Zarev, a Romani man from *Fakulteta* neighbourhood, on the afternoon of January 16, 2004, two officers in uniform from Sofia’s III Police Station attacked him while he was playing with his five children on the street. Reportedly, the officers, accompanied by a dog, had run out of a nearby forest in

pursuit of a group of Roma who had cut down a tree, and they asked Mr Zarev in which direction the Roma had run. When Mr Zarev responded that he did not know, the officers released their dog, which attacked Mr Zarev, biting him twice on the leg. They proceeded to beat him while threatening him with their drawn guns. Mr Zarev's frightened children then asked the officers not to kill their father and the officers then handcuffed Mr Zarev and dragged him to the nearby forest. The officers eventually released Mr Zarev because a group of Roma followed them into the forest and insisted upon his release. Mr Zarev has obtained a medical certificate, which documented haemorrhages on his body.

Subsequently, at 6:00 AM on January 20, 2004, sixteen police officers carried out a police operation in Fakulteta neighbourhood – *Glaveva mahala* – which had been authorised by the Deputy Chief of Sofia's III Police Station, Major Stoycho Tafradjiev. The operation was reportedly carried out to detain Roma who had allegedly attacked the police officers while the latter attempted to detain Mr Assen Zarev on January 16. According to information from the police, on January 16, Roma threw stones at the police officers and injured one of them in the eye.

According to victims and witnesses with whom *Romani Baht* and *BHC* investigators spoke, during the operation on January 20, police officers forced their way into a number of Romani houses, breaking windows, beds, washing machines, tape recorders, televisions and other possessions. Investigators observed damage reportedly caused by police offic-

ers in a number of houses in Fakulteta, including a broken sofa, torn curtains, a broken handle of a washing machine, a broken hi-fi, a broken double bed, and a broken TV remote control. Approximately 30 people reportedly witnessed the incidents. The precise addresses of houses in which police officers destroyed property are known to the *ERRC* and can be made available in the event of an official investigation into the case.

On January 30, 2004 the *ERRC* sent a letter of concern to the Bulgarian Minister of Interior requesting immediate measures to ensure that the alleged instances of police abuse and misuse of power against Roma are thoroughly and impartially investigated, and that all law enforcement officials responsible for human rights violations in relation to these cases are prosecuted to the fullest extent of the law.

According to information provided by the Minister of Interior in his response to the *ERRC* letter from March 19, 2004, the Sofia Regional Prosecutor's Office has opened an investigation into the actions of the police in the Fakulteta neighbourhood. Further information on the situation of Roma in Bulgaria is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/bulgaria.shtml>. (*BHC, ERRC, Romani Baht Foundation*)

◆ **Discrimination against Roma in the Bulgarian Criminal Justice System**

According to information provided to the *ERRC* by the Sofia-based non-governmental organisation *Human Rights Project (HRP)*,

Bulgarian law enforcement officials apply misdemeanours legislation, namely the Decree on Petty Hooliganism, in a discriminatory way where Roma are concerned.

Following a request for information by the *HRP*, on December 8, 2003, the Regional Directorate of the Ministry of Interior in Pazardzhik reported that for the period January 1 through November 25, 2003, out of eleven decisions of the Pazardzhik District Court under the Decree, six decisions were against individuals who have their residence registered in the all-Romani neighbourhood Iztok of Pazardzhik, i.e. individuals who are presumably of Romani ethnicity. According to the same data, out of twenty-four individuals convicted under the Decree for the same period, fourteen were residents of Iztok Romani neighbourhood. According to the data provided by the Regional Directorate of the Ministry of Interior in Pazardzhik, about 60 percent of the decisions of the local court in Pazardzhik under the Decree are made against Roma, while Roma do not constitute more than 6 or 7 percent of the local population in Pazardzhik.

Furthermore, according to *ERRC/HRP* analysis, the Decree on Petty Hooliganism itself calls into question the respect for the fair trial guarantees contained in Article 6(1) and Article 6(3) of the European Convention on Human Rights (ECHR). The Decree's failure to respect these guarantees is demonstrated by the following two cases, reported by the *HRP*:

At around 7:00 PM on November 17, 2003, 60-year-old Mr Joseph Argirov and his 29-year-old son Ivan, Romani residents of the Iztok Romani neighbourhood of the

central Bulgarian town Pazardzhik, were charged in accordance with the Decree on Petty Hooliganism after being beaten by police officers outside the premises of the local hospital in Pazardzhik, while mourning the death of their spouse and mother Zlatka. On the same day, Mr Argirov signed the charge against himself and his son Ivan in accordance with the Decree. Inspecting the police document charging Mr Argirov, the *ERRC/HRP* established that, in violation of the Act on Administrative Offences (Article 42(5)), the document did not mention under which Article of the Decree on Petty Hooliganism the two were charged. The text of the police document was made in one copy only and there is no evidence that a copy of it was given to Mr Argirov or Ivan, who were released from custody at around 1:00 AM on November 18.

On November 19, Mr Argirov received notice to appear in court at 10:30 AM the next day. At around 9:15 AM on November 20, Mr Argirov met an attorney hired by his family. The hearing started at 10:30 and lasted approximately forty minutes. Two police officers gave eyewitness testimony, as well as two hospital security guards who were on duty at the time of the incident and Ms Popova, sister to Joseph Argirov. Despite large discrepancies between the accounts of prosecution and defence witnesses, the court did not hear third-party witnesses to clarify the factual situation. The court also did not give weight to Ms Popova's statement because "[...] she is the sister of the offender Argirov and is trying to give evidence acquitting him," according to the court transcripts. Mr Argirov was sentenced to three days imprisonment

at the Pazardzhik Police Station where he was taken directly from court. At around 4:15 PM on the same day, Mr Argirov fell ill and after being given two injections to lower his high blood pressure, he was released from custody due to aggravated health condition at 7:30 PM without serving the rest of his sentence.

In an earlier incident, again involving residents of the Romani neighbourhood Iztok in Pazardzhik, at around 6:00 PM on September 6, 2003, an eighteen-year-old Romani man Mr Shteryo Georgiev got into a fight in the Iztok Romani neighbourhood and Mr Yanko Angelov, another Romani man from the neighbourhood, intervened. According to the testimony of Mr Angelov to the *HRP*, at about 9:00 PM, two police vehicles arrived and police officers arrested Mr Georgiev, Mr Angelov and the third unknown man. During the arrest, the officers beat Mr Georgiev, resulting in numerous injuries on his head and body. All three men were taken to the Pazardzhik Police Station where they were charged with petty hooliganism in accordance with Article 1 of the Decree. Mr Angelov testified that officers did not allow him to call a lawyer, though he requested one. On the following day, a Sunday, the three men appeared before the Pazardzhik District Court early in the day. The trial lasted not more than one hour. Mr Angelov testified that he did not have a lawyer and he was not allowed to bring witnesses in his defence or examine the evidence against him. According to Mr Angelov, the court gathered witness testimony from the officers only. The three Romani men were sentenced to fifteen days imprisonment at the Pazardzhik Police

Station, the maximum punishment allowed under the Decree.

The defendants in the two cases described above were subjected to a criminal punishment – prison sentence – without being able to access the minimum rights guaranteed under the ECHR. In particular,

- One defendant was not allowed to have access to a lawyer (contrary to Article 6(3c));
- One defendant was not allowed to obtain the attendance and examination of witnesses in court (contrary to Article 6(3d));
- In both cases, law enforcement officials failed to adequately inform the suspects of the charges against them and have refused to allow the defendants to examine the evidence against them (contrary to Article 6(3a)); and
- In both cases, defendants did not have adequate time and facilities to prepare their defence – cases have been brought before courts within 12 to 14 hours after the individuals have been charged or summoned to court (contrary to Article 6(3b)).

Finally, the convicted individuals have been denied the right to an effective remedy guaranteed by Article 13 of the ECHR due to the fact that the court decisions under the Decree are not subject to appeal.

On December 12, 2003, the *ERRC* and the *HRP* sent a letter to Mr Ognian Gherdjikov, Chair of the Bulgarian National Assembly, and to Mr Simeon Saxe-Coburg-Gotha, Prime Minister of Bulgaria, urging them to ensure that the allegations of human rights violations against the Romani individuals are properly investigated and the responsible law enforcement officials

brought to justice; that the Decree on Petty Hooliganism be abolished and new legislation in conformity with the ECHR is adopted; that the allegations that individuals of Romani ethnicity have been disproportionately subjected to punishments under the Decree on Petty Hooliganism be investigated and a broader investigation into the respect for the human rights of the defendants of Romani ethnicity in the criminal procedure be launched; and to undertake immediate measures to prevent discriminatory treatment of Roma by law enforcement and judicial officials. (*ERRC, HRP*)

◆ **European Commission against Racism and Intolerance Third Report on Bulgaria**

On January 27, 2004, the Council of Europe's European Commission against Racism and Intolerance (ECRI) made public its Third Report on Bulgaria. Special attention was paid to the situation of Roma in Bulgaria. In the Executive Summary, ECRI noted that "many of the recommendations in ECRI's second report have not been implemented or have been implemented only partially. [...] There are still stereotypes, prejudices and discrimination against minority groups, particularly Roma, as well as against immigrants, refugees and asylum seekers. Lastly, there are still serious problems connected with the excessive use of firearms and force by the police against Roma. A large majority of Roma continue

to face serious financial and social problems, live in very deprived neighbourhoods and are hard hit by unemployment. There is still a widespread problem of segregation of Roma children in schools, and, so far, the implementation of the Framework Programme for Equal Integration of Roma in Bulgarian Society, which the government adopted in 1999, is still in its early stages." ECRI put forth a number of recommendations to Bulgarian authorities, including:

"92. ECRI considers that there is an urgent need for the authorities to adopt specific measures to combat all forms of direct and indirect discrimination against members of the Roma community. In particular, it recommends that the Bulgarian authorities ensure that Roma have equal access to services offered to the public. It would draw attention, in this connection, to the measures advocated in its General Policy Recommendation N°3 on combating racism and intolerance against Roma/Gipsies and General Recommendation N°7 on national legislation to combat racism and racial discrimination. Special attention should be drawn to the situation of Roma women who may be victims of discrimination on several grounds, for instance on that of their sex and ethnic origin. [...]"

"100. ECRI urges the Bulgarian authorities to take steps without delay to give Roma children more equal opportunities in the educational field. It stresses the prime importance of devising a

short-, medium- and long-term policy in this area and setting aside sufficient funds and resources to implement it.

"101. In particular, ECRI recommends that the authorities take over the "desegregation" programme by enabling children in schools attended solely by Roma children, where the standard of education is below average, to receive an education of the same standard as that given to other children. ECRI reiterates the urgent need to put a stop to the practice of placing Roma children who are not mentally handicapped in special schools intended for children with mental disabilities, and to reintegrate those already placed in such schools in the ordinary school system. [...]"

"108. ECRI urges the Bulgarian authorities to speed up the implementation of the Framework Programme for Equal Integration of Roma in Bulgarian Society. It recommends that the Bulgarian authorities take a clear public stand, asserting their political resolve to implement the Framework Programme without delay. ECRI also urges the authorities to ensure that the funds needed to finance the Framework Programme are made available."

The full text of ECRI's report on Bulgaria is available on the Internet at: http://www.coe.int/t/E/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Bulgaria/Bulgaria_CBC_3.asp#TopOfPage. (*ERRC*)

CROATIA

◆ **Croatian Constitutional Court Upholds Decision to Deny Illiterate Romani Woman Citizenship**

According to Decision No. U-III-1918/2000 of the Croatian Constitutional Court of December 17, 2003, by a vote of 8 to 5, the Court upheld the June 2000 Decision of the Administrative Court of the Republic of Croatia to deny Ms M.O., an illiterate Romani woman and long-term resident of the northeastern Croatian town of Slavonski Brod, Croatian citizenship. Ms M.O. was a citizen of the Former Socialist Republic of Yugoslavia, registered in the Republic of Bosnia. According to the Court's Decision, Ms M.O. put forth that, since 1987, she had lived in Croatia with her common-law husband, Mr D.L., who is a Croatian citizen. Ms M.O. and Mr D.L. also reportedly have three children, all of whom possess Croatian citizenship. The Court reached its decision on the basis that Ms M.O. did not prove an erroneous application of the law by the Administrative Court because she is, in fact, not formally married to a Croatian citizen and she is illiterate.

In their opinions, the dissenting judges argued that a more lenient standard should apply to citizens of

the Former Socialist Republic of Yugoslavia applying for Croatian citizenship than to other "foreigners", specifically regarding the literacy test. The dissenting judges further stated that the family should be under the special protection of the State and therefore, Ms M.O. should have been afforded protection of the Court as she met the more lenient criteria.

Since its adoption in 1992, the Croatian Law on Citizenship has received much criticism by international bodies because certain provisions of the law discriminate against non-ethnic Croats. In its "Status Report No. 10 – Assessment of Issues Covered by the OSCE Mission to the Republic of Croatia's Mandate since 21 November 2001" issued on May 21, 2002, the Organization for Security and Cooperation in Europe (OSCE) Mission to Croatia stated:

"Croatian citizenship legislation contains provisions that discriminate on the basis of national origin. These provisions impede the sustainable return of refugees and the integration of non-Croat long-term residents who remained in the country following Croatia's independence.

"For example, the 1991 Law on Croatian Citizenship provides for

citizenship by naturalization to non-resident Croats under more lenient standards than to individuals of other ethnic groups who were permanent residents until the conflict. For this reason, the Council of Europe's Venice Commission recommended in March 2002 that the Law on Croatian Citizenship be revised. In addition, the Ministry of the Interior's insistence upon formal renunciation of another citizenship by non-Croat permanent residents, even in cases where such renunciation is not reasonably possible, effectively leaves such individuals unable to obtain Croatian citizenship."

The issue of citizenship and access to personal documents is a major human rights issue faced by Roma living in the countries formed following the dissolution of the Former Socialist Republic of Yugoslavia and other countries arising in similar circumstances. *Roma Rights* 3/2003 entitled "Personal Documents and Access to Fundamental Freedoms", which addresses this theme is available on the *ERRC*'s Internet website at: http://errc.org/rr_nr3_2003/index.shtml. For further information on the human rights situation of Roma in Croatia, see <http://www.errc.org/publications/indices/croatia.shtml>. (*ERRC*)

CZECH REPUBLIC

◆ Czech Police Attack Roma in Casino

According to the Czech electronic news source *Romano Vodi* of December 5, 2003, a number of police officers attacked a group of Roma in a casino in the northern Czech town of Dobruška on November 11, 2003. *Romani Vodi* reported that according to a spokesperson for the Rychnov police, the officers were attacked by the Romani patrons and acted within the limits of the law to detain a criminal suspect protected by a group of Roma. However, witnesses to the incident reported a different version of events. The officers reportedly attacked the Romani patrons without reason. Eyewitness Petr Rafael was quoted as having stated, "A visitor shouted at the police to leave them (the Romani patrons) alone, because they had done nothing wrong, but they started beating them up."

One witness filed a complaint against the police actions and, according to *Romano Vodi*, the Rychnov Police Department was conducting an investigation into the incident. Several Romani patrons were reportedly charged in accordance with Articles 155 (attack of a public official) and 202 (disturbing the peace) of the Czech Criminal Code. On March 10, 2004, the investigating officer, First Lieutenant Hyrka, informed the *ERRC* that no police officers were charged in connection with the incident.

Antipathy towards Roma in Czech Republic continues to infect most of society. In January 2004, the Czech weekly newspaper

Respekt published a poll in which 79 percent of Czechs stated that they would not want Roma as neighbours. Additional information on the human rights situation of Roma in Czech Republic is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/czechrepublic.shtml>. (*ERRC, Respekt, Romani Vodi*)

◆ Suspended Sentences for Perpetrators of Violent Attack on Roma in Czech Republic

According to a January 5, 2004 report by the Prague-based radio station *Radio Prague*, Judge Miloš Kubíček of the Jeseník First Instance Court ordered three-year suspended sentences for three Czech youths who violently attacked a Romani couple in their home in the northeastern Czech town of Jeseník. Ms Petra Zhrivalova, a Prague-based human rights activist, informed the *ERRC* that on June 28, 2003, the three Czech youth – Petr Blajze, Martin Jaš and Martin Stiskala – in a drunken state and impersonating police officers, knocked at the door of 27-year-old Mr Jan •iga and 21-year-old Ms Lýdie •igová and demanded to be let in. Ms •igová, who was pregnant at the time, opened the door and was hit in the eye with a cobblestone. Mssrs Blajze, Jaš and Stiskala then reportedly attacked Mr •iga with broken bottles, cutting his face and chest. As a result of the attack, Ms •igová is unable to see out of her eye.

On January 9, *Radio Prague* reported that outraged Romani ac-

tivists petitioned the Czech government and the Ministry of Justice, demanding a fair trial. Mr Petr Mares, deputy prime minister, reportedly demanded an explanation from the Ministry of Justice. Mr Jan Jařab, the Czech human rights commissioner, was quoted as having stated, "I think it is correct to call it an outrage but it wouldn't be correct to call it a surprise, because in the last fourteen years we have seen a number of such verdicts and it seems that it is the rule, not the exception, that people who commit such attacks – very brutal racist attacks against the Roma – and the offenders are themselves mostly members of Neo-Nazi organizations – they are treated very lightly [...]"

The Olomouc Appeals Court ordered a retrial in the case, according to *Radio Prague* of January 26, after the State Prosecutor failed to appeal the verdict of the lower court, reportedly due to political interference. According to the Czech daily newspaper *Lidové Noviny* of March 26, 2003, Judge Kubíček of the Jeseník First Instance Court send a notice to the Olomouc Appeals Court in which he stated that the Court declined to hear the case because of pressure for stronger punishments from the media, Romani representatives and a number of politicians.

On February 11, 2004, Mr Dušan Badi, president of the Jeseník-based Association for Romani Human Rights, who is providing assistance to Mr and Ms •iga, testified to the *ERRC* that two weeks following the court's decision, as Mr and Ms •iga were walking through Jeseník, Mr Stiskala and a group of Neo-nazi

youth began to chase them, shouting racial epithets. Mr and Ms •iga escaped the group only by entering a local shop. According to *ERRC* research, later, on March 3, 2004, Mr Blazje and Mr Jaš assaulted Mr Lukas Tokar, a young mentally handicapped Romani man, at a bus station. Mr Blazje and Mr Jaš verbally insulted Mr Tokar, shouting “Black Monkey” at

him. Mr Jaš then punched Mr Tokar in the face causing him to fall to the ground, and proceeded to kick him in the chest. Mr Tokar was taken to a local hospital where his broken nose was treated, according to *ERRC* research. Mr Blazje and Mr Jaš reportedly threatened Mr Tokar with death should he report the incident to the police. Police detained Mr Blazje

and Mr Jaš, who were reportedly charged in accordance with Article 221 (injury to health) of the Czech Criminal Code and Article 202 (disturbing the peace), 221 (injury to health) and 198 (defamation on the basis of race), respectively **UPDATE AS WE GO TO PRESS** (*ERRC, Lidové Noviny, Radio Prague*)

GERMANY

◆ United Nations Committee on the Elimination of Discrimination against Women Concerned About Multiple Discrimination against Roma and Sinti Women in Germany

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW), on January 30, 2004, issued its Concluding Comments on Germany’s compliance with its obligations under the International Convention on the Elimination of Discrimination against Women. In its Concluding Comments, the Committee expressed concern “about the situation of migrant and minority women, including Sinti and Roma women, who suffer from multiple forms of discrimination based on sex, ethnic or religious background and race, and at the vulnerability of some of these women to trafficking and sexual exploitation. The Committee regrets the lack of specific information provided in the reports with regard to their access to health, employment and education, as well as various forms of violence committed against them and, in particular, data and information about forced marriages.

The Committee is also concerned about the situation of some foreign women domestic workers in the households of diplomats.”

In the run-up to the Committee’s review, the *ERRC*, in partnership with the Open Society Institute’s *EU Monitoring and Advocacy Program (EUMAP)*, submitted a shadow report to CEDAW, outlining Germany’s failure to provide legal protection for Sinti and Roma women, who often face both gender and ethnic discrimination. The report noted that many Sinti and Roma women and girls in Germany are excluded from a range of protections guaranteed by the Convention, particularly in the areas of education, employment, health and participation in public and political life. The full text of the Committee’s Concluding Comments are available on the Internet at: <http://www.ohchr.org/tbru/cedaw/Germany.pdf>. (*ERRC*)

◆ United Nations Committee on the Rights of the Child Reviews Germany

On January 30, 2004, the United Nations Committee on the Rights

of the Child issued its Concluding Observations on Germany, concerning Germany’s compliance with its obligations under the International Convention on the Rights of the Child. The Committee expressed concern that Romani children may be forcefully expelled to countries from which their families have fled, and recommended that German authorities “take all necessary measures to review its legislation and policies regarding Roma children and other children belonging to ethnic minorities seeking asylum in the State party.”

Speaking on the occasion of the release of the Committee’s findings, Mr Boris Tsilevich, a member of the Parliamentary Assembly of the Council of Europe involved in the investigation of the forcible expulsion of Roma from Germany to Serbia and Montenegro, stated, “The Committee’s conclusions are very important. Our work has caused us deep concern about Germany’s respect for children’s rights where Romani children are at issue.”

In recent years, the German government has carried out high numbers of forcible expulsions of Roma to countries in Central and South-

eastern Europe, notably Serbia and Montenegro and Romania. German authorities have expelled Romani children who have been born in Germany, have attended German schools for significant periods of

time, and who have formed real and lasting ties to Germany. In the extreme case, German officials have expelled Roma and others regarded as “Gypsies” to Kosovo, despite serious concerns that such persons are

under threat of persecution in the province. The full text of the Committee’s Concluding Observations on Germany are available on the Internet at: <http://www.ohchr.org/tbru/crc/Germany.pdf>. (ERRC)

GREECE

◆ Roma Charged Under Sanitary Decree Found Not Guilty

On December 1, 2003, the One-Member Misdemeanour Court of Nafplio acquitted twenty-seven Roma from Glykeia, near Nafplio in the Peloponnesse region of Greece, charged in accordance with the Common Ministerial Decree of the Minister of Internal Affairs and the Minister of Health No. A5/696/1983 “Sanitary Provision for the Organised Relocation of Wandering Nomads”. The defence argued *inter alia* that the defendants were not itinerant and hence that they fell outside the 1983 Decree’s scope of application, an argument that the court accepted and it rendered a verdict of not guilty. The five Romani men and twenty-two Romani women were charged because they had allegedly settled on land in Glykeia without permission from the end of November 1998 through to June 17, 1999. However, in 1986, the Prefectural Council of Argolida decided to create the existing settlement and relocated the Roma living in the area. The ERRC provided legal representation for the group, in co-operation with Mr Spyros Kloudas, a local lawyer.

This was not the first time members of the Glykeia Romani community were indicted under the

1983 Sanitary Provisions. In 1999, the same twenty-seven Roma faced identical charges before the One Member Misdemeanour Court of Nafplio, which acquitted them on grounds that their continuing residence in the area was due to necessity in accordance with Article 25 of the Greek Penal Code. It is to be noted that the Roma have been living in the settlement since 1986, when the Prefectural Council of Argolida decided to create the existing settlement and relocated there the Roma living in the wider area.

The December 1, 2003 decision of the One-Member Misdemeanour Court of Nafplio will constitute an important precedent against potential future criminal indictments and sentencing of Roma for “settling illegally” because although the 1983 Sanitary Provision has been amended by virtue of the Joint Ministerial Decision 23641/2003 “Amendment of the A5/696/25.4.1983 Sanitary Provision for the organized settlement of itinerant persons”, the latter still concerns “itinerant persons”. This term is essentially a euphemism for Roma, as Article 6(3) of the Joint Ministerial Decision 23641/2003 excludes from the scope of its application all those categories of persons of which it could be applicable, such as farmers in agricultural areas or of cattle-breeders in summer or

winter grasslands and travellers in general. (ERRC, GHM)

◆ Racist Attempts by Greek Authorities to Keep Roma From Their Territories

Racist attitudes on the part of Greek officials towards Roma continue to be crucial to the inability of Roma in Greece to access fundamental rights and freedoms, and particularly the right to adequate housing. Most recently, Greek authorities have been speaking out to the media in an attempt to discourage private non-Romani citizens from taking actions which might encourage the movement of Roma into areas they govern. According to the Pyrgos-based daily newspaper *Proti* of September 11, 2003, Mr Costas Lourbas, mayor of the town of Gastouni in Western Peloponnesse, stated:

“[...] the race of the Gypsies is inadaptable and the social problems they create are numerous. Moreover, there is no reason to be optimistic about the prospects of those people integrating into society in the future. Consequently, we should all confront this grave problem and we should understand that the only solution is for people to stop renting their properties to the Gypsies, as this creates problems to the local residents and degrades the area.”

In a meeting on December 9, 2003 with the *ERRC* and its local partner *Greek Helsinki Montior (GHM)*, Mr V. Valassopoulos, the general secretary of the Ministry of Interior, stated, that the Municipality of Aspropyrgos has a “purely racist attitude” vis-à-vis Roma, thereby admitting awareness by the central Greek administration of the anti-Romani feelings held by many local authorities. Other information points to the fact that similar attitudes are held by members of the central Greek administration. Speaking with a journalist with the Greek national newspaper *Eleftherotypia* on February 6, 2003, Mr Michalis Hadjigiannis, the former mayor of Lechaina, a municipality in Western Peloponnesse, reportedly stated:

“We were about to start work on the new settlement when I received a call from the head of the

Environment and Town Planning directorate of the Western Greece Region, Ms K. Karagianni. She informed me that the settlement could not be made in the designated plot of land as it was next to the national highway and with the Olympics in mind, it would not be good for foreign visitors to be able to see the Gypsies. I then contacted the Ministry of the Interior and was told that we could suitably landscape the area so that a small hill could be erected between the national highway and the settlement and that trees could be planted upon it, so that the Gypsies would not be seen from the highway when the road would be used during the Olympics. I initially thought they were joking but shortly I found out that unfortunately they were talking in earnest. It is unbelievable [...]. This is how all the efforts we made to house these people came to an end.”

Though the interview was not published, the interview was made available to the *ERRC/GHM*. Racial discrimination and incitement to racial hatred violate the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), which Greece ratified on July 18, 1970. Article 4 of the ICERD states: “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and [...] (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.” For more information on the situation of Roma in Greece, see the *ERRC*’s Internet website at: <http://www.errc.org/publications/indices/greece.shtml>. (*ERRC, GHM*)

HUNGARY

◆ Private Foundation School Found Segregative in Hungary

In February 2004, the Hungarian Examination and Evaluation Center for Public Education (OKÉV) presented its finding that, on the basis of its investigation, the establishment of the Antal Mihály private foundation school in Jászladány is not in accordance with the law and leads to the segregation of disadvantaged students. The Antal Mihály private foundation school, which shares a building with the local municipally-run school, opened at the beginning of the 2003/2004 school year following much controversy related to the alleged intention of the school to segregate Romani children

(background information on the school can be found at: http://errc.org/rr_nr4_2003/snap19.shtml). The OKÉV further stated that the establishment of the private foundation school resulted in the polarisation of the two halves of the school in such a way that children coming from normal families ended up in the private part of the school, while those coming from disadvantaged families ended up in the municipal section of the school. According to OKÉV, the decision of Jászladány municipal authorities violates the constitutional rights of citizens as well as certain legislative prohibitions.

According to a February 17, 2004 press release of the Hungar-

ian Ministry of Education, it is typical in cases such as that of Jászladány that even though various authorities find a practice unlawful, there are no consequences for those responsible because authorities do not have the tools to enforce the elimination of such a practice. Therefore, the Alliance of Free Democrats (SZDSZ), a liberal political party in Hungary, was considering proposing amending the law on compulsory and higher education, including granting courts the power to revoke per capita subsidies provided by the state so long as the unlawful situation persists.

The Hungarian Act on Equal Treatment and the Furtherance of Equality of Opportunities, adopted

in December 2003, prohibits discrimination on ethnic basis in education, stating at Article 27(3) that "It is an infringement of the requirement of equal treatment especially when a person or group is: a) illicitly segregated in an educational institution, or in a division, class or group created within; b) limited to a form of education or training, or the establishment and maintenance of an educational or training system or institution, the level of which does not reach the requirements laid down in the issued professional requirements, or does not meet professional rules, and as a result of which, does not provide the opportunity required to pursue studies, taking state examinations, or the opportunity of training and preparation expected in general." The measure strengthens existing Hungarian rules and case law banning racial segregation in the field of education. (ERRC)

◆ Roma Victim of Racially Motivated Attack in Hungary

According to a January 23, 2003 report by the Budapest-based *Roma Press Center (RSK)*, on the evening of January 18, six non-Romani men, who were reportedly intoxicated and on their way home from a local disco, attacked a group of Romani families in their homes as they slept in the central Hungarian town of Ósi. During the attack, the arm of Mr Mátyás Kovács, an elderly Romani man, was broken and Ms Irén Kocsáncsi, a Romani woman, suffered injuries to her skull after being hit on the head with an iron bar. The attackers also reportedly broke windows in the Romani homes with sticks, axes and bricks and damaged vehicles owned by the Roma during the attack. The attack

was reportedly an act of vengeance for the alleged theft of approximately 500,000 Hungarian forints worth of copper wire from one of the attackers, who believed the perpetrator to be Romani.

The *RSK* quoted the Chief of the Várpalota Police Department as having stated that police took the six suspects into police custody in Várpalota, from where they were transferred to the Székesfehérvár Police Station. On January 21, 2004, the six men, charged in accordance with Article 271 of the Hungarian Criminal Code (collective breach of the peace), were released from police custody by order of the Veszprém City Court.

The Budapest-based Romani organisation *Foundation for Romani Civil Rights*, which is providing legal representation for the victims, informed the *ERRC* that it reached an agreement with the Ósi local government whereby the local government has begun to repair the doors and windows of the Romani homes broken during the attack. In addition, a local civil guard group is to begin patrolling the area to ensure the safety of the residents.

On February 11, 2004, the *ERRC* and the *Foundation for Romani Civil Rights* sent a letter to General Prosecutor Dr Péter Polt of the Hungarian General Prosecutor's Office, expressing concern at the inadequacy of the charges brought against the six perpetrators given the severity of the attack and asking that the perpetrators be charged with crimes commensurate with their actions. On March 5, 2004, the *ERRC* and the *Foundation for Romani Civil Rights* received a response that the General Prosecutor's Office was following the investigation, which was ongoing.

UPDATE AS WE GO TO PRESS Information on the human rights situation of Roma in Hungary is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/hungary.shtml>. (*ERRC, Foundation for Romani Civil Rights, RSK*)

◆ Romani Men Offered Reduced Compensation by Hungarian Court after Being Judged Primitive

In November 2003, the Szeged City Court awarded two Romani brothers acquitted of murder charges a reduced compensation in the amount of 1.2 million Hungarian forints each (approximately 4,650 Euro) after classifying them as "primitive", according to a *Radio Free Europe/Radio Liberty (RFE/RL)* report of November 12, 2003. The *RFE/RL* reported that the brothers, who had spent fifteen months in detention as a result of the charges against them, had asked for 2 million Hungarian forints each (approximately 7,750 Euro) in damages. The Court's ruling was reportedly based on a medical assessment which found the two men to be "more primitive than average" and had, therefore, suffered less as a consequence.

On December 18, 2003, the Csongrad County Court decided that the Szeged Court had erred in granting the Romani men reduced compensation on the grounds that they were "primitive", but upheld the Court's decision to award only 1.2 million Hungarian forints each in compensation, according to the *RFE/RL* of December 19. The reasoning of the Szeged Court was found to be humiliating and was reportedly changed from "primitive" to "simple". (*RFE/RL*)

ITALY

◆ **Italian Court Stops Expulsion of Romani Family to Bosnia and Herzegovina**

On January 8, 2004, Rome's Civil Court issued two decisions declaring void the expulsion decrees issued by Italian immigration authorities for Mr Nedeljko Sulejmanović and his wife Ms Mehida Seferović. Italian authorities had earlier issued decrees to expel Mr Sulejmanović and Ms Seferović to Bosnia and Herzegovina and placed Ms Seferović in custody at the Ponte Galaria Immigration Centre, separating her from her four small children. Attorneys Piero Paoletti and

Ms Alessandra Mari appealed the expulsion decrees, prompting the decisions of Rome's Civil Court. In its decisions, the Court quoted the decision of the European Court of Human Rights (ECHR) in the case *Čonka v Belgium*, in which the Court found a violation of Article 4 of Protocol 4 (prohibition of collective expulsion) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the March 2002 admissibility decision of the ECHR in the case *Sulejmanović v. Italy*, in which the court agreed to consider the applicants' complaints arising under Article 3 (prohibition of tor-

ture or inhuman and degrading treatment), Article 4 of Protocol 4, Article 8 (right to privacy and family life) and Article 13 (requirement of an effective remedy) of the Convention. Rome's Civil Court found that the principle of non-refoulement – the ban on the return of persons to countries of origin if they may face serious harm there – precluded Italian authorities from expelling the appellants to Bosnia and Herzegovina. Further information on the human rights situation of Roma in Italy is available on the *ERRC's* Internet website at: <http://errc.org/publications/indices/italy.shtml>. (*ERRC*)

KOSOVO

◆ **Ethnic Cleansing of "Gypsies" in Kosovo**

On March 31, 2004 the *ERRC* sent a letter to Special Representative of the Secretary General of the United Nations for Kosovo Mr Harri Holkeri, Commander of Kosovo Force Lieutenant General Holger Kammerhoff, Kosovo Prime Minister Bajram Rexhepi, and European Commission President Romano Prodi to express deep concern at the continued acts of ethnic cleansing perpetrated by ethnic Albanians in Kosovo beginning with renewed force on March 17. In the letter, the *ERRC* presented documentation gathered in the course of an *ERRC* field mission undertaken since the beginning of the latest wave of violence in Kosovo.

The *ERRC* has gathered evidence that Roma and Ashkaelia have been subjected to very seri-

ous human rights violations during the wave of pogroms on minority communities carried out in the period March 17-21, 2004 throughout the province by ethnic Albanians. *ERRC* field investigation has documented that, in addition to the pogroms on ethnic Serb communities, several hundred Roma and Ashkaelia have been also targeted. At least 75 houses belonging to Romani and Ashkaeli families have been set on fire.

A summary of *ERRC* documentation in some localities in Kosovo follows:

Vushtri/Vučitrn

ERRC research established that approximately 70 houses belonging to Ashkaeli persons were set on fire by Albanian attackers (referred to locally as "protesters") on March 18, 2004, in the town of Vushtri/Vučitrn, about 10 kilometres south

of Kosovska Mitrovica – the place where the pogroms on Kosovo Serbs had begun the day before. The houses were completely destroyed in the arson attacks.

According to eyewitnesses, on March 18, 2004, at approximately 17:00, a crowd of 200-300 persons gathered at the St. Elias Orthodox church in the town, which in 1999 had also been the target of assaults by ethnic Albanians in the context of ethnic cleansing of minorities in Kosovo following the end of the NATO military action in June 1999. At the time of the March 18, 2004 incident, the Moroccan KFOR unit which had been positioned to protect the site, failed to provide any protection and allegedly left. The crowd set fire to the church and the adjacent structures, destroyed some of the remaining church interior, including an altar and wall paintings, and knocked down tomb-

stones in the graveyard located beside the church. At around the same time, a second crowd began to gather and subsequently headed toward the Ashkaeli neighbourhood. The group that had set the church on fire then joined the attackers in the Ashkaeli area.

According to the testimony of Ashkaeli eyewitnesses, during the pogrom, a crowd of ethnic Albanians came to the Ashkaeli neighbourhood and started breaking into the houses. Their intention was, according to witnesses interviewed by the ERRC, to burn the houses to the ground while persons were still inside. The first house burnt was the house of Xemail Balinca. Some of the attackers allegedly tried to rape a girl from the Balinca family. The next house broken into belonged to the Qizmolli family. According to Mr Hamit Zymeri, an Ashkaeli eyewitness to the pogrom, neighbours gathered in the yard of the Qizmolli house in order to help the family, but officers of the Kosovo Police Service (KPS) intervened. The representatives of the Ashkaeli group alleged that some of the KPS officers acted in complicity with the attackers. Three members of the Qizmolli family were then arrested by KPS officers.

According to the testimony to the ERRC of Station Commander Martin Wenzel, a senior UNMIK officer, Ashkaeli persons allegedly fired at the Albanian crowd, in an attempt to defend their homes. According to Station Commander Wenzel, these shots were not the trigger for the onslaught and arson that followed; the attackers had allegedly already decided to evict, burn and destroy the neighbourhood. In his view, "Everything was orchestrated."

According to Officer Wenzel, when the information that Ashkaeli houses were being attacked was received, ten KPS police officers volunteered to evacuate the Ashkaeli families and bring them to the police station. Over 200 Ashkaeli people were assisted by KPS officers in fleeing their homes and coming inside the building of the police station. At about 19:30, the last Ashkaeli individuals were extracted from the area under mob siege. The houses were subsequently burned to the ground. At approximately 2:00 AM the following morning, the evacuated Ashkaelia were transferred to the French KFOR base at Plana. Two days later, they were transported to the French KFOR military compound Marechal de Lattre de Tassigny, near the village of Novo Selo.

The three members of the Qizmolli Ashkaeli family detained at the time of the pogrom were held initially at the same police station. An AK-47 and hunting guns were seized during the arrest. The men were released two days later, reportedly on verbal order of the local prosecutor and they joined the other Ashkaeli people in the camp. According to the Officer Wenzel, the three men face charges of illegal possession of firearms. In addition, an investigation into the destruction by arson of each of the approximately 70 houses in Vushtri/Vucitrn is currently reportedly open. As of March 28, 2004, no one associated with the attacking crowd had been detained in relation to the arsons and the looting.

According to Mr Hamit Zymeri, an Ashkaeli man with whom the ERRC spoke at the French KFOR compound in Novo Selo, the total number of persons burned out of

Vushtri/Vucitrn in the attack was 257; there were 87 children, 85 women, two of whom are pregnant, 13 children under 3 years of age, and 18 babies under 6 months of age. According to a medical expert from the Ashkaeli community, thirteen people have diabetes, 20 have high blood pressure, 3 have epilepsy, and one woman has hip condition and is unable to walk. The conditions in the camp, according to the Ashkaeli representatives are poor: the barracks, which accommodated eleven persons each, were damp from heavy rain and were inadequately heated.

Gjilan/Gnjilane

At approximately 17:15-17:30 on March 17, Serbian and Romani communities in the town of Gjilan/Gnjilane, about 35 km southwest of Pristina were attacked by a mob of ethnic Albanians, reportedly predominantly young people in their teens. According to Romani eyewitnesses with whom the ERRC spoke, twenty-three houses belonging to Serbs were burnt. Also according to Romani eyewitnesses, the attackers were also intent on burning Romani houses. The attackers arrived at the Romani streets with canisters of inflammable liquid. Albanian neighbours, however, reportedly protected the Roma and did not allow the attackers to set their houses on fire. The attackers threw stones at Romani houses breaking windows and doors. They also insulted the Roma, calling them Majup (a pejorative word meaning, roughly, Gypsies in Albanian). Some of the attackers broke into the house of Sulejman Demiri, in the process breaking the front door and window-panes.

The house of Milaim Demiri was also attacked with stones and some



Adriana, Elvis and Denis have spent the last 9 days with their mother Taibe Berisha, 34, in the miserable conditions of the Plementina camp, where numerous other Romani IDPs have lived since 1999. When an angry Albanian crowd surrounded the building in Obiliq/Obilic where they had lived among ethnic Serbs, their father put them in the family's old car and drove away to safety.

PHOTO: ERRC

window-panes were broken. According to Mr Milaim Demiri, some of the attackers asked Roma why they did not join the protest. Also according to Mr Milaim Demiri, one Romani house in another neighbourhood, Avdulla Presheva, was burnt. The house belonged to Mr Ramadan Selimi. Roma with whom the *ERRC* spoke in Gjilan/Gnjilane were afraid to accompany the *ERRC* to see the Romani house. They did not know the whereabouts of Mr Selimi.

According to *ERRC* research, the police first appeared approximately six hours after the attack. Locals told the *ERRC* that the town has a community of 350 Roma. The number of Roma used to be between 5,000-6,000 before 1999, but most of these fled during the campaign of ethnic cleansing of minorities in Kosovo, 1999-present.

Lipjan/Lipljan

According to eyewitnesses with whom the *ERRC* spoke on March 28 in the town of Lipjan/Lipljan, about 15 km south of Pristina, three houses belonging to Ashkaeli and Romani families were burnt to the ground on March 17 and March 21. The *ERRC* spoke with Ms Selvije Kurteshi, an Ashkaeli woman whose house was burnt down on March 21 at around 2:00 AM. Ms Kurteshi and her family were not in their house at the time it was set on fire; they were temporarily accommodated in the house of Ms Kurteshi's brother, located nearby. Neighbours reportedly told Ms Kurteshi that her house was burning, but stated that they were not able to identify the attackers. Mr Kurteshi told the *ERRC* that all of the furniture in the house was destroyed in the fire. According to Ms Kurteshi, KFOR arrived at the scene of the attack approximately

one hour after the fire. The fire was extinguished by the police, who had reportedly been called by neighbours. The other two houses burnt in Lipjan/Lipljan belonged to Ashkaeli persons currently refugees outside Kosovo. Both houses were reportedly set on fire on March 17. The Investigator of the KPS in Lipjan/Lipljan in charge of the investigation cases told the *ERRC* that investigations had been opened with respect to the arson attacks on the three houses. He declined to provide the *ERRC* with information as to whether persons had been detained or charged in connection with the attacks.

Obiliq/Obilic

In the town of Obiliq/Obilic, east of Pristina, a number of Romani persons with whom the *ERRC* spoke told the *ERRC* that they had fled their homes on March 17 and sought refuge in the nearby Plemetina refugee camp when they saw a mob of people approaching their neighbourhood. At least three Romani families were reportedly forced to flee from their homes in Obiliq/Obilic in advance of rioters there. The *ERRC* subsequently observed that the building in Obiliq/Obilic where the Berisha family – one of the families concerned – lived was looted and that window panes in the building were broken and other damage to the exterior was visible. The building had previously housed ethnic Serbs and Roma. According to Mr Shevki Berisha and Ms Taibe Berisha, Romani victims of the attacks, no authority came to help them when the crowd gathered intent on attacking their house. As of March 28, no authority had been to visit them in the Plemetina camp. They stated to the *ERRC* that they did not have means to buy food and were afraid to go to Obiliq/Obilic.

In Obiliq/Obilic, the *ERRC* also visited a community of 19 Roma, Ashkaeli and Egyptian families, who live in recently rebuilt houses on the outskirts of Obiliq/Obilic. They told the *ERRC* that none of them had been attacked on March 17. However, individuals in the community stated that they feared attack and had stopped sending their children to school. One Ashkaeli man told the *ERRC*, We are not free to go to Obiliq/Obilic. All persons in the community were reportedly unemployed at the time of the *ERRC* visit; they collect scrap metal to earn money for food.

In its letter the *ERRC* stated that the situation of Roma, Ashkaelia, Egyptians and others regarded as “Gypsies” in Kosovo was extremely precarious. In March 2004, Roma, Ashkaelia and others regarded as “Gypsies” in Kosovo have again been targeted for extreme violence as part of a campaign begun in 1999 by ethnic Albanians to expel minorities from the province, to seize their property and to do them serious physical harm. In the close to five years since an international administration was established in Kosovo, rudimentary security has never been durably established in Kosovo and minorities have been daily unable to enjoy basic freedom from fear of physical attack. A number of communities have lived for close to half a decade without effective freedom of movement.

Efforts to bring the perpetrators of the orgy of ethnic violence undertaken in the wake of the establishment of an international authority in Kosovo have not yet even begun in earnest, much less been able to show any form of significant impact. Arrests of suspects in crimes committed by

ethnic Albanians against civilians are met with ethnically inspired protests by Albanians, demonstrating under the slogan, “UNMIK Stop Arresting Liberators!”

The *ERRC* noted that on at least two occasions, governments outside Kosovo (specifically the governments of Slovenia and Hungary) had arrested and then subsequently released without charge high-ranking members of the Kosovo Liberation Army, persons for whom valid international arrest warrants have been issued in connection with ethnic cleansing acts in Kosovo.

Further, the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) stated on March 21, 2001, that her office had opened an investigation into “activities against Serbs and other minorities [emphasis added] in Kosovo by unidentified Albanian armed groups from June 1999 until the present...” Asking the UN Security Council to modify the Tribunal statute to cover such crimes, Chief Prosecutor Del Ponte expressed her offices belief in the importance of pursuing these allegations:

“We must ensure that the Tribunals unique chance to bring justice to the populations of the former Yugoslavia does not pass into history as having been flawed and biased in favour of one ethnic group against another. Besides, if we obtain this morally justified and necessary extension of our mandate, the Tribunal might become a deterrent factor against the ongoing ethnic-cleansing campaign in Kosovo.”

The *ERRC* also pointed to the fact that as of the date of its letter, the ICTY had brought no eth-

nic Albanians to justice in connection with the violent attacks on Roma, Ashkaelia, Egyptians, and other persons regarded as “Gypsies” occurring as part of the campaign of ethnic cleansing undertaken in Kosovo in the period June 1999-present.

Local courts had not, according to employees of international agencies involved in the governance of Kosovo, proven effective in bringing ethnic Albanian perpetrators of racially motivated crimes and acts of ethnic cleansing against Roma, Ashkaelia, Egyptians, other persons regarded as “Gypsies”, or indeed any other minorities in Kosovo. As such, despite the international administration of Kosovo, a climate of near-total impunity for perpetrators of violent attacks on minorities prevailed in the province. One example among countless racially motivated crimes occurring in Kosovo since 1999, was the fact that no one had ever been brought to justice in connection with the shooting deaths of three Ashkaeli men less than 24 hours after they returned to their native village of Dosevac/Dashevc as part of a voluntary return program in November 2000.

Roma and Ashkaelia with whom the *ERRC* spoke during its mission to Kosovo in March 2004, had despaired entirely of their ability ever to live with dignity in Kosovo in the future, and had spoken with near universal voice of their desire to leave Kosovo. That fact marked a significant change from previous *ERRC* documentary missions in Kosovo and among Romani refugees outside Kosovo, many of whom expressed the desire to return to their homes in Kosovo and participate in the reconstruction of a democratic Kosovo after Milosević.

In view of the situation in Kosovo in the aftermath of the pogroms, the *ERRC* urged the representatives of the international community to act within the powers available to them to ensure that:

- Without delay, the security situation of Romani and Ashkaeli communities throughout Kosovo is assessed and measures appropriate to the specific situation of each community, as well as to local community perceptions of the actual and potential risks in the given community, are swiftly undertaken;
- Prompt and impartial investigations into all acts of violence to which Romani, Ashkaeli and Egyptian individuals and other persons regarded as “Gypsies” in Kosovo have been subjected are carried out; all perpetrators of racially-motivated acts of ethnic cleansing are brought swiftly to justice and victims or families of victims receive adequate compensation; justice is done and seen to be done;
- The International Criminal Tribunal for the Former Yugoslavia redoubles its efforts to bring to justice individuals guilty of the persecution of Roma, Ashkaelia, Egyptians and other persons regarded as “Gypsies” in Kosovo;
- All governments honor the international warrants for the arrest of a number of persons wanted in connection with crimes of ethnic cleansing occurring in Kosovo;
- Sustained efforts are undertaken by all authorities in Kosovo and involved in the administration of Kosovo to ensure that no discussions of Kosovo’s

final status are embarked upon until such a time as all stakeholders achieve durable and lasting consensus in practice that Kosovo is a multi-cultural society in which all individuals can freely exercise in practice all of their fundamental human rights;

- Any forced returns of Kosovo Romani, Ashkaeli or Egyptian individuals to Kosovo, or to the rest of Serbia and Montenegro are rendered impossible and im-

permissible until such a time as authorities in Kosovo are able to demonstrate durable and lasting security and freedom from racial discrimination for all in all parts of the province; in particular, the governments of Denmark, Germany and the United Kingdom should be instructed that forced returns of minority individuals to Kosovo in the present circumstances constitute refoulement and are therefore extreme violations of international law.

Information on the situation of Roma, Ashkaelia, Egyptians and others regarded as “Gypsies” in Kosovo is available on the Internet at: <http://www.errc.org/publications/indices/kosovo.shtml>.

Photographic documentation by *ERRC* researchers in Kosovo in March 2004 is available on the Internet at: http://www.errc.org/publications/photos/kosovo_2004.shtml.

MACEDONIA

◆ Public Officials Discriminate against Roma in Macedonia

Roma in Macedonia continue to suffer violations of fundamental rights. According to *ERRC* research, conducted in partnership with the Štip-based non-governmental organisation *Association for the Human Rights Protection of Roma (ARRP)*, several days after having their water supply cut off by the public utilities company at the beginning of November 2003, seven representatives of the Romani community in the north-eastern Macedonian town of Vinica went to the local Social

Welfare Office to ask for assistance. The Romani representatives hoped the director of the Social Welfare Office would issue a letter to the public utilities company asking that their water be restored and their debt forgiven because of their material situation. However, according to *ERRC/ARRP* research, the director of the Social Welfare Office called for police assistance upon seeing the Romani group speaking with the office secretary, reportedly out of fear that they would attack her. Soon thereafter, five police officers arrived at the Social Welfare Office and an officer in civilian clothing stated to the group, “What

are you doing here? Leave this office at once. Go look for your rights in India; not here.” At this point, the Romani representatives left the building.

On November 10, 2003, the *ERRC/ARRP* sent a letter to the mayor of Vinica, expressing concern about the discriminatory attitudes exhibited by both local police and public employees. For more information on the human rights situation of Roma in Macedonia, see the *ERRC*’s Internet website at: <http://www.errc.org/publications/indices/macedonia.shtml>. (*ARRP, ERRC*)

MOLDOVA

◆ Police Officer Enjoys Impunity for an Alleged Abuse of Romani Boy

According to information provided to the *ERRC* by Mr Nicolae Radița, a Moldovan Romani activist, at the end of July 2003, the Chișinău First Instance Prosecu-

tor’s Office issued a non-indictment decision in a case involving the physical abuse of a Romani boy by a police officer. On July 5, 2003, an officer from Chișinău’s 5th District Police Station forcibly took Artur Albina, a 14-year old Romani boy, from his home to the police station, reportedly on sus-

picion of having committed murder. The officer reportedly did not present a warrant at the time he entered the house and took Artur to the police station. Artur’s parents, Mr Mihai Albina and Ms Magdalena Ciobatari, who were not at home at the time, were not informed of their son’s detain-

ment. According to Mr Radița, at the station, Artur was questioned without the presence of a lawyer or his parents and the detaining officer physically abused him, punching him in the head. Mr Radița reported that approximately three hours after Artur was taken into police custody, Ms Ciobatari went to the police station in search of her son and he was released. Ms Ciobatari immediately took Artur to a hospital where he was kept for ten days of medical treatment, according to his medical certificate. On July 6, the real perpetrator of the murder was identified. On July 10, Ms Ciobatari filed a complaint with

the police, asking that the officer who physically abused her son be punished. At the end of July 2003, a non-indictment decision was issued in connection with the police's abuse of Artur.

In August, Mr Albina received written notice that an administrative court had found him guilty of being an unfit parent, fining him 300 Moldovan lei (approximately 20 Euro). The charge was reportedly brought against Mr Albina because his son had been taken into police custody. Mr Albina stated that he had never attended a trial in connection with the charge and appealed the decision

to the Chișinău Appeal Court with the assistance of Ms Svetlana Nenița, a lawyer from Moldova. The Appeal Court sent the case back to the Administrative Court for retrial. On behalf of Artur Albina, in February 2004, the *ERRC*, together with Ms Nenița, appealed the decision not to indict the officer involved in the incident. **UPDATE AS WE GO TO PRESS** Additional information on the situation of human rights situation of Roma in Moldova is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/moldova.shtml>. (*ERRC*)

NORWAY

◆ **European Commission against Racism and Intolerance Issues Third Report on Norway**

On January 27, 2004, the Council of Europe's European Commission against Racism and Intolerance (ECRI) made public its Third Report on Norway. Specific attention was devoted to the Romani issues in Norway. In its report, ECRI states, at Paragraph 61:

"In its second report, ECRI noted the research work being undertaken on assimilation policies and systematic serious human rights violations, such as forced sterilisations of women, practiced in the past in Norway against the members of the Romani communities. ECRI understands that the establishment of a system of reparation for human rights violations has been examined by the Norwe-

gian Government in close consultation with the representatives of the Romani communities. The latter have stressed that human rights violations were not limited to forced sterilisation of women, but included other practices such as lobotomy and forced separation of children, and that any system of reparation should take all violation of human rights into account. As concerns other areas, representatives of the Romani communities point out that recent legislation has made more difficult the exercise by Romani people of certain professions in the craft industry traditionally exercised by them, as qualifications or equipment that they do not always possess have now been made compulsory for these professions. The survival and development of the Romani language is also an area of priority for some representatives of these communities. [...]"

ECRI recommended that Norwegian authorities "[...] pursue their dialogue with the representatives of the Romani communities in view of the establishment of a system of reparations for past human rights violations committed against the members of these communities. It also encourages the Norwegian authorities to intensify their efforts to support the Romani language and to provide children of itinerant families with regular education. ECRI furthermore encourages the Norwegian authorities to ensure that the exercise by Romani people of certain traditional professions in the craft industry is preserved." The full text of the ECRI report is available on the Internet at: http://www.coe.int/t/E/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Norway/Norway_CBC_3.asp#TopOfPage. (*ERRC*)

ROMANIA

◆ Romanian Doctors Remove a Romani Woman's Uterus without Informing Her

On February 27, 2004, three junior doctors removed the uterus of Ms Maria Iordan, a 22-year-old Romani woman, without her consent or even her knowledge, according to *ERRC* research, conducted in cooperation with the Bucharest-based Romani organisation *Romani CRISS* on March 7, 2004.

Just after midnight on February 22, 2004, Maria, who was pregnant at the time, arrived at the Constanța County Clinical Hospital where she was transferred to the Gynaecological-Obstetrical Department after doctors discovered that the foetus was in a breach position. According to Maria's medical file, at 1:00 AM Dr D. Caraiani noted that the membrane was torn. Maria testified to the *ERRC* and *Romani CRISS* that she reported being in extreme pain and a female doctor recommended she stay in bed and injected her with a pain-killer.

Later on February 22, Ms Lenuta Iordan, Maria's mother-in-law, went to the hospital where she was informed that Maria would have to give birth by caesarean section. Ms Iordan was told by some of Maria's roommates that she would have to pay the doctor about 6,590,000 Romanian lei (approximately 165 Euro) for the procedure, which she could not afford. On the same day, Dr Viorel Stoica wrote in Ms Iordan's medical file that she was having irregular contractions. At around 10:00 AM on February 23, Dr Ion Rușa recorded in Maria's file that her

contractions were not progressing and recommended that she give birth by caesarean section in case of emergency. At 11:00 AM, Dr Elvira Rusu moved Maria, who was experiencing contractions every five minutes, to an operating room. According to Maria, Dr Rusu did not introduce herself. Indeed, Maria only learned Dr Rusu's name several days after giving birth. Furthermore, Maria testified that she was not informed that she had to give birth by caesarean section. Thirty minutes after their arrival in the operating room, Dr Rusu, assisted by Drs Magdalena Manolache and Gino Gaoese, delivered Maria's daughter, Roxana Delia Iordan, and Maria was transferred to a post-operational room. After the delivery, Maria paid Dr Rusu 2,000,000 Romanian lei (approximately 50 Euro).

Maria testified that on February 24, 25 and 26, she informed Dr Rusu and the nurses that she was experiencing great abdominal pains, headaches and nausea, but no one paid any attention. At 7:00 AM on February 26, when Maria reported she was secreting a foul smelling liquid, the nurses told her to "go wash herself in the bathroom". Until 3:00 AM on February 27, Maria reported that she was passed from one nurse to the next while the doctor-on-duty gave her several injections to fight an infection. At this time, she was put on infusions.

At around 8:00 or 9:00 that morning, doctors performed an ultrasound on Maria in an attempt to find the source of the discharge. According to Maria, the doctors informed her there was a liquid in-

side her but did not say what it was. Maria told the *ERRC* and *Romani CRISS* that she had assumed it was amniotic fluid. It was recorded in Maria's medical file on February 27 that, according to her ultrasound, Maria had peritonitis. That same morning, Maria underwent five more ultrasounds in the presence of Drs Elvira Rusu, Magdalena Manolache, Dumitru Caraiani and Ion Rușa, all from the Gynaecological-Obstetrical Department.

At 11:00 AM on February 27, of Drs Rusu, Manolache, Caraiani and Rușa operated on Maria. According to Maria, before the operation, she was not informed about the reason for operation or the consequences or possible complications. The doctors did not solicit her consent to proceed with the operation and Maria did not sign any document allowing the doctors to operate.

At around 6:00 PM that day, Ms Iordan arrived at the hospital and learnt that Maria was in intensive care after having been operated on again. Ms Iordan told the *ERRC* and *Romani CRISS* that Maria told her the reason for the second operation was that "the child's liquid was still inside her". None of the medical staff would give Ms Iordan any information as to why Maria had required a second operation until, finally, Dr Elena Munteanu stated that because Maria had not been well cleaned during the caesarean section, some liquid remained inside her, causing her uterus to begin to rot. Dr Munteanu then informed Ms Iordan that the doctors had removed Maria's uterus during

the second operation and asked that she not tell Maria.

According to Ms Iordan, she then called Maria's mother, Ms Lia Mihai, and told her Maria needed her help. Ms Mihai arrived at the hospital on February 28 and Ms Iordan told her that Maria's uterus had been removed without her knowledge or consent. Ms Mihai told the *ERRC* and *Romani CRISS* that during a visit with Maria that day, Dr Rusu told Maria not to be desperate because she would take care of her and that she herself had nightmares about what had happened.

Also on February 28, Maria's father-in-law, Mr Costica Iordan, informed the media that the doctors had removed Maria's uterus without her knowledge or consent. Mr Iordan told the *ERRC* and *Romani CRISS* that Maria had not had any problems during her pregnancy, which had been supervised by Dr Cristian Baldesiu of Constanța. On March 5, Ms Mihai told Maria that her uterus has been taken out and that she would not be able to have children anymore. As of March 7 and 8 when the *ERRC* and *Romani CRISS* visited the family, doctors had not explained to Maria what had happened and what the effects will be for her. **UPDATE AS WE GO TO PRESS**

The European Convention on Human Rights and Biomedicine (ECHR), provides, at Article 5, that an intervention in the health field may only be carried out after the person has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its conse-

quences and risks. The Explanatory Report to the Convention states that in order for their consent to be valid, the persons in question must have been informed about the relevant facts regarding the intervention being contemplated. This information must include the purpose, nature and consequences of the intervention and the risks involved. The Explanatory Report further states that moreover, this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention.

The Committee on the Elimination of Discrimination against Women in its General Recommendation 24 on Women and Health, has stated that Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available information. The Recommendation further states that "Acceptable [health care] services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilization [...]."

The WHO Declaration on Patients Rights, Article 2(2), underscores that patients have the right to be fully informed about their health status, including the medical facts about their condition; about the proposed medical procedures, together with the potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment, and about

the diagnosis, prognosis and progress of treatment. Information on the human rights situation of Roma in Romania is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/romania.shtml>. (*ERRC, Romani CRISS*)

◆ **Romanian Private Security Firm Involved in Second Romani Death in Four Months**

According to information received from the Petroșani-based Romani organisation *Asociația "Tumende" Valea Jiului (Tumende)*, on March 11, 2004, Mr Bela Dodi, a Romani man, died following a conflict with employees of a private security firm at the Coroiești mine in the town of Vulcan in Hunedoara County. Mr Dodi, together with Mr Vasile Ilisei, Mr Dumitru Paraskiv, Mr Romolos Zagoni and Mr Gheza Bodi, all Romani, was collecting scrap metal, reportedly with the permission of the mine's guards, when employees of S.C. Protector International SRL, a private security company, arrived at the mine and brutally attacked the men. The security guards caught and severely beat Mr Ilisei, Mr Paraskiv, Mr Zagoni and Mr Bodi. The Bucharest-based Romani organisation *Romani CRISS* informed the *ERRC* that Mr Dodi managed to escape but fell as he was running and died after hitting his head on the ground. According to *Tumende*, Mr Bodi testified that the security guards had stated on many occasions that "Gypsies should be killed". Mr Ilisei, Mr Paraskiv, Mr Zagoni and Mr Bodi were, as of March 12, 2004, in the Vulcan Emergency Hospital in critical condition as a result of the

assault by the private security guards. *Tumende* informed the *ERRC* that the local police were investigating the death of Mr Dodi. **UPDATE AS WE GO TO PRESS**

The death of Mr Dodi is the second since November in which employees of S.C. Protector International SRL were involved. On November 14, 2003, Ms Olga David, a 42-year-old Romani woman, died after a guard from S.C. Protector International SRL savagely beat her for collecting coal from a mine in the nearby village of Valea Jiului. **UPDATE ON THE LEGAL STATUS OF THIS CASE** (*ERRC, Romani, CRISS, Tumende*)

◆ Roma Refused Medical Treatment in Romania

ERRC field research, conducted on February 19, 2004, revealed that family doctors in the village of Cumpâna, Constanța County, refuse to treat Romani patients on the grounds that they “smell bad” and are “dirty”. The Romani community in Cumpâna is extremely impoverished and the majority of Roma in the community are unemployed. According to *ERRC* research, only some of the eligible Roma receive social benefits. Therefore, many Romani residents of the village are not entitled to state-sponsored medical insurance. Nor can they afford to pay doctors’ fees.

According to Article 6 of the Emergency Ordinance 150/2002 on the Organisation and Functioning of Health Social Insurance, the following category of persons are entitled to health insurance without paying the contribution: h) per-

sons belonging to a family who has the right to social benefits in accordance with the Law 416/2001 on Guaranteeing Minimum Income. However, *ERRC* research revealed that family doctors refuse to provide care assistance even to those who receive social benefits. According to their testimony to the *ERRC*, in September 2003, a Romani family filed a complaint against Dr Elena Nitulescu of Cumpâna with the Constanța Public Health Department Cumpâna village because she refused to see and vaccinate their two children, reportedly on the grounds that they were “dirty” and “noisy”. The family receives social welfare benefits, including state-sponsored medical insurance. Dr Nitulescu reportedly took the family off her patients list and informed the Constanța Health Insurance Agency. According to *ERRC* research, the case was transferred from the Public Health Department to the Social Welfare Office.

Ms Lacramioara Georgescu, a social worker, informed the *ERRC* that she visited Cumpâna to accompany the Romani family to Dr Nitulescu’s office for a consultation. According to Ms Georgescu, Dr Nitulescu’s medical assistant verbally abused the family, saying that they were noisy and did not wait their turn and said, “Not only do you come dirty and have a big mouth, but you also threaten the doctor.” The medical assistant then told them that they could not see Dr Nitulescu because they were not on her patients’ list. Ms Georgescu informed the *ERRC* that when she asked Dr Nitulescu why she refused to treat the family, she stated, “I am fed up with them because they are noisy and because they abuse me. They stink and are dirty! That is why I took them off

the list.” Dr Nitulescu told Ms Georgescu that she refused to vaccinate the children because the mother had not signed a form. After Ms Georgescu again requested that she vaccinate the children, Dr Nitulescu vaccinated one of the children, in a very aggressive manner, apparently without first sterilising the needle.

Before Christmas 2003, the Constanța Public Health Department issued a decision that unregistered persons should be registered with a family doctor as soon as possible. However, according to the testimony of A.A., a Romani woman, in January 2004, S.M., her brother, brought her daughter S.G. to the office of Dr Nitulescu for treatment because she had the flu. According to A.A., Dr Nitulescu refused to treat S.G., though S.M. is a registered patient. An employee of the office refused to issue them a ticket for consultation because they had reportedly run out, though S.G. witnessed patients who arrived after them receive tickets.

On February 8, 2004, the Cumpâna Town Hall wrote a letter to the Constanța Public Health Department, listing sixteen people who were not registered with a family doctor because the patients’ lists of the doctors were full. On February 19, 2004, an employee of the Cumpâna Town Hall who requested anonymity stated that thirteen of the people on the list were Romani. The Town Hall employee further stated that the reason for non-registration was the ethnicity of the patients. However, those persons listed in the letter of the Cumpâna Town Hall had not been registered on the patients’ lists of any family doctor, according to the Town Hall employee.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Romania is a party, states, "In compliance with the fundamental obligations laid down in article 2 of this Convention,

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in

the enjoyment of the following rights: [...] (e) Economic, social and cultural rights, in particular: [...] (iv) The right to public health, medical care, social security and social services [...]" (*ERRC*)

SERBIA AND MONTENEGRO

◆ Police Officers Beat Romani Youth in Serbia and Montenegro

On the evening of December 21, 2003, several police officers physically abused Mr Svetislav Stojanović, a Romani youth, in the central Serbian town of Velika Plana, according to his December 25th testimony to the *ERRC*, working in partnership with the Belgrade-based non-governmental organisation *Minority Rights Center (MRC)*. Mr Stojanović testified that he was at a local café on the evening in question where he had a few drinks with friends, when he noticed some confusion at a nearby disco. Mr Stojanović went to the disco to see what was happening and to find his cousin, when several police vehicles arrived. Armed officers exited the vehicles and entered the disco, causing the patrons to run out. According to his testimony, Mr Stojanović asked aloud, "Why are so many police officers here?", and was then hit hard on the head with what he believed to be the butt of a gun. An officer then reportedly handcuffed Mr Stojanović and placed him in one of the police vehicles. Mr Stojanović was then brought to the police station and handcuffed to a chair in the hallway. Mr Stojanović told the *ERRC/MRC* that he asked on numerous occasions why he had been brought to the station, when a po-

licewoman approached him and began to beat him with a truncheon as he tried to protect himself. Eventually, the policewoman went into a nearby room but then returned and punched him in the neck, Mr Stojanović reported. After some time, Mr Stojanović was placed in a police vehicle where he was left for several hours in freezing weather without heat. When he was brought back into the police station, another officer tied him to a door and punched him repeatedly. According to Mr Stojanović, only when the officers went off duty and new officers arrived was he released at around 1:00 PM the following day. Mr Stojanović stated that officers did not offer him any explanation for his detention and ill treatment, but stated that "people who insult police incur such treatment". Ill treatment of Roma by law enforcement officials continues with alarming frequency throughout Europe. Information on the human rights situation of Roma in Serbia and Montenegro is available on the *ERRC*'s Internet website at: http://www.errc.org/publications/indices/serbia_and_montenegro.shtml.

◆ Racist Violence against Roma in Serbia and Montenegro

On December 20, 2003, Mr Alberto Bojić, a 24-year-old

Romani man, was attacked by a group of non-Roma in an arcade in the northern Serbian village of Srpski Miletić, according to his testimony, provided to the *ERRC* by Mr Djordje Jovanović, a Romani activist from Serbia and Montenegro, on January 11, 2004. After having resided in Italy for twenty-one years, Mr Bojić and his family were deported to Serbia and Montenegro in the summer of 2003. Mr Bojić stated that he spoke only Italian and Romani and had had a very difficult time establishing a life with dignity in Serbia since his family's deportation. On the day of the attack, Mr Bojić testified that the non-Romani youth forced him to sing, then beat him all over his body when he was unable to understand their further orders. One of the youth hit Mr Bojić hard on the head causing him to fall onto a table full of glasses, which tipped over and the glass broke. Mr Bojić sustained numerous cuts from the broken glass. At this point, he ran out of the arcade where he met two young Roma. The three reportedly tried to call the police at a local payphone, but as the payphone was broken, Mr Bojić went home. Mr Bojić testified that he had not left his home since the incident out of fear. Mr Bojić did not further pursue the incident with the police. (*ERRC*)

◆ **Romani Families Face Wintertime Eviction in Serbia and Montenegro**

Ms Svetlana Stojanović, a Romani woman, and her two young children were threatened with eviction from their Belgrade apartment, according to a press release of the Belgrade-based non-governmental organisation *Humanitarian Law Center (HLC)* dated January 21, 2004. Ms Stojanović and her children had reportedly illegally occupied the apartment since 1992. Upon request of the owner of the apartment, ZIPP A.D., a Paraćin-based company, municipal authorities ordered Ms Stojanović to vacate the apartment. **UPDATE AS WE GO TO PRESS**

In another case, according to the *HLC* press release of December 18, 2003, Ms Slavica Jovanović, the single Romani mother of four young children, received notice that she and her young children would be evicted from the flat they illegally occupied for five years in Bel-

grade's Vračar municipality on December 27, 2003. In December 2000, the Vračar housing and Building Affairs Office commenced legal action to evict Ms Jovanović, a social aid recipient who is reportedly forced to rummage through garbage to collect food to feed her children, according to the *HLC*. On December 16, the *HLC* asked Ms Milena Milošević, president of the Municipality of Vračar, to take steps to prevent the eviction of Ms Jovanović and her four young children. In a welcome development, Ms Milošević reportedly responded immediately that she would do what she could for the family and that Ms Jovanović and her children would not be made homeless. **UPDATE AS WE GO TO PRESS (HLC)**

◆ **Suspended Sentences for Police Officers Found Guilty of Torturing Romani Men in Serbia and Montenegro**

On October 8, 2003, the Bačka Topola Municipal Court found Po-

lice Inspector Josip Fontanji and Officer Mirko Sivčević guilty of torturing Mr Stevan Brančić and Mr Saša Gojkov, Romani men, in May 2001. In a highly inadequate response to a finding of torture, the Court sentenced them to only eight months and three months in prison respectively, suspended for two years. On May 7, 2001, Inspector Fontanji and Officer Sivčević severely beat Mr Brančić and Mr Gojkov, aged 38 and 27 at the time, respectively, with truncheons for approximately four hours at the Bačka Topola Police Station (background information on the assault is available at: http://www.errc.org/rr_nr2-3_2001/snap9.shtml).

At the beginning of December 2003, the *ERRC*, together with its Belgrade-based partner organisations *Humanitarian Law Center (HLC)* and *Minority Rights Center (MRC)* filed a civil action seeking compensation from Serbia for Mr Stevan Brančić and Mr Saša Gojkov. (*ERRC, HLC, MRC*)

SLOVAKIA

◆ **Extreme Rights Deprivation among Roma in Slovakia Leads to Unrest**

On the evening of Tuesday February 24, 2004, the Slovak government ordered the largest mobilisation of its police and armed forces since 1989, in order to address the problem of unrest and a threatened state-wide strike among Roma in Slovakia. Although figures varied according to reports, according to information available as of February 26, on the territories of Košice, Prešov and Banská-Bystrica Counties, ap-

proximately one thousand, six hundred police officers and six hundred and fifty members of the army had been mobilised, with a further three hundred and fifty soldiers put on active alert. Minister of the Interior Vladimír Palko was quoted by domestic media as having stated on the evening of February 24, "All police officers have had holidays suspended until further notice. At issue is the largest engagement of police forces since 1989. [...] Yesterday for the first time since 1989 water cannons were deployed and used." Slovak press has been

dominated by headlines this week such as "This is War!"

The engagement of supplementary armed forces were also a response to a series of riots by members of the Slovak Romani community, during which crowds of Roma have looted and damaged food shops. The riots were triggered by changes to the social welfare system in which, from early 2004, the structure of the social welfare system has been changed, with all persons requiring social support receiving less than previously. Many Roma were par-

ticularly affected by the changes to the social welfare law due to provisions cutting support for families with more than four children and the tying of a certain portion of the benefit to legal housing. These provisions were apparently specifically adopted to reduce the number of Roma on social welfare.

The *ERRC* jointly with the *Center for Roma Rights in Slovakia (CRRS)* conducted a field investigation in Trebišov on February 25, 2004 and Čaklov on February 26, 2004 into the events surrounding the recent riots and police response. In the case of Trebišov, human rights researchers interviewed numerous individuals in the Romani settlement, as well as the Director of the District Police Directorate, Mr Jozef Mlynarik. The interviews established that during the early evening hours of February 23, police engaged in significant force in response to a group of approximately fifty Romani individuals intent on looting a local grocery store (according to Director Mlynarik). Later the same evening, at around 8:00 PM, police became aware and engaged in response to the fact of a crowd of approximately four hundred Romani individuals organising to leave the Romani community in a group, possibly intent on violence (again according to Director Mlynarik). On February 23, police opened an investigation into crimes including theft, destruction of property, disturbing the peace and assault on a public official with respect to the events transpiring in and around the Romani settlement in Trebišov. The investigation was particularly related to the looting of a local shop and the subsequent violent engagement between members of the local Romani community and

police, resulting in, according to Director Mlynarik, minor injuries to one police officer and damage to two police vehicles.

The *ERRC* and the *CRRS* heard extensive and plausible allegations from Romani inhabitants of the Romani settlement in Trebišov that, beginning in the very early morning hours of February 24, several hundred masked police officers (two hundred and forty police officers, according to Director Mlynarik) raided the Romani settlement and began a police action that lasted throughout the course of the daylight hours of February 24. During the course of this action, officers reportedly:

- ◆ Indiscriminately entered the houses of a very large number of Roma, without showing any form of warrant or other authorisation, and often violently kicking in doors;
- ◆ Struck violently with truncheons and also kicked a large number of Romani individuals, both in houses and in the open in the settlement;
- ◆ Beat and verbally abused Romani women, minors, and people with physical and mental handicaps; and
- ◆ Used electric cattle prods on the head, arms, chest and legs of a number of Romani individuals, again both in houses and in the open in the settlement.

According to Director Mlynarik, twenty-six or twenty-seven individuals were detained during the raid and remained in detention at the time of the interview, between noon and 1:30 PM on February 25. According to Director Mlynarik, these had been turned over to prosecution services in relation to the crimes listed above. According to

Roma who had been detained and subsequently released (such persons were not accounted for by Director Mlynarik), more than forty persons had been seen in police detention, and nearly all of them had been physically abused while in custody. In particular, males had been ordered to strip to the waste, face a wall with their hands pressed against the wall, and had been struck repeatedly in the midriff by police officers with truncheons. In addition, officers had jumped on their lower legs/calves with their boots. Director Mlynarik stated that officers had not indiscriminately entered dwellings, but rather had “chased identified perpetrators” from house to house. As such, according to Director Mlynarik, officers had remained within the boundaries of the law. Here Director Mlynarik’s account of events and those of eyewitnesses interviewed by the *ERRC* and the *CRRS* differ completely.

In addition to a very large number of adult males who alleged that police had physically abused them during the raid on February 24 (and who were in many cases able to show fresh visible linear bruises apparently caused by police truncheons), the *ERRC* and the *CRRS* also interviewed:

- ◆ 16-year-old D. N., a mentally handicapped youth who, according to his own testimony, had been beaten both in his home and in public by officers with truncheons, and had also been subjected to electric shocks to the head, arms, forehead and stomach from a cattle prod while lying face-down on the floor of his home as well as in the yard in front of the apartment block where he lives with his family. D.N. had also been detained for

approximately two hours, physically abused in custody and forced to sign a form prior to his release which he neither read nor had read to him, and the contents of which he was ignorant;

- ◆ 16-year-old P. D., who testified that policemen used an electric truncheon against him. His mother, Ms B. D. witnessed the incident;
- ◆ 14-year-old A. B., whom officers reportedly struck in the back with a truncheon;
- ◆ 16-year-old J. K., whom police officers struck in the stomach and sides with truncheons until he vomited.
- ◆ Ms L. K., who testified that police beat her three minor sons, two of whom are mentally handicapped; and
- ◆ 17-year-old I. D., who is pregnant, was kicked by a police officer, while she was carrying a baby in her hands and was called racist names.

The *ERRC* and the *CRRS* also interviewed Mr E. L., who testified that police broke into his house and started beating him and used an electric truncheon against him. Mr L. stated that he was released from hospital several days previously where he had been treated for severe burns all over his body. The burns were still fresh at the time the *ERRC* and the *CRRS* spoke with him.

In addition to the above, a number of eyewitnesses interviewed by the *ERRC* and the *CRRS* alleged that officers were drunk during the raid, many alleged that they had used abusive language, and several stated that at one point they looked from the window of their apartment and saw officers in their yard “dancing like it was Bosnia.”

The *ERRC* and the *CRRS* presented a summary of the information above to Director Mlynarik orally during a meeting on February 25, and requested that he open an investigation into the actions of police officers on the basis of very compelling indications that police officers had in a number of instances violated their mandate. Director Mlynarik declined to open such an investigation or to request that such an investigation be opened.

In the case of Čaklov, according to testimonies of Roma, on February 24, 2004, the shop assistant in the town’s state-owned grocery store invited the Romani women in Čaklov to take items from the shop. The shop assistant had allegedly made an accounting shortfall of 118,000 Slovak crowns (approximately 2,900 Euro) and thought that she could justify it by blaming Roma for having committed thefts from her shop equaling this amount. Some thirty to forty Romani women went to the shop and peacefully left with a bag of (unpaid) groceries each. There was no damage to the shop. On February 25, 2004, the police stormed into the Romani settlement in the village and ran through the streets chasing Romani women with batons. Police cars drove aggressively at Romani inhabitants. A 3-year-old boy, A. G., was unfortunately in the way of a policeman. The policeman beat him about the head with his truncheon. The boy later received medical treatment for his injuries. The policeman later returned to the settlement and apologized for his actions. The police detained twenty-three women and two men on February 25, 2004, and returned on February 26, 2004 and detained a further fourteen Romani women. During the arrests, the police used abusive language and told

the inhabitants, who were in their homes, that they would break down the house door unless they surrendered to the police. The police said that they had arrest and search warrants, but not a single document was reportedly shown during the two police raids. According to the testimonies of Roma, the police refused to give information to the close relatives of the detained people about the place where they had been detained as well as any other information about the detainees. A representative of the *ERRC*, together with the husband of one of the detainees, asked the Director of the Judicial Police in Vranou nad Toplou for information on the Roma in detention and details of the police action in arresting them. He refused to give any information.

According to information received by the *ERRC* from the Regional Judicial Police in Prešov, two Romani man and thirty-two Romani women from Čaklov were charged with the second most serious crime under the Slovak Criminal Code – robbery in organised form. Aside from a pregnant Romani woman, a Romani woman with a 6-month child and a Romani man against whom the police had no evidence, all of the arrested Roma were being held in pre-trial detention pending the outcome of their court case. The *ERRC* fears that the serious nature of the charges against the predominantly female Romani detainees from Čaklov may be politically motivated, in that the government is trying to make an example of the detained Roma.

On March 2, 2004, the *ERRC* and the *CRRS* communicated in writing to the Slovak General Prosecutor the findings of their field investigation into the events in several Romani communities in east-

ern Slovakia, and urged him to open an investigation into the acts of law enforcement officials to determine whether they have violated domestic and/or international law. In their communication, the *ERRC* and the *CRRS* urged the Slovak General Prosecutor to carry out an impartial and effective investigation into allegations of inhuman and degrading treatment of Roma; review apparently disproportionate criminal charges brought against a number of Romani individuals; ensure that any Romani persons placed in custody pending trial are detained in accordance to Slovak law and international human rights law; and ensure that Roma have effective access in practice to all fair trial guarantees provided under domestic and international law.

Later, while in Slovakia on March 6, the *ERRC* received information that a Romani man had gone missing following the February 24 police action in Trebišov. Mr Radoslav Puky's dead body was found on March 7 in the Ondava river near the Romani settlement in Trebišov. According to *CRRS* research into the death of Mr Puky, following the police raid in the early morning hours of February 24, Mr Puky was seen with broken ribs and a broken hand, reportedly the result of a beating by about ten police officers. Later that morning, Mr Puky was also reportedly among a group of Roma who ran out of the settlement towards a nearby field, being chased by a large number of police officers. *CRRS* research revealed that a group of Roma were caught in the field by about fifty armed and masked officers, ordered to the ground and told to place their hands above their heads. The police reportedly beat many Roma and some of the Roma caught by police were

tied up beside a nearby bridge. Mr Puky was not seen following the police action and there was no record of Radoslav Puky having been detained. A police search for Mr Puky was unsuccessful. On March 6, a group of Roma from Trebišov performed a search for Mr Puky after receiving information that the beaten body of a dead man was bound to a tree in the local park "Adam and Eve". On March 7, Mr Puky's body was found in about fifty centimetres of water in the Ondava River, about 25 metres from where the police had held and beaten the Roma earlier, the *CRRS* reported. The body was, according to the *CRRS*, not bloated as the body of a drowned person would be and was reportedly in a protective position. Radoslav Puky was reportedly buried before his family had the opportunity to view the body. According to a death certificate, dated March 7, 2003, Radoslav died as a result of drowning. The *ERRC* is currently following up, *inter alia*, by pressing for an independent autopsy. Additional information on the situation of Roma in Slovakia is available on the *ERRC*'s Internet website at: <http://www.errc.org/publications/indices/slovakia.shtml>. (*CRRS*, *ERRC*)

♦ Mayor Expels Roma from a Village in Slovakia in the Aftermath of Violent Racist Attacks

On March 3, 2004, according to information provided by the Bratislava-based non-governmental organisation *League of Human Rights Advocates (LHRA)*, the Romani families Šarkozi and Malik from the village of Záhorská Ves in western Slovakia, were told by police officers that they had to leave

the village and were escorted by the police outside the village. By that time, the members of the two families – sixteen people, including seven children, who had been subjected to two racist attacks and the destruction by fire of their dwellings -- were living in the house of a relative in Záhorská Ves. In the period after the second attack on the families in December 2003, according to testimonies of the members of the families to the *ERRC*, they had been subjected to coercion on the part of the municipal authorities of Záhorská Ves to move out of the village. According to information provided by the *LHRA*, the mayor had undertaken a number of illegal actions in order to expel the Romani families from the village. Moreover, the mayor had threatened staff members of the *LHRA* in order to prevent them from interfering in the case and helping the two Romani families with accommodation in Záhorská Ves.

According to field research carried out independently by the *ERRC* and *LHRA*, on September 25 and December 25, 2003, masked assailants brutally assaulted two Romani families in the western Slovak village of Záhorská Ves. According to the testimony of Ms Olga Šarkoziová, the 56-year-old Romani resident of Záhorská Ves, at around 9:00 PM on September 25, 2003, approximately seven men wearing facemasks jumped over the fence surrounding the homes of her family and the Romani family Malik and attacked members of both families with baseball bats and other unidentified objects. According to their medical reports, Olga suffered a concussion and injury to her left arm, her husband Stefan sustained a broken arm, contusions to his skull and abrasions to his forehead, her son Roman sustained

a broken arm, and her son Josef suffered a concussion. The Šarkozis underwent six weeks of medical treatment for their injuries.

Later in the year, at about 8:30 PM on December 25, 2003, nine men wearing facemasks, shouting racial slurs again violently attacked the two families with baseball bats, iron bars and truncheons, according to the testimony of Mr Roman Malik. The perpetrators destroyed the belongings of the families, then poured inflammable liquid substances throughout the houses and set them on fire. Roman Malik Jr, a 2-year-old infant, sustained third degree burns to 25 percent of his body according to his medical certificate because his parents were unable to pull him from the house in time. The buildings and properties, including the personal documents of the Roma were completely destroyed in the fire. The attackers then moved to the home of Mr Josef Zeman, a Romani man living nearby, and attacked his family, breaking windows and doors in the house.

Threats by the Mayor

In the aftermath of the attacks, the village council provided the Romani families with temporary accommodation between January 8 and 31, 2004. On January 31, 2004, the mayor of Záhorská Ves, Mr Boris Simkovič, ordered that the mobile homes be taken away from the Romani families. A couple of days prior to that, the mayor had asked in writing Dr Columbus Igboanusi of the *LHRA* to assist the village council in relocating the Šarkozi and Malik families to the village of Kubanova, over 350 kilometres away, because the affected families “are the worst Roma in the vil-

lage and that nobody wants them in the village, even their own close relatives.” Following consultation with the Šarkozi and Malik families, who wanted to remain in Záhorská Ves where they had been born and had lived all their lives, the *LHRA* refused the mayor’s request and offered to provide the families with temporary housing on the site of their former homes and to assist in rebuilding their homes. Mayor Simkovič rejected this proposal on the grounds that there was no space and the families had no land in the village. During a telephone call to the *LHRA* on January 27, Mayor Simkovič threatened that any mobile homes brought to the village would be immediately destroyed. Members of the illiterate Zeman family claim to have been threatened with violence by Mayor Simkovič and his acquaintances should they get involved in the case, and on February 5 members of the Zeman family sent a typed letter to the *LHRA* requesting that its representatives not go to their home anymore or get involved in their affairs. The *LHRA* also informed the *ERRC* that Mayor Simkovič threatened members of its staff with violent repercussions should they continue their involvement in the case during telephone conversations on two separate occasions.

Coercion and Fraud

On January 27, Mayor Simkovič registered the land at Plot 310/4 Polna Street (the location of the Šarkozi and Malik homes before they were burned down) in the name of the Záhorská Ves Village Council at the Malacky District Registry Office. Prior to this action, Mr Stefan Šarkozi’s ownership of the plot had not been

registered in the official registry of the District; it had only been registered in the records of the Záhorská Ves Village Office. Like many other property owners, Mr Šarkozi had not registered his property in the system put in place following the end of Communism. Mayor Simkovič has denied Mr Šarkozi access to the village records in order to prove his ownership of the land. He has also reportedly approached a further five Romani families about purchasing their land; further Roma are apparently listed for expulsion from Záhorská Ves.

According to the *LHRA*, Mayor Simkovič has reportedly reached an agreement with the Malacky District Department of Social Affairs whereby it is to take into state custody the children of the families who refused to leave the village. On January 20, the Malacky District Court granted the Department of Social Affairs permission to take the children of Ms Olga Šarkoziová Jr into state custody. In addition, since he appropriated their land on January 27, Mayor Simkovič has refused the Šarkozi and Malik families access to the land and has employed coercive tactics to force them to leave the village.

On February 20, 2004, the *ERRC* met members of the two families who were living in the house of Ms Aneta Šarkoziová, daughter of the Šarkozi family, and her husband. According to the testimony of Ms Olga Šarkoziová, on February 17, 2004, Mayor Simkovič called her and her husband to his office to sign a contract for the purchase of a house located in the village of Diva Sarkan, about 150 kilometres away from Záhorská Ves near the Hungarian border. The signing of the contract was

done in the presence of two police officers and one guard. Ms Šarkoziová told the *ERRC* that they did not want to live in Diva Sarkan because it was too far from Záhorská Ves where their relatives live. The Šarkozis signed the contract for the purchase of the house because they felt intimidated by the mayor and were afraid for their security and for the security of their relatives.

That same day, twelve members of the Šarkozi and Malik families were taken on a bus, provided by the mayor, to Diva Sarkan. All family members with whom the *ERRC* spoke stated that they were very upset by the fact that they had been taken so far away. Moreover, they said the conditions in their new house were far from satisfactory. The house is located outside the village near a forest. The house itself was in bad condition: One window was broken and there was much rubbish in it. In addition, the people in the village spoke predominantly Hungarian, which the Šarkozis do not speak. On the following day, February 18, the members of the Šarkozi and Malik families returned to Záhorská Ves and went to live in the house of •aneta Šarkoziová. On the same day, according to the testimony of •aneta, the mayor came to her house and told her that he would complain to the police that her relatives were still in Záhorská Ves.

Failure to Investigate the Racist Attacks

According to the *LHRA*, the Malacky District Police Department officially opened an investigation into both racially motivated attacks, but has not undertaken any actions in the investigation, despite

its efforts to move the investigation along. On October 3, the *LHRA* filed a complaint with the Malacky police regarding the September attack and at the beginning of January 2004, filed a complaint regarding the December attack. After having called the victims to give testimony, the investigating officer, Captain Jan Paucik, and the head on-duty police officer, refused to allow the Romani victims to enter the police station or even the premises, alleging that they carried infectious diseases as one of the children reportedly had Hepatitis. On January 21, 2003, the *LHRA* complained to Mr Jaroslav Spisak, vice-president of Slovak police, about the failure of Slovak police to properly investigate the attacks and requested that Mr Spisak ensure thorough investigation into the attacks.

On February 5, the Malacky District Police Department informed the *LHRA* that it had closed its investigation into the September attack due to a lack of evidence. According to the *LHRA*, police had still not taken steps to investigate the December incident as of the middle of February.

On February 12, 2004, the *ERRC* sent a letter to Slovak Prime Minister Mikulaš Dzurinda, expressing alarm at the situation in Záhorská Ves. The *ERRC* called on Prime Minister Dzurinda to ensure a thorough investigation into the racially motivated attacks, the actions of Mayor Simkovič and the police officers involved in the case and that individuals responsible for human rights violations be brought swiftly to justice.

In a separate letter of concern addressed to the General Prosecutor of Slovakia, the *ERRC* re-

quested a meeting with the General Prosecutor's Office to discuss the measures to be undertaken to guarantee the security of the two Romani families. As of March 5, 2004, the *ERRC* had not received a response to either letter. **UPDATE AS WE GO TO PRESS** (*ERRC, LHRA*)

◆ **Racist Slovak Official Threatens Activist Working on Romani Issues**

Mr Jan Slota, the mayor of the northern Slovak town of •ilina and former leader of the extreme right Real Slovak National Party (PSNS), has again made public statements against Dr Columbus Igboanusi, executive director of the Bratislava-based non-governmental organisation *League of Human Rights Advocates* (*LHRA*) and activist for Romani issues in Slovakia, according to the Slovak national daily newspaper *Slovak News Agency* (*SITA*) of January 29, 2004. Mr Slota was quoted in the daily as having stated that Dr Igboanusi, a lawyer of Nigerian origin who recently became a Slovak citizen, should be expelled from Slovakia as soon as possible and that the PSNS will pursue this goal if it becomes part of the ruling coalition. (*SITA*)

◆ **European Commission against Racism and Intolerance Issues Report on Slovakia**

On January 27, 2004, the Council of Europe's European Commission against Racism and Intolerance (ECRI) made public its Third Report on Slovakia. In the Executive Summary, ECRI noted, "[...] progress made in dealing with the

problems of racism, intolerance and discrimination remains limited in many respects. Racially-motivated violence, including serious acts of police brutality, continues and too frequently meets with impunity, due to an insufficient application of the law. The Roma minority remains severely disadvantaged in most areas of life, particularly in the fields of housing, employment and education. Various strategies and measures to address these problems have not led to real, widespread and sustainable improvements, and the stated political, priority given to this issue has not been translated into adequate resources or a concerted interest and commitment on the part of all the administrative sectors involved. Public opinion towards the Roma minority remains generally negative.” Specifically, in its report, ECRI included the following Concerns and Recommendations in relation to the Romani community in Slovakia:

“54. [...] the employment situation of Roma remains extremely difficult, with around 80% unemployment among Roma across the country and in some settlements up to 100% unemployment. Roma women face particular difficulties in finding employment, affected by double discrimination on the basis of their gender and their ethnic origin. It has been commented by non-governmental organisations that not enough has been done to deal with long-term unemployment nor to tackle the problem of discrimination in the labour market.

55. ECRI recommends that further efforts be made to improve the employment situation of the Roma community. It considers that, given the long-term and endemic nature of disadvantage on the labour market for Roma, special measures to

place them in a position in which they can compete on an equal footing with members of the majority population in the employment market are necessary. [...]

58. ECRI is very concerned that the situation as regards housing for many Roma communities remains grave, with large numbers of Roma living in settlements lacking even the basic amenities such as water, sanitation and electricity. The conditions are so critical in some settlements that there is a real threat of health epidemics, while it seems clear that the families - and particularly children - living under such conditions cannot possibly hope to participate in society on an equal footing in other areas of life such as education and employment.

59. Indications that local communities remain hostile toward Roma settling in their villages continue, and it is reported by the non-governmental sector that active opposition to housing initiatives has proved a serious barrier to the effective use of internationally and State-funded projects in this area. Most concrete projects to carry out measures set out in the most recent Strategy for the Solution of the Problems of the Roma National Minority (hereafter: “the Strategy”) are still in the pilot phase, including urgent measures to construct social housing and improve infrastructure in the settlements. Moreover, it has been commented by the non-governmental sector that more efforts should be devoted to relocating Roma communities into the majority communities rather than improving settlements and building social housing, since this may actually perpetuate and increase segregation.

60. ECRI recommends that urgent measures be taken to im-

prove the housing situation of Roma, and particularly to ensure that Roma families who are currently living without access to even basic amenities are provided with a decent standard of housing and infrastructure.

61. ECRI also stresses the need to address the problem of segregation of Roma communities from the majority community, and the attitudes on the part of the majority community which have contributed to such segregation, and considers that the principle objective of housing policy should be to allow Roma communities to live as a part of majority communities. [...]

64. The extent to which members of the Roma community are without identity cards is unclear. The authorities have stated that problems can exist in cases when persons move to other municipalities and then experience difficulty in obtaining registration of their permanent residence from the municipality to which they have moved. Persons living on land without property rights or housing rental agreements also experience problems in obtaining registration. The lack of permanent residence in a given municipality may lead to difficulties in obtaining social and welfare benefits and other services. A draft law was prepared in 1998 to solve the problem of identity cards: this law was passed by Parliament but its date of application has been postponed three times, as apparently it has needed to be amended in the light of reforms in the public administration service.

65. Recent changes to the way in which social benefits are allocated are said to have impacted particularly negatively on members of the Roma community. The new

definitions of material hardship for “subjective” or “objective” reasons, with lower benefits allocated for “subjective” reasons, have meant that many Roma are now receiving lower levels of payment; moreover, it has been commented by the non-governmental sector that the definitions of these categories leave a wide margin of discretion for social workers and other officials, and thus may allow for discriminatory application of the regulation in force. The non-governmental sector has also reported that some social assistance offices have used the threat of stopping the payment of all benefits to deter Roma from pursuing legal cases against them with a view to securing their rights.

66. Access of Roma communities to health care remains problematic. Many settlements are located at some distance from health care facilities, while at the same time the poor conditions prevailing in such settlements mean that the health status of Roma communities is threatened. Discrimination in health care, including practices such as segregating Roma from other patients in hospitals, is also a problem.

67. ECRI recommends that legislative or other measures should be taken to ensure that problems

linked to the obtaining of residence and identity documents are resolved. It recommends that an early solution be found to the obstacle created by the uncertainty surrounding the rights to land on which Roma have settled, for example by granting such rights to the families in question. [...]

69. ECRI recommends that measures be taken to ensure that Roma communities enjoy equal access to health care, including preventive health care such as vaccination programmes. ECRI also recommends awareness-raising and training among health care personnel to combat stereotypes and prejudices which can lead to discriminatory treatment of Roma patients. [...]

72. [...] the participation of Roma in public affairs at the national level remains limited. No Roma political party has achieved representation in Parliament despite the large size of the community in question, while, with a few notable exceptions such as the Plenipotentiary, few Roma hold positions in governmental structures. Their representation in other important societal elites such as the legal profession and judges is also extremely limited, although it is difficult to monitor such representation due to the

prohibition of the collection of data based on ethnic origin.

73. As regards initiatives taken specifically to improve the position of the Roma, such as the Strategy, it has also been commented by the non-governmental sector that more needs to be done to ensure that Roma are consulted and involved in initiatives and projects involving them.

74. ECRI recommends that further emphasis be placed on ensuring that the Roma community is involved at all stages of the planning and implementation of measures which concern them, at as local a level as possible. In particular, the preparation and appointment of persons who can act as mediators between Roma communities and the authorities could be most opportune. ECRI stresses the importance of encouraging projects and initiatives which emanate from the Roma community itself, through the on-going provision of funding and the widening of successful projects to other areas.”

The full text of ECRI’s Third Report on Slovakia is available on the Internet at: http://www.coe.int/t/E/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Slovakia/Slovakia_CBC_3.asp#P273_33411. (ERRC)

SWITZERLAND

◆ European Commission against Racism and Intolerance Issues Third Report of Switzerland

On January 27, 2004, the Council of Europe's European Commission against Racism and Intolerance (ECRI) made public its Third Report on Switzerland, which included a section on Jenisch, Sinti and Roma. Jenisch is the preferred appellation of a group that has suffered similar treatment as other Romani/Gypsy groups. Sinti is the preferred appellation of a group commonly perceived as Romani by non-Roma in Germany whose language is a dialect of Romani influenced by German, but who reject the terms "Roma" and "Gypsy". ECRI's concerns and recommendations for the Swiss government follow:

"45. A new federal law on itinerant trade came into force on 1 January 2003, replacing and harmonising the numerous different regulations existing at cantonal level. The situation for travellers is now improved in that they can obtain a five year trade permit which is valid for all cantons, rather than having to apply for a new permit in each canton.

46. The provision of sufficient permanent and transit stopping places for travellers remains a problem, in a context where the communities are reporting an increasing interest on the part of young people in continuing the traditional way of life. It is also commented by representatives of the

communities involved that the new system of trade permits, while positive, is also likely to increase the numbers of travellers from other countries coming into Switzerland, thus exacerbating the problem of lack of stopping places.

47. Although some cantons have constructed sites in recent years, other cantons or communes have not given planning permission for sites to be built; in many cases, even if the political will to create sites is present, the local population votes against the plans. The current lack of sites means that travellers are often forced to stop without permission, in areas without any sanitation facilities. The Foundation "Protecting the future of Swiss Travellers" has estimated that 30 extra permanent sites and 30 extra transit sites would be necessary to meet the demand: the Foundation itself is trying to promote the creation of sites and to influence zone planning in order to ensure that the needs of travellers are specifically taken into account.

48. The situation as regards schooling for children of travelling families seems to have improved in recent years, with more schools accepting that children attend classes during the winter and work by correspondence from March to October. Such arrangements are however made on an individual "good-will" basis, with no obligation on schools to accept the system. There is practically no teaching of the Jenisch, Sinti or Romany languages within the school system. Beyond the com-

pulsory school level, it is reported that young travellers do face difficulties in obtaining apprenticeships due to prejudices on the part of potential employers.

49. ECRI recommends that the authorities take further steps to ensure that sufficient permanent and transit sites be provided across Switzerland for members of the travelling communities. In particular, it is important that the needs of this population are taken into account during the planning stage of zone development, respecting the principle that developments should not lead to the separation of travellers from the majority population through the creation of "ghetto" areas.

50. ECRI feels that further improvements could be made to ensure that all children from travelling families are guaranteed a high-quality education. For example, the provision of teachers who could visit travelling children to support their education during the summer months might be considered. Ways of overcoming barriers to the further education and training of young travellers, including their access to apprenticeships, should also be examined."

The full text of ECRI's Third Report on Switzerland is available on the Internet at: http://www.coe.int/t/E/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Switzerland/Switzerland_CBC_3.asp#P239_27958. (ERRC)

UNITED KINGDOM

◆ Gypsy Families Granted Planning Permission After Long Battle with Local Council While Others Still Fighting in the UK

A group of Gypsy/Traveller families, including twenty-one children, were granted permission to set up seven permanent sites in the village of Weston Turville in Buckinghamshire County, southern England, according to the *BBC* report of January 20, 2004. A planning inspector granted planning permission after the families appealed the repeated denial of permission by the Aylesbury Vale District Council over a period of about three years. The *BBC* reported that local residents had fought for the eviction of the families because “it would look out of character in the rural area.” The planning inspector, in his decision, stated that the settlement of the families and the education of the children in the group were more important than the effects of the site on the natural beauty of the area, according to the *BBC*. The failure of the Aylesbury Vale District Council and the Buckinghamshire County Council to provide much needed new sites for Gypsy/Travellers was reportedly also a deciding factor in the decision of the planning inspector.

In other news, on January 12, 2004, the *BBC* reported that twelve bailiffs attempting to evict twenty-one Traveller families from their land in the town of Bulkington in Warwickshire County, central England, retreated after a six-hour stand-off. The families, who moved onto the land, located on a greenbelt area, after

purchasing it two-and-a-half years earlier, had reportedly dug 7 foot wide trenches at the entrance to the site, which they filled with garbage and lit ablaze along with two caravans in an effort to stop their eviction. Forty police officers at the scene of the incident blocked the road to passersby. According to the *BBC*, the Nuneaton and Bedworth District Council, which set aside 100,000 British pounds (approximately 149,500 Euro) to finance the eviction, had pursued the families’ eviction to the High Court because they had not applied for planning permission to set up a permanent site before moving onto the land. In November 2003, the High Court ordered the families to be evicted on January 12. The *BBC* reported that the families requested permission to purchase another plot of land they could develop. On January 13, the *BBC* quoted Mr Alan Franks, the Environmental Services Director of the Council as having stated, “As far as we know they have not looked at neighbouring local authorities to see where they can be accommodated. I would state on behalf of the local authorities that they have an obligation to look for another site.”

Earlier, the *BBC* reported on October 7, 2003, that a group of Gypsy/Travellers who had for seven months occupied public land at Trevadoc, near Newlyn in Cornwall County, southwestern England, were fighting the efforts of the Cornwall County Council to evict them. Ms Anya Thompson, a Traveller residing at the site, stated that the site was empty until March 2003 aside from rubbish and topsoil, which

the group used to level and landscape the site. Mr John Payne, a councillor from the nearby town of Penzance councillor who resigned over the issue, was quoted as having stated that the area had fallen into disuse but “That does not mean to say that it is not going to be actively used again and indeed it has been used – for the storage of winter grit.” Penzance councillor Joby Akira supported the group who she said had “radically enhanced” the area, stating, “It was [...] just a dump for the county council. [...] It is a place of real beauty now.” One hundred and seven local residents however, and seventeen businesses had signed a petition supporting the Cornwall County Council’s efforts to evict the families, according to the *BBC*.

In September 2003, a report issued by Lord Avebury found, “Local authorities which experience unauthorised encampments of travellers need to recognise the fact that any person living on an unauthorised site is homeless in law. Travellers do not want the upheaval of being moved on from unlawful sites, but do not have a choice if the local authorities fail to provide lawful sites”, according to the *BBC* report of September 8, 2003. Lord Avebury, who examined the strategies of one hundred and fifty-two authorities under the Homelessness Act 2003, found that nearly 70 percent failed to mention Gypsy/Travellers. Further information on the situation of Gypsy/Travellers and Roma in the UK is available on the *ERRC*’s Internet website at: <http://www.errc.org/publications/indices/uk.shtml>. (*BBC, ERRC*)

◆ Study Finds Traveller Children Not Attending School in the UK

According to a report published in December 2003 by the UK's Office for Standards in Education (OFSTED), the average school attendance rate for Traveller children is only 75 percent, a number well below the national average and the lowest of any ethnic minority group in the UK. While school attendance at the primary level was generally high, the number of Traveller students attending secondary school is worsening, according to the study. A 1996 report by OFSTED estimated the number of Traveller pupils not registered in secondary school to be 10,000, while the 2003 report estimated the figure to be nearer 12,000. The incompatibility of the Traveller education service with the policy of local authorities in dealing with unauthorised encampments was cited in the report as a contributing factor to the decrease in the number of Traveller students attending school. Also listed was the failure of a number of schools to ensure confidence of Traveller children in their ethnic origin: in many cases, Traveller children and their parents experience feelings of insecurity which affect their attendance at school. Prejudicial attitudes and behaviours towards Traveller children were also reported in a number of schools. OFSTED issued a number of recommendations on the basis of its findings. It recommended that national authorities provide guidance to local education authorities to improve the level and accu-

racy of reporting by Travellers of their ethnicity to ensure the availability of accurate data, as well as one the home education of Travellers, taking into account educational rights. OFSTED recommended that local education authorities improve coherence of a number of services to improve Traveller pupils' access to education, particularly at the secondary level, and harmonise written policies on race equality and inclusion with actual practices in addressing Traveller encampments. Finally, it recommended that schools promote the culture and lifestyle of Traveller students in line with the law in a manner that improves the quality and accuracy of teachers' and fellow students' understanding and take increased responsibility to create lasting links with Traveller families. (*ERRC, OFSTED*)

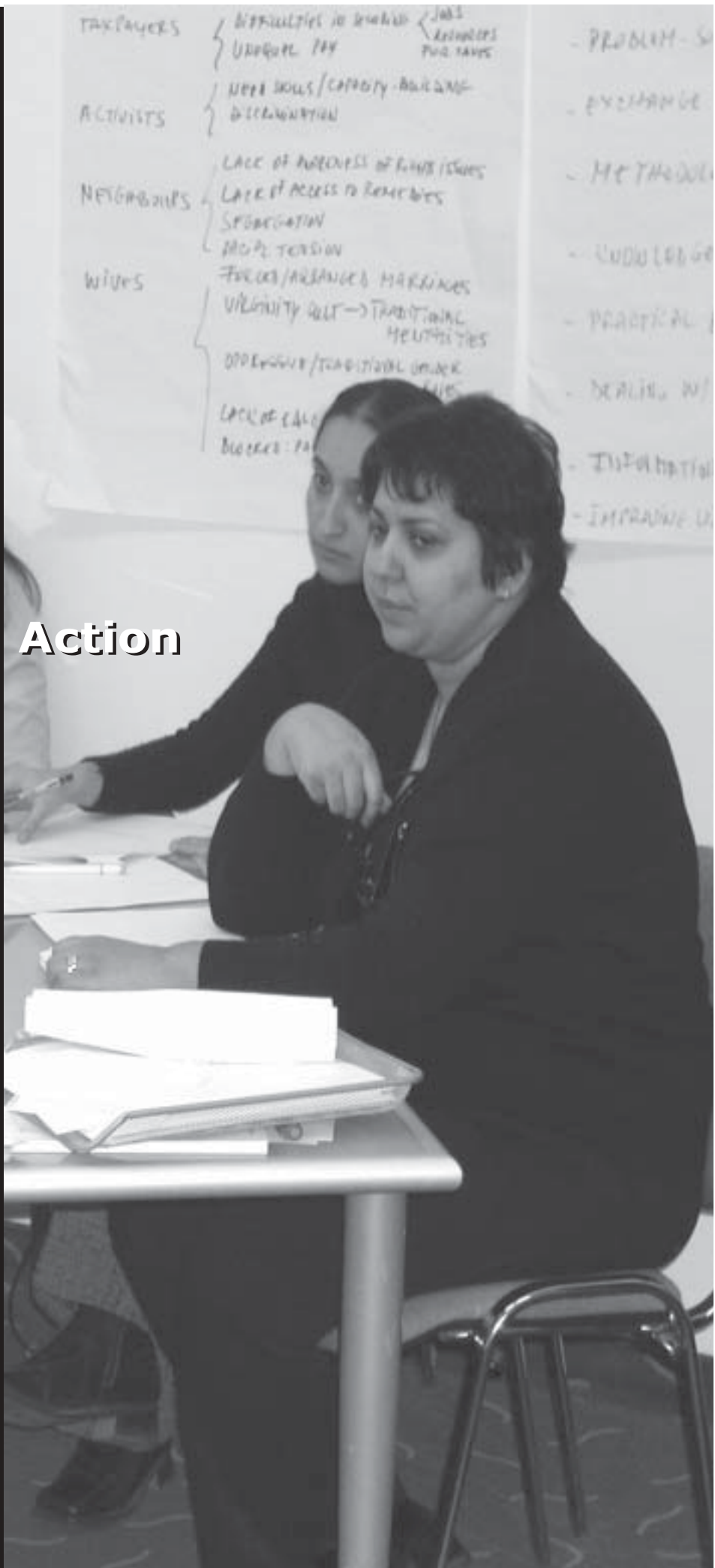
◆ Government Restricts Benefits for Immigrants Prior to the Accession of 10 New States to the EU after Racist Campaign against Roma in UK Media

On February 3, 2004, the *BBC* reported that Prime Minister Tony Blair and Home Secretary David Blunkett of the UK were considering imposing restrictions on social security benefits for citizens of the ten European countries that will accede to the European Union in May 2004. The announcement came shortly after a wave of anti-Romani articles in the UK media. For example, on January 20 and 22, the *Daily Express* published issues

which apportioned significant space to the predicted "invasion" of "1.6 million gipsies" following the May 2004 accession to the European Union of ten new countries. The January 20 issue included, at page 4 an opinion poll entitled, "Should we let the gipsies invade Britain?" and at page 12, a map of the accession countries with the title "THE GREAT INVASION 2004: Where the gipsies are coming from". The January 22 issue reiterated the same sentiments. The mass migration of Roma from Central and Eastern European countries as predicted by the *Daily Express* is, at this point in time, baseless and irresponsible – the purpose of the articles appears to be purely to incite alarm and racial hatred in the UK against Roma from the accession countries, an illegal act under international law.

British officials insist that the changes do not affect their pledge to fully open their labour market to citizens of the acceding countries but, according to the *BBC*, stricter tests for housing and financial benefits will make it very difficult for those seeking employment in the UK. On February 24, the *BBC* reported that according to the scheme announced a week earlier by the UK government, unemployed migrants will be banned from most benefits for at least two years while employed migrants will be illegible for some benefits immediately. Mr Blair was quoted as having stated, "If they (migrants) can't support themselves, they will be put out of the country." (*BBC, Daily Express*)

ERRC Action





The Strasbourg Court Finally Redresses Racial Discrimination

Branimir Pleše¹

ON 26 FEBRUARY 2004, the European Court of Human Rights (“the Court”) announced its judgment in the case of *Nachova and Others v. Bulgaria*.² The Court unanimously found the Bulgarian state responsible for the deaths of two Romani men as well as its subsequent failure to conduct an effective official investigation, in violation of Article 2 of the European Convention on Human Rights (“the Convention”). Most importantly though, for the first time in its history, the Court also found a violation of the guarantee against racial discrimination contained in Article 14 taken together with Article 2, and in doing so stressed that the Bulgarian authorities had failed in their duty to take all possible steps to establish whether or not discriminatory attitudes played a role in the events at issue. This article will focus on the Court’s evolving jurisprudence concerning the standard of proof and the burden of proof in general and as applied in cases of racial discrimination and outline the main arguments contained in the amicus brief filed by the *European Roma Rights Center (ERRC)* on 21 May 2002 which ultimately led to the Court’s landmark judgement in *Nachova*.

Introduction

The term standard of proof, also known as the quantum of proof, refers to “the degree of probability to which facts must be proved to be true”,³ while the term burden of proof, also known as the onus of proof, concerns “the legal obligation on a party to satisfy the fact-finder, to a specified standard of proof, that certain facts are true”.⁴ In *Nachova*, the *ERRC* sought and was granted permission to provide the

Court with its written comments concerning the relevant international and comparative jurisprudence on issues involving both the burden of proof and the standard of proof as applied in cases of discrimination. In its brief, the *ERRC* also elaborated upon the ever more pressing need for the Court to re-evaluate its current approach to these issues, the ultimate goal being to secure practical and effective redress to all victims of discrimination.

The *ERRC* Amicus Brief in *Nachova v. Bulgaria*

The *ERRC* began by addressing the practical difficulties attached to the current “reasonable doubt” standard of proof and explained how that standard is more appropriate in a criminal rather than a human rights context. It then turned to a discussion of some of the creative remedies that various courts have fashioned to address certain evidentiary issues, such as inferences, presumptions, and shifts in the burden of proof where needed to assure justice. The *ERRC* noted the growing consensus, particularly in Europe, for a shift in the burden of proof with regard to claims of discrimination, and the international recognition given to the special nature of human rights abuse based on race and ethnicity. Finally, the *ERRC* proposed an approach which would take into account both the serious nature of human rights claims filed against a given state and the need for a reasonable and attainable level of proof in order for Article 14, like the Convention, to live up to its potential as a tool to combat racism and related intolerance. Some of the issues raised in the *ERRC* amicus brief in *Nachova* follow below:

¹ Branimir Pleše is Legal Director of the *ERRC*.

² Application nos. 43577/98 and 43579/98.

³ Dennis, Ian. *The Law of Evidence*. Sweet & Maxwell, 1999, p. 342.

⁴ *Ibid.*, p. 341.

a) *The pre-Nachova standard of proof under Article 14 with respect to claims of racial discrimination is inconsistent with international human rights standards and renders the Convention's protections illusory*

One aspect of the *ERRC* amicus brief addressed the issue of overly strict standards of proof, as applied prior to the adoption of the landmark decision in *Nachova*. Nothing in the Convention or Rules of Court mandates a particular standard of proof – international courts are free to set the most appropriate standards based on their experience.⁵ There is a close relationship between the effective protection of substantive rights and the required allocation and standard of proof.⁶ The Court's application, pre-*Nachova*, of a beyond-a-reasonable-doubt standard for substantive violations including Article 14, which some commentators have characterised as a 95% or more probability of a fact,⁷ is more appropriate in an adversarial criminal context than with respect to human rights violations. The Inter-American Court of Human Rights outlined the differences as follows:

“The international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human

rights law is not to punish those individuals who are guilty of violations but rather to protect the victims and to provide for the reparation of damages resulting from the acts of States responsible.”⁸

This principle was further elaborated in a dissenting opinion in the case of *Labita v. Italy*, heard by the European Court of Human Rights:⁹

“[T]he standard of proof ‘beyond all reasonable doubt’ is, in certain legal systems, used in criminal cases. However, this Court is not called upon to judge an individual's guilt or innocence or to punish those responsible for a violation; its task is to protect victims and provide redress for damage caused by the acts of the State responsible. The test, method and standard of proof in respect of responsibility under the Convention are different from those applicable in the various national systems as regards responsibility of individuals for criminal offences.”¹⁰

This Court has held that the Convention “is intended to guarantee not rights that are theoretical and illusory but rights that are practical and effective.”¹¹ Yet an analysis of the pre-*Nachova* case law under Article 14, including a series of cases involving the alleged killing or torture of Kurds by Turkish authorities¹² or of Roma by Bulgarian

⁵ Article 32 of the Convention gives the Court the absolute power to interpret and apply its provisions, including rules with respect to the proof necessary to substantiate a claim.

⁶ See *Kokott, Juliane*. *The Burden of Proof in Comparative and International Human Rights Law*. Kluwer Law International Publishers, 1998.

⁷ *Ibid*, p. 134.

⁸ *Velasquez Rodriguez case, Inter-American Court of Human Rights, Judgment of 29 July 1988, para. 134*.

⁹ *Labita v. Italy, European Court of Human Rights, application no. 26772/95, Judgment of 6 April, 2000*.

¹⁰ *Ibid, dissenting opinion para. 1*. See also the dissenting opinion of Judge Bonello in *Veznedaroglu v. Turkey, application No. 32357/96 (unreported), para. 13 (cited in Erdal, U. “Burden and standard of proof in proceedings under the European Convention,” HR/68 (2001) 26 European Law Review. Human Rights Survey, p. 77): “I find the standard of proof – beyond reasonable doubt – required by the Court in torture cases to be legally untenable and, in practice, unachievable. Proof “beyond reasonable doubt” reflects a maximum standard relevant and desirable to establish criminal culpability. No person shall be judicially deprived of liberty . . . unless his guilt is manifest ‘beyond reasonable doubt.’ . . . But in other fields of judicial enquiry, the standard of proof should be proportionate to the aim, which the search for truth pursues: the highest degree of certainty, in criminal matters; a workable degree of probability in others.”*

¹¹ See, e.g., *Artico v. Italy, 1980, 3 EHRR 1, para. 33*.

¹² For example, the Court was unable to find a violation of Article 14 in the following cases: *Tanrikulu v. Turkey, Judgment of 8 July 1999 (applicant claimed husband was killed by state security forces because of Kurdish ethnicity, citing Susurluk Report and Commission reports finding state agencies implicated in deliberate elimination of prominent Kurds; despite “grave concern” at government's failure to provide*

authorities,¹³ indicates that this high standard of proof has in effect prevented the Court from finding a violation of Article 14 even in these egregious cases, thus rendering illusory or hypothetical the cornerstone protection intended by Article 14. This was especially troubling in situations where the evidence that might meet the “reasonable doubt” standard was in the hands of the state, and the state refused to cooperate.¹⁴

For example, in the case of *Velikova v. Bulgaria*, another *ERRC* case, the applicant claimed her husband’s Romani ethnicity was a decisive factor in his ill treatment and murder while in police custody. She cited widespread prejudice and instances of racially motivated violence, often carried out with impunity against Roma in Bulgaria, as documented by human rights monitoring organisations and even acknowledged by the Bulgarian government. Despite this evidence, the Court was unable to find a violation of Article 14:

“The Court observes that the applicant’s complaint under Article 14 is grounded on a number of serious arguments. It also notes that the respondent State failed to provide a plausible explanation as to the circumstances of Mr. Tsonchev’s death and as to the reasons why the investigation omitted certain fundamental and indispensable steps which could have shed light on the events ... The Court recalls, however, that the standard of proof required under the Convention is ‘proof beyond reasonable doubt.’ The material before it does not enable the Court to conclude beyond reasonable doubt that Mr. Tsonchev’s death and the lack of a meaningful

investigation into it were motivated by racial prejudice, as claimed by the applicant. It follows that no violation of Article 14 has been established.”¹⁵

Short of a written policy or specific admission from a state official that someone’s race or ethnicity was a factor in treatment violating Articles 2 or 3 of the Convention, it is difficult to imagine what kind of evidence would meet the “reasonable doubt” standard, as evidenced in *Velikova* and other similar cases. If testimony from the mistreated individuals, medical certificates, and reports from international or non-governmental organizations substantiating disturbing trends with respect to the treatment of particular racial or ethnic minorities are not sufficient to at least require further investigation or to shift the burden of proof to the state, then, the *ERRC* argued, the protections of Article 14 simply must be deemed illusory.

b) The Court has not hesitated to lighten or shift the burden of proof or resort to inferences or presumptions in other contexts as needed to reach a just result – such an approach should apply with equal force to Article 14 cases

This Court and other international courts have not hesitated to shift or lighten the burden of proof in certain instances, particularly those cases involving violation of fundamental rights or where the evidence that would prove the case is under the control of the perpetrator. When an individual dies or is injured while in custody, the burden is on the state to provide a satisfactory explanation.¹⁶ The failure to under-

copies of the complete investigations file and produce two public prosecutors as witnesses, the Court was unable to find a violation of Article 14); Ergi v. Turkey, Judgment of 28 July 1998 (applicant claimed sister killed by state security forces who attacked their village; Commission concluded government’s failure to provide documents and information was an inference in support of applicant’s allegations, yet insufficient to find violation of Article 14); Kurt v. Turkey, Judgment of 25 May 1998 (applicant whose son “disappeared” claimed forced disappearances primarily affected Kurds, citing reports by UN Working Group on Enforced or Involuntary Disappearances; no finding of violation of Article 14); Tanli v. Turkey, Judgment of 10 April 2001 (applicant whose son died in detention presented substantial evidence from UN agencies and NGOs as to systematic unlawful treatment of Kurds, yet Court did not find son was the target of a discriminatory policy on account of his ethnic origin).

¹³ See, e.g., *Assenov v. Bulgaria, Judgment of 28 October 1999*; *Velikova v. Bulgaria, Judgment of 18 May, 2000*.

¹⁴ See, e.g., cases cited in Erdal, “Burden and Standard of Proof in Proceedings Under the European Convention,” *supra* note 10, pp. 74-76.

¹⁵ *Ibid.*, paras. 91, 92, 93, 94.

¹⁶ *Salman v. Turkey [27 June 2000]*; *Askoy v. Turkey [18 December 1996]*; *Tomasi v. France [27 August 1992]*, *Assenov v. Bulgaria [28 October 1999]*.

take an effective official investigation can result in a finding of a procedural violation of Article 2 or 3.¹⁷

The UN Human Rights Committee has similarly held that “the burden of proof cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information . . . Mr Mukong has provided detailed information about the treatment he was subjected to; in the circumstances, it was incumbent upon the State party to refute the allegations in detail, rather than shifting the burden of proof to the author.”¹⁸

More recently, the *ERRC* argued, the Court has itself demonstrated a trend towards stepping back from the “reasonable doubt” requirement with respect to substantive violations of the Convention through the use of inferences where a government has failed to cooperate in providing evidence. For example, in two more recent Turkish cases, the Court held that the government’s failure to submit information to which it alone had access may give rise to an inference that the applicant’s case is well founded.¹⁹

A similar shifting of proof was also articulated with respect to a recent case concerning the collective expulsion of aliens, where the Court held:

“The Court reiterates its case law whereby collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the

group ... [Given the facts of this case] ... and in view of the large number of persons of the same origin who suffered the same fate as the applicants, the Court considers that the procedure followed did not enable it to eliminate all doubt that the expulsion might have been collective ... [Therefore] ... there has been a violation of Article 4 of Protocol No. 4.”²⁰

Both the wording and reasoning of the judgment suggest that (1) the applicants had initially successfully raised an arguable claim of a violation of Article 4 of Protocol 4, (2) it was then up to the respondent government to “eliminate all doubt that the expulsions might have been collective,” and (3) having failed to do so, the government was found to have violated the Convention.

Thus, the *ERRC* argued, the cited jurisprudence makes it clear that where important and fundamental rights are involved, the Court may use presumptions, inferences, or shifts in the burden of proof as tools in its efforts to secure adequate protection against human rights violations. In view of the growing international consensus as to the fundamental nature of the ban on racial discrimination, there are similarly compelling reasons to do the same when it comes to complaints raised under Article 14 of the Convention.

c) International and comparative anti-discrimination legislation and jurisprudence reflects a clear and growing trend of shifting the burden of proof to the alleged perpetrator

In its brief the *ERRC* stressed that the Court has repeatedly stated that an evolving or dynamic approach

¹⁷ *Kaya v. Turkey* [19 February 1998], *Assenov v. Bulgaria* [28 October 1999].

¹⁸ *Mukong v. Cameroon*, *Communication No. 458/1991*, U.N. Doc. CCPR/C/51/D/458/1991 (1994). See also *Bleir v. Uruguay*, *Doc. A/37/40*, p. 130 (1982) (state held liable where petitioner’s testimony of ill treatment was supported by other eyewitnesses and further clarification depended on information in state’s hands which was not produced); *Santullo (Valcada) v. Uruguay*, *Doc. A/35/40*, p. 107 (1980) (state produced no evidence that allegations of ill treatment had been investigated; general denial not enough).

¹⁹ *Tas v. Turkey*, [14 November 2000] (lack of documentation as to where applicant’s son was detained and no explanation for what happened to him permitted inference that son had died in state custody); *Timurtas v. Turkey*, judgment of 13 June 2000, para. 66 (“failure on a Government’s part to submit such information which is in their hands without a satisfactory explanation may ... give rise to the drawing of inferences as to the well-foundedness of the allegations.”)

²⁰ *Conka v. Belgium*, *Judgment of 5 February 2002*, paras. 59, 61 and 63.

to the interpretation of the Convention is required if its object and purpose, the protection of individual rights, is to be fulfilled. In *Tyrer v. United Kingdom* the Court stated “that the Convention is a living instrument which . . . must be interpreted in the light of present-day conditions.” (2 EHRR 1, 1978, para. 31.) Dramatic evidence of this evolution with respect to discrimination can be seen in the proposed Protocol 12, signed by 25 member states upon its presentation, which expressly recognizes the right to be free from discrimination as a general, not accessory, right.

The European Union standard on burden of proof with respect to claims of discrimination is embodied in the recent “race equality directive,” which became binding on the member states on 19 July 2003.²¹ The directive stipulates that once a plaintiff establishes “facts from which it may be presumed that there has been direct or indirect discrimination,” the burden of proof shifts to the respondent to prove there has been no breach of the principle of equal treatment.²²

This standard is the result of over twenty years of progressive liberalization and improvements that have evolved since the first EU gender directives in the mid-1970’s.²³ In view of the intrinsically weaker position of an employee, as compared to an employer, the European Court of Justice (ECJ) went on to develop the principle of “transparency” of the employer’s acts or omissions. This principle requires that once a *prima facie* breach is established, the burden of proof shifts to the defendant to provide the court with an objective justification, based on

non-discriminatory criteria, for the adoption of the measure at issue.²⁴

The “race equality directive” is the end result of a long and thoughtful process, and reflects developments in both ECJ and other domestic and international legislation and jurisprudence. It offers a compelling perspective within which the Court may wish to re-evaluate its current approach to corresponding issues under the Convention – the ultimate goal always being to secure practical and effective protection to all victims of discrimination.

EU member states apply a similar approach, placing “a heavy onus on the employer” to satisfy the tribunal that a requirement or condition resulting in less favorable treatment for a protected group was necessary.²⁵ In an extraordinary departure from the normal German legal standard of full judicial persuasion (beyond a reasonable doubt), Section 611a of the German Civil Code provides that in an employment context, the employee needs to show gender discrimination by a mere preponderance of the evidence.²⁶

In the Netherlands, the allocation of the burden of proof may change pursuant to certain rules or requirements of reasonableness and fairness, which in labor discrimination cases has been used as a basis to shift the burden of proof to the employer in view of the inequality of the parties.²⁷ The Dutch Supreme Court in *Binderen/Kaya* confirmed the shifting of the burden of proof in cases of discrimination.²⁸

²¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. (Official Journal L 180, 19/07/2000 p. 0022-0026).

²² Ibid, Article 8. This language is identical to that contained in Directive 97/80 on the burden of proof in cases of discrimination based on sex. (Official Journal L 014, 20/01/1998 P. 0006-0008)

²³ Beginning with Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. (Official Journal L39, 14/2/1976 p. 40) See also S. Koukoulis-Spiliotopoulos, *From Formal to Substantive Gender Equality*, 2001, published by Marangopoulos Foundation for Human Rights.

²⁴ See case No. 109/88, *Danfoss*, [1989] ECR 3220, para. 12. This was previously articulated in the landmark case of *Bilka Kaufhaus v. Weber von Hartz* (case 170/84), ECR 1986, 1607).

²⁵ See for example, *Steel v. Union of Post Office Workers*, 2 All E.F. 504, 505 (1977), heard by the UK Employment Appeal Tribunal; see also the U.K Race Relations Act of 1976 (burden on discriminator to show a requirement was justifiable on race-neutral grounds).

²⁶ See *Kokott*, supra note 6, p. 113.

²⁷ Code of Legal Procedure, Article 177.

²⁸ Supreme Court 10-12-1982, NJ 1983, 687.

The European Union standard and directives are in keeping with legislation and jurisprudence from other jurisdictions as well. The United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) stated that the complainant carries the initial burden of establishing a *prima facie* case of discrimination. Once that is done, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for its actions. Similarly, in *Griggs v. Duke Power Co.*, 401 U.S. 424, 427 (1971), a case involving indirect discrimination, the initial burden was on the plaintiff to show the employer's practices had a discriminatory impact on a protected class, which could be done by showing a mere statistical disparity. The burden then shifts to the employer to show the challenged practice is a business necessity with a "manifest relationship" to the employment in question.

The United States Civil Rights Act of 1991²⁹ specifically places the burden on the employer to demonstrate that a practice resulting in a disparate impact (indirect discrimination) on the basis of race, color, religion, sex, or national origin is job related for the position in question and consistent with business necessity. Even in some EU candidate countries, at least in an employment discrimination context, the burden of proof shifts to the defendant.³⁰

In its brief, the *ERRC* noted that most of the case law relating to standards of proof for discrimination

claims arises in the employment context, where the employer is in a stronger position than the employee. A fortiori, in the more serious context of a claim on the part of an individual against the state for a violation of fundamental human rights, the same rationale applies with even more force.

In view of the particularly invidious nature of race discrimination and the "special importance" attached thereto, the right to be free from such discrimination is a fundamental right requiring a high level of protection.

The European Commission on Human Rights has recognised that, under certain circumstances, racially discriminatory policies may amount to degrading treatment violative of Article 3.³¹ In *East African Asians*, the Commission affirmed that "special importance should be attached to discrimination based on race," and that "differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when different treatment on some other ground would raise no such question."³²

Legal developments outside of Strasbourg likewise acknowledge the singular evil of differential treatment based on race, and offer further support for the notion that prohibitions against racial discrimination are of fundamental importance. In the United

²⁹ *Pub. L. No. 102-166, 105 Stat. 1071 (1991), Section 105(a).*

³⁰ *For example, Hungarian Labor Code Section 5, "Prohibition on Discrimination and the Obligation of Priority", prohibits discrimination in employment based on gender, age, national origin, religion, political views, or membership in an employee interest organization. Paragraph 2 provides that in the event of a dispute, the employer shall be required to prove his acts did not violate that prohibition. (more recently, in December 2003, Hungary adopted a single more comprehensive anti-discrimination act.)*

³¹ *East African Asians v. UK, 3 EHRR 76 (1973) (British immigration legislation singled out U.K. passport holders of Asian origin resident in E. Africa and denied them admission to the UK; Commission held this violated Article 3.)*

³² *Ibid., para. 207. See also Abdulaziz, Cabales and Balkandali v. UK, Commission Report, 6 EHRR 28 (1983), para. 113 (expressly affirming "its opinion in the East African Asians cases that the singling out of a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity"); Hilton v. UK, No. 5613/72, Admissibility Decision of 5 March 1976 (allegation of racial discrimination by prison officers against prisoner raised an issue under Article 3); Glimmervenn & Hagenbeek v. Netherlands, 4 EHRR 260 (1979), Admissibility Decision, para. 19 (recalling holding of *East African Asians* that race discrimination could amount to degrading treatment). See also Vivien Prais v. Council of the European Communities, Case 130/75, Decision of the European Court of Justice, 27 October 1976, p. 7 (referring to *East African Asians*); and Harris, O'Boyle, et al, *Law of the European Convention on Human Rights (1995)*, p. 82 (suggesting that, after *East African Asians*, "single instances or practices of direct or indirect racial discrimination, which must be inherently degrading, are contrary to Article 3").*

States, classifications based on race are suspect and subject to “strict scrutiny” because ensuring citizens that the state will not discriminate against them on account of race is the “core guarantee of equal protection.”³³ The constitutions of virtually all Council of Europe member states ban discrimination on the grounds of race and/or ethnic origin. The European Union Consultative Commission on Racism and Xenophobia has made clear that the principles of non-discrimination and tolerance lie at the foundation of the Union itself.³⁴

Legal efforts to sanction and eradicate racial prejudice and discrimination have resulted in the adoption of numerous binding international legal instruments³⁵ which today make the general prohibition against race discrimination one of the elements of *ius cogens*, a peremptory rule of international law.³⁶

d) Final remarks contained in the brief

In its submission, the *ERRC* is mindful of the fact that a special seriousness attaches to a claim that a member state has violated the Convention, and that the Court’s standard of proof must consider the seriousness of the charge yet still be capable of “establishing the truth of the allegations in a convincing manner.”³⁷ An approach is needed which would strike a fair balance between protect-

ing the fundamental right involved and the avoidance of unrealistic burdens of proof on either the state or the applicant.

The Inter-American Court in the Velasquez case adopted an intermediate standard – that which “established the truth . . . in a convincing manner.” This standard appears analogous to the “clear and convincing” standard of proof applied in the United States to cases falling in between the “preponderance of the evidence” standard used in most civil cases and the “beyond-a-reasonable-doubt” standard used in criminal cases – the standard used in cases involving individual rights, such as civil commitment to psychiatric institutions, maintaining one’s nationality, or expulsion.³⁸ Commentators have estimated this level of proof as requiring about 75% probability of a fact (compared to 51% for a “preponderance of the evidence” and more than 95% with respect to “reasonable doubt”).³⁹

Once convincing evidence has been shown that a person’s race or ethnicity was a factor with respect to the violation at issue, then the Court should impose an obligation on the respondent state to conduct an investigation capable of proving or disproving the discrimination claim, similar to that imposed with respect to violations of Articles 2 and 3. The state’s failure to do so would support an inference that Article 14 has been violated.

³³ *Batson v. Kentucky*, 476 U.S. 79 (1986). See also *United States v. Carolene Products*, 304 U.S. 144, 152 n.4 (1938) (“ . . . similar considerations enter into the review of statutes directed at particular religious, or national, or racial minorities: whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call searching judicial inquiry.”)

³⁴ See *European Council Consultative Commission on Racism and Xenophobia, Final Report*, 12 April 1995.

³⁵ See *Universal Declaration of Human Rights* (1948), Art. 7; *International Labour Organisation Convention No. 111* (1958); *Convention Against Discrimination in Education* (1960); *Declaration on the Elimination of All Forms of Racial Discrimination* (1965); *Convention on the Elimination of All Forms of Racial Discrimination* (1965); *International Covenant on Civil and Political Rights* (1966), Arts. 2, 26; *International Covenant on Social, Economic and Cultural Rights* (1966), Art. 2; *International Convention on the Suppression and Punishment of the Crime of Apartheid* (1973).

³⁶ See, e.g., *Dissenting Opinion of Judge Tanaka in the South West Africa Cases (Second Phase)*, *ICJ Reports* (1966), p. 298.

³⁷ See *Velasquez Rodriguez Case*, *supra*, para. 129.

³⁸ See *Kokott*, *supra* note 6, p. 20, citing *Lessarad v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972) (“The requirements of due process are not static but vary depending upon the importance of the interests involved and the nature of subsequent proceedings.”)

³⁹ *Ibid*, p. 134.

In the case of *Assenov v. Bulgaria*, the Court held that Article 3 not only prohibits certain misconduct but in addition obliges states to enforce that prohibition by carrying out adequate investigations under specified circumstances.⁴⁰ The fundamental importance of protecting against racial discrimination demands a similar obligation in Article 14 cases, particularly where the claim is accessory to a non-derogable obligation under Article 2 or 3. As in *Assenov*, absent such a procedural requirement, Article 14's prohibition "... would be ineffective in practice and it would be possible in some cases for agents of the State to [practice racial discrimination] with virtual impunity."

While states enjoy a "margin of appreciation" with respect to some kinds of restrictions of Convention rights, the *ERRC* noted that it is difficult to imagine any appropriate "margin of appreciation" with respect to different treatment based on race.⁴¹ Thus, the Court should extend to Article 14 cases based on racial or ethnic discrimination a procedural requirement similar to the one which the Court in *McCann*⁴² first grafted onto Article 2 and in *Assenov* to Article 3, which would come into effect upon a "convincing" showing that discrimination was a factor in the violation. The difficulty which claimants have had in proving discrimination beyond a reasonable doubt shows that, absent a requirement that the state investigate such claims, the prohibition against discrimination is ineffective and theoretical.

Such an approach would be in keeping with the requirements imposed on states in other regimes as

well as by the Convention.⁴³ It would ease the unrealistically high burden on victims of discrimination, and would affirm further the Convention's aims of "securing the universal and effective recognition and observance" of the rights enumerated therein.⁴⁴

The Court's Judgement in the Case of *Anguelova v. Bulgaria*

On 13 June 2002, following the submission of the *ERRC* amicus brief in *Nachova*, in *Anguelova v. Bulgaria*,⁴⁵ another *ERRC* case involving the death of a young Romani man while in police custody, the Court found the respondent government in breach of several provisions of the Convention, including Articles 2, 3, 5 and 13. However, like in *Velikova* previously, the Court again failed to find a violation of Article 14. While accepting that the applicant had raised "serious" arguments to the effect that the victim's treatment by the police was in part a result of his Romani ethnicity, it nevertheless went on to state that the applicant had not proven her discrimination claim "beyond a reasonable doubt".

In a thoughtful dissenting opinion, Judge Bonello noted his concern that the Court, in over fifty years, had not found a single instance of a violation of the right to life or the right not to be subjected to torture based on race, color or ethnicity:

Leafing through the annals of the Court, an uninformed observer would be justified to conclude that,

⁴⁰ *Assenov v. Bulgaria*, *supra*, para. 102 ("where an individual raises an arguable claim that he has been seriously ill-treated by the police ... in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms in [the] Convention,' requires by implication that there should be an effective official investigation.")

⁴¹ See *Schokkenbroek, Jeroen*. "The Prohibition of Discrimination in Article 14 of the Convention and the Margin of Appreciation," *Human Rights Law Journal* 19/1998, p. 20 and p. 22.

⁴² *McCann and others v. United Kingdom*, 21 EHRR 97 (1995), para. 161.

⁴³ *Godinez Cruz Case*, Judgment of 20 January 1989, *Inter-Am. Ct.H.R. (Ser. C) No. 5 (1989)*, paras. 140–41 ("The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment, and to ensure the victim adequate compensation.") See also *Velasquez Rodriguez Case*, *supra*, paras. 166–167 (Article 1(1) of the Convention requires, inter alia, that States "prevent, investigate and punish any violation of the rights recognised by the Convention").

⁴⁴ Preamble to the European Convention on Human Rights.

⁴⁵ Application no. 38361/97.

for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion ... Frequently and regularly the Court acknowledges that members of vulnerable minorities are deprived of life or subjected to appalling treatment in violation of Article 3; but not once has the Court found that this happens to be linked to their ethnicity. Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it. Misfortunes punctually visit disadvantaged minority groups, but only as the result of well-disposed coincidence ... At the root of this injurious escape from reality lies the evidentiary rule which the Court has inflicted on itself ... "proof beyond reasonable doubt" ... Nowhere does the Convention mandate ... [this] ... standard today required of the victim to convince the Court that death or ill-treatment were induced by ethnic prejudice. Article 32, on the contrary, gives the Court the widest possible discretion as to the interpretation and the application of the Convention [...]

[...] It is cheerless for me to discern that, in the cornerstone protection against racial discrimination, the Court has been left lagging behind other leading human rights tribunals ... So long as the Court persists in requiring in human rights disputes a standard of proof that fifty years experience has shown it to be as unreal as it is unrealistic ... it will, in effect, only continue to pay lip-service to the guarantees it then makes impossible to uphold. The way forward, in my view, lies in a radical and creative rethinking of the Court's approach, leading to the removal of the barriers which, in some important human rights domains, make the Court an inept trustee of the Convention. The Court has often risen to the challenge in spectacularly visionary manners, and ought, in matters of ethnic discrimination, to succumb with pride to its own tradition of trail blazing.⁴⁶

⁴⁶ Ibid., *dissenting opinion of Judge Bonello, paras. 2–4 and 9–13.*

⁴⁷ See note 1 *supra*.

The Court's Judgement in the Case of *Nachova and Others v. Bulgaria*

Finally, on 26 February 2004, the Court announced its judgment in the case of *Nachova and Others v. Bulgaria*.⁴⁷ It unanimously found the Bulgarian state responsible for the deaths of two Romani men, shot by military police officers, as well as its subsequent failure to conduct an effective official investigation, in violation of Article 2 of the Convention. For the first time in its history, the Court also found a violation of the guarantee against racial discrimination contained in Article 14 taken together with Article 2.

Having clearly taken into account the arguments put forward by the applicants as well as those contained in the *ERRC* amicus brief, as detailed above, the Court explained its ruling as follows:

The Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights ... On the basis of the above the Court finds that the authorities failed in their duty under Article 14 of the Convention, taken together with Article 2, to take all possible steps to establish whether or not discriminatory attitudes may have played a role in events ... The Court considers, furthermore, that the domestic authorities' failure to discharge that duty should have an incidence on its approach in the present case in the examination of the allegation of a "substantive" violation of Article 14 [...]

[...] The Court has held on many occasions that the standard of proof it applies is that of "proof beyond reasonable doubt", but it has made it clear that that standard should not be interpreted as requiring such a high degree of probability as in criminal trials.

[...] The Court has already recognised that specific approaches to the issue of proof may be needed in cases of alleged discriminatory acts of violence ... In addition, it has become an established view in Europe that effective implementation of the prohibition of discrimination requires the use of specific measures that take into account the difficulties involved in proving discrimination (see ... above concerning anti-discrimination legislation, including evidentiary rules tailored to deal with the specific difficulties inherent in proving discrimination). The Court has also emphasised the need for a broad interpretation of the protection provided by Article 14 of the Convention ... In the light of the above, the Court considers that in cases where the authorities have not pursued lines of inquiry that were clearly warranted in their investigation into acts of violence by State agents and have disregarded evidence of possible discrimination, it may, when examining complaints under Article 14 of the Convention, draw negative inferences or shift the burden of proof to the respondent Government, as it has previously done in

situations involving evidential difficulties ... In these circumstances, the Court considers that the burden of proof shifts to the respondent Government, which must satisfy the Court, on the basis of additional evidence or a convincing explanation of the facts, that the events complained of were not shaped by any prohibited discriminatory attitude on the part of State agents [...] ⁴⁸

The significance of the Court's judgement in *Nachova* is tremendous. From now on, governments will have to consider and investigate promptly and thoroughly every arguable claim of a violation of Article 14 taken together with Articles 2 and 3 of the Convention, and possibly others, based on race and/or ethnicity. Should a government fail to comply, the Court will find it in violation the Convention and grant the victim appropriate redress. Such a landmark decision is long overdue, but the Court has now finally lived up to its own mandate to provide a remedy to those in greatest need and assert its authority as a defender of the disadvantaged and the vulnerable.

⁴⁸ *Ibid.*, see paras. 158, 163, 164, 166–169 and 171–175.



Housing Rights Litigation

Alan Anstead¹

HOUSING REMAINS AN ISSUE of major importance to Roma: for example, grossly inadequate standard of housing, hazardous living conditions, segregated settlements, forced evictions. Protection of housing rights by the State is guaranteed by a number of international legally binding norms. The UN International Covenant on Economic, Social and Cultural Rights safeguards “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.² The UN International Convention on the Elimination of Racial Discrimination emphasises that “State parties undertake to prohibit and eliminate racial discrimination... in the enjoyment of... right to housing”.³ The European Convention on Human Rights states that “Everyone has the right to respect for his private and family life, his home and his correspondence”.⁴ The detailed standards by which States should implement these legally-binding instruments are contained within General Comments No. 4 and 7 for the International Covenant on Economic, Social and Cultural Rights; General Recommendation No. 27 for the International Convention on the Elimination of Racial Discrimination; and the case law of the European Court of Human Rights, to name only three such bodies of elaboration.⁵ Although there are clear international law standards on housing rights with legally binding obligations and duties on States (and in many countries some housing rights are regulated by domestic legislation), the extent to which national Courts

accept domestic and international jurisprudence in the field of housing rights varies considerably from country to country.

This article looks at some cases of housing rights violations in which the *European Roma Rights Center (ERRC)*, together with local partner organisations and lawyers, has brought litigation, using these case studies to illustrate the application of international law.

The Right to Protection from Forced Evictions, and the Provision of Alternative Accommodation

Forced evictions are defined by the United Nations Committee on Economic, Social and Cultural Rights in their General Comment No. 7 as “the permanent or temporary removal against the will of individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.” The General Comment also provides, *inter alia*, that:

- ◆ Forced evictions frequently violate other human rights such as the right to life, the right to security

¹ Alan Anstead is ERRC Legal Adviser/Project Manager.

² ICESCR, Article 11 (1), see www.unhchr.ch/html/menu3/b/a_cescr.htm.

³ ICERD, Article 5 (e)(iii), see www.unhchr.ch/html/menu3/b/d_icerd.htm

⁴ ECHR, Article 8 (1), see www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm

⁵ CESCR General Comment 4: Right to adequate housing and General Comment 7: Forced evictions, and CERD General Recommendation 27: Discrimination Against Roma, can be found at www.unhchr.ch/tbs/doc.nsf.

of person, the right to non-interference with privacy, family and home and the right to peaceful enjoyment of possessions.

- ◆ Procedural protections are required where there is no alternative to eviction, including an opportunity for consultation before the eviction; adequate and reasonable notice and information on the proposed eviction; all persons carrying out the eviction to be properly identified; and government officials to be present, especially when groups of people are involved.
- ◆ Evictions should not result in individuals becoming homeless. Where those affected are unable to provide for themselves, the State must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing is available.

The following are examples of forced eviction cases in which *ERRC*, together with local partner organisations and attorneys, have brought legal action:

*Zvecanska Street*⁶

Ten Romani men, together with their families, have been living in an illegal, predominantly Romani settlement close to a hospital on *Zvecanska* street in Belgrade, Serbia and Montenegro. They have lived there for over 15 years and invested considerable time and much of their limited financial resources into improving the living conditions. For example, building a separate toilet block, adding a drainage system, and securing a power supply to the sheds in which they live.

During the last few years, the inhabitants of this settlement have repeatedly asked the municipal authorities for a more adequate and permanent solution to their housing situation. Instead of receiving local government assistance, the ten Romani men and their families were informed of eviction proceedings against them, initiated by the local hospital.

The Romani inhabitants, with the assistance of a local attorney and the *ERRC*, are fighting the eviction threat through the courts. In a separate action they have requested adequate alternative accommodation should the evictions be enforced. The Serbian courts have so far refused to consider the issue of alternative accommodation until the evictions had been enforced and the people made homeless. In the latest development, the plaintiffs, using international legal arguments, have requested the domestic courts that all of the previous legal actions in this case be joined together with the one for alternative accommodation, so that should the action against the eviction fail, the Romani inhabitants will not be made homeless. The case is currently pending before domestic courts in Serbia.

*Danilovgrad*⁷

On the basis of an application submitted jointly by the *ERRC*, the Belgrade-based NGO *Humanitarian Law Center* and a local attorney, the UN Committee against Torture (CAT) found forced eviction to be in violation of the Convention Against Torture, and by doing so not only provided a remedy to the victims of forced eviction but also provided human rights advocates with beneficial jurisprudence. The case, *Hijrizi v. Yugoslavia*, involved the forced eviction and destruction of the *Bozova Glavica* Romani settlement in the city of *Danilovgrad* by private residents who lived nearby. Earlier, the perpetrators had threatened to “exterminate” the community and “burn down” their houses. The *Danilovgrad* Police Department told the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes leaving just a few behind to protect their housing and other possessions. During the afternoon of 15 April 1995, the non-Romani residents entered *Bozova Glavica* shouting “we shall evict them” and “we shall burn down the settlement”. The crowd set fire to the housing, resulting in the entire settlement being levelled and all properties belonging to its Romani residents completely destroyed.

⁶ Further information on the case at: www.errc.org/rr_nr1_2002/legal_defence.shtml

⁷ See also www.errc.org/publications/letters/2003/montenegro_jul_4_2003.shtml and www.errc.org/publications/letters/2003/montenegro_jan_22_2003.shtml.

Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment leaving no trace of the community.

The CAT found that the Police Department did not take any appropriate steps to protect the residents of Bozova Glavica, and that the burning and destruction of the settlement constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning of Article 16 of the Convention Against Torture. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 by not protecting the rights of the residents of Bozova Glavica, a positive obligation under the Convention. Although the right to compensation is not expressly provided in the Convention for victims of acts of ill-treatment other than torture, the Committee concluded that the State Party should compensate the victims of this violation. As a direct result of the Committee's finding, the Montenegrin Government agreed on 19 June 2003, to pay 985,000 Euro in compensation to seventy-four Romani victims of the Danilovgrad tragedy.

The Right to Freedom from Discrimination in Access to Housing and Related Services

The International Covenant on Economic, Social and Cultural Rights, and the European Convention on Human Rights, both have articles that prohibit racial/ethnic discrimination in the enjoyment of the rights set out in the Covenant and the Convention. The scope of the International Convention on the Elimination of Racial Discrimination affirms that State parties must guarantee that individuals can enjoy the right to housing without being subjected to racial discrimination. The Committee on the Elimination of Racial Discrimination (CERD) in their General Recommendation No.27 explain that "State Parties [should] adopt measures to act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that

are isolated and without access to health care and other facilities".⁸

The following examples of discrimination in access to housing, cover a case in which local inhabitants and the municipality specifically singled out Roma to not receive public housing; a case in which local officials stopped a Roma family purchasing a house; and a case in which a municipality denied freedom of movement and residence to Roma.

Luboslava v. Slovakia

On 20 March 2002, the Councillors of the municipality of Dobšina, Slovakia, adopted a resolution in which they approved a plan to construct low cost houses for the Roma inhabitants of the town. About 1,800 Roma live in Dobšina in appalling conditions. Most of their houses are thatched huts or houses made of cardboard, with no potable drinking water, toilets or drainage and sewage systems. On hearing about the Councillors' resolution, some of the inhabitants of Dobšina and surrounding villages set up a five-member petition committee, and designed a petition which read "I do not agree with the building of low cost houses for people of Gypsy origin on the territory of Dobšina, as it will lead to an influx of in-adaptable citizens of Gypsy origin from the surrounding villages, even from other districts and regions". More than 2,700 inhabitants of Dobšina signed the petition. The Councillors considered the petition and voted, unanimously, against building houses for Roma, cancelling the earlier approved resolution. The *ERRC's* Slovak partner organisation, the League of Human Rights Advocates, wrote to the District Prosecutor on behalf of 17 Roma from Dobšina to request that the Prosecutor investigate and prosecute the authors of the discriminatory petition, and overturn the decision of the Dobšina town Councillors to no longer build houses for Roma in Dobšina. The District Prosecutor turned down the request to investigate the issue on the grounds that he had no jurisdiction over the matter. A submission to the Slovak Constitutional Court was turned down on the grounds that the applicants had provided no evidence that any fundamental right had been violated by the petition or by the Councillors' second resolution.

⁸ CERD General Recommendation No.27, para. 31, see www.unhcr.ch/tbs/doc.nsf.

The *ERRC* (with assistance from local activist Jozef Červenak) and the *League of Human Rights Advocates* submitted a communication to the Committee on the Elimination of Racial Discrimination, asserting that a number of rights secured to them under the Convention have been violated. The case, *Luboslava v. Slovakia*, is pending before the CERD.

*Kahlik v. Hungary*⁹

Ms Bertalan Nagy is a Hungarian citizen of Romani origin who decided to buy a house in Gyüre, Hungary. On 27 July 2001 she signed a preliminary contract with the owners of the house, Mr and Mrs Kahlik, both Ukrainian citizens of Hungarian origin. After it became publicly known that Mr and Mrs Kahlik intended to sell their house to a Roma, several non-Romani inhabitants of Gyüre as well as a number of local government officials tried to stop the sale using threats and coercion. On 10 August 2001, despite the opposition, the purchasing contract was signed (under Hungarian law, however, the sale required the approval of the County Office of Public Administration. More than two years later, this office is formally yet to decide on the matter).

On the same day, the mayor and the notary held a meeting at the local council office following which five men, driving a council-owned car, went to the Kahlik's family house and threatened them by saying that the whole village would rather gather and burn their house down than allow it to be sold to Roma. Later that day, Mr Laszlo Herceg, the mayor of Gyüre, came personally to ask the Kahliks to terminate the contract saying that "Roma cannot buy a house in Gyüre" and "no Gypsy may live on the main street". In the evening of 10 August 2001, an unknown person, whom the Kahliks could hear but not see as they were afraid to leave the house, caused damage to their gate with an axe, called them "dirty Russians", and threatened to kill them. Ms Kahlik reported the incident to the competent authority, the notary of Gyüre, but he terminated the investigation on the alleged grounds that the perpetrator could not be identified.

On 15 August 2001, Ms Nagy was called to come to the Council office for a meeting with the mayor of Gyüre, the notary, a representative of the Ministry of Internal Affairs, and other local officials. Ms Nagy was told that she could not buy the house because the Kahlik family, being Ukrainian, could not sell the property, and in addition the notary of Gyüre had issued a sequester on the Kahlik family house based on a debt that subsequently turned out to be non-existent. The Kahlik family and Ms Nagy, assisted by the Hungarian non-governmental organisation *Legal Defense Bureau for National and Ethnic Minorities (NEKI)* as part of a joint litigation project with the *ERRC*, filed a criminal complaint and a civil complaint for damages. The criminal complaint was filed against the mayor and the notary as well as against an unknown perpetrator for misuse of official power, infringement of constitutional rights, using racist and threatening language, and damage to the Kahlik family house. Despite compelling evidence submitted by the applicants, including taped conversations containing the threats, both lawsuits were ultimately rejected.

ERRC and *NEKI* submitted an application to the European Court of Human Rights asserting violations of Article 3 (freedom from inhuman and/or degrading treatment), Article 8 (right to family and private life), Article 1 of Protocol 1 (right to peaceful enjoyment of one's possessions), Article 13 (right to an effective domestic remedy) and Article 14 (right to non-discrimination) of the European Convention on Human Rights. The case is pending before the European Court.

*Koptova v. Slovakia*¹⁰

In 1981, seven Romani families went to work and live on an agricultural co-operative located in the N'agov and Rokytovec municipalities, and obtained permanent residency there. At the end of 1989, the co-operative ceased operating and the Romani families lost their jobs and the company provided housing.

For the families, a long period of homelessness and anti-Romani racism followed. Over the next 16

⁹ See www.errc.org/publications/letters/2003/hungary_oct_1_2003.shtml.

¹⁰ CERD Communication No. 13/1998 (CERD/57/D/13/1998), see www.unhchr.ch/tbs/doc.nsf

years, the families moved from village to village, seeking a permanent and secure residence. They attempted to avail themselves of the housing provided by local authorities, but on more than one occasion, anti-Romani hostility on the part of local officials and non-Romani residents caused them to flee. They tried to build temporary dwellings, but local non-Roma tore these down.

On 18 June 1997, the Municipal Council of Rokytovec enacted Resolution No. 21, which expressly forbade Romani families from settling in the village and threatened them with expulsion should they attempt to settle there. Soon thereafter, on 16 July 1997, the Municipality of N'agov adopted Resolution No. 22, which forbade Romani citizens to enter the village or to settle in shelters in the village district.

Anna Koptova, a Slovak citizen of Romani ethnicity and director of the Legal Defence Bureau for Ethnic Minorities of the Good Romany Fairy Kesaj Foundation in Košice, brought a complaint before the Committee on the Elimination of Racial Discrimination, represented by the *ERRC*. She alleged that as a person of Romani origin, she was a victim of violations of the International Convention on the Elimination of Racial Discrimination, because Resolutions No. 21 and 22 prohibited her from entering the Municipalities of Rokytovec and N'agov on the basis of her ethnicity. In April 1999, the Resolutions were rescinded.

The CERD found a violation of Article 5(d)(I) of the Convention, because the “wording” and the “context in which [the Resolutions] were adopted” indicated that any Roma would have been prohibited from settling in the villages on the basis of their ethnicity. The CERD recommended that Slovakia “take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated.”

Right to Respect for Private and Family Life, and Home

The European Convention on Human Rights states that “Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except in accordance with the law”.¹¹ Protocol 1, Article 1, to the Convention also covers protection of property. The case law of the European Court on the right to respect for the home covers such issues as protection from wilful damage, protection from nuisances and disturbance (including environmental nuisance), and regulation of property. There are two famous cases in which Turkish State agents illegally destroyed homes, and violations of Article 8 were found.¹² The following is a similar case from Romania:

*Hadareni*¹³

Nearly ten years after mob violence left three Romani men dead and the houses of 14 Romani families destroyed in Hadareni, Romania, the European Court of Human Rights on 3 June 2003 agreed to review the claims of 24 of the victims, finding the complaint raised “serious issues of law and fact under the Convention”. The applicants are represented by the *ERRC*.

Following an altercation in which a non-Romani boy was killed, a mob of non-Romani villagers hunted down the alleged perpetrators and set fire to the house in which they were hiding. Two Roma were brutally murdered when they tried to escape, and a third burned to death in the house. The mob, including members of the local police force, went on to destroy 14 additional houses of Romani families. Three individuals were charged with the murders but later released and their arrest warrants cancelled by the General Prosecutor. The complaints against the police were referred to the Military Prosecutor’s Office, which

¹¹ *ECHR, Article 8 (1) and (2)*.

¹² *Mentes v. Turkey, application 23186/94, and Akdivar v. Turkey, application 21893/93, see www.hudoc.echr.coe.int/hudoc*

¹³ *See www.errc.org/publications/letters/2003/romania_jul_4_2003.shtml*.

issued a decision not to prosecute. That decision was upheld on appeal.

Nearly four years later, following international outcry over the incident and the failure of Romanian authorities to bring justice to the victims, the Public Prosecutor in Mures County finally issued an indictment against 11 civilians suspected of committing the crimes, later expanded to include others. Twelve individuals were convicted of destruction of property and disturbance, including the Deputy Mayor of Hadareni, and five of murder. The sentences ranged from one to seven years, later shortened on appeal. The Supreme Court later acquitted two of the defendants and those remaining in custody were pardoned by the Romanian President in June 2000. A civil court rejected all of the claims for non-pecuniary (moral) damages, finding the crimes were not of such a nature as to produce moral damage.

Because the incident occurred prior to Romania's ratification of the European Convention on Human Rights, the applicant's claims under Article 2 (right to life) and Article 3 (freedom from torture or inhuman or degrading treatment) arising from the incident itself were dismissed on 13 March 2001. The claims remaining before the Court, which were declared admissible in the 3 June 2003 decision, include the applicants' claims under Article 3 (freedom from torture, inhuman or degrading treatment) and Article 8 (respect for private and family life) arising from the inhuman conditions in which they were forced to live following the destruction of their homes, as well as Article 6 (right to a fair trial) based on the delayed civil proceedings against the civilian defendants and the inability to pursue civil claims against the police because of the refusal by Romanian authorities to prosecute them.

In the following case, *Chapman*, *ERRC* submitted an *amicus* brief during the legal proceedings. The case is important as regards housing rights as it sets out positive obligations on the State in respect of people following a travelling lifestyle or living in illegal accommodation.

*Chapman v. UK*¹⁴

The applicant, a Gypsy/Traveller from the UK, wanted to station a mobile home on property that she had purchased, in direct conflict with the area's designation as a Metropolitan Green Belt. Although the European Court of Human Rights found that there is no general obligation for a government to provide housing under Article 8, the Court also stated that, "[n]onetheless, although the fact of being a member of a minority with a traditional lifestyle different from that of the majority of a society does not confer an immunity from general laws intended to safeguard assets common to the whole society such as the environment, it may have an incidence on the manner in which such laws are to be implemented. . . . The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases. To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life." In *Chapman*, the positive obligation on the United Kingdom was not sufficient to overcome the environmental land restrictions where the applicant wanted to live. In upholding the land restriction, the Court weighed the existence of alternative locations for an individual who wanted to live in a caravan. However, the Court did state, "that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation." Therefore, the Court suggested that minorities living in illegal accommodations may be permitted to stay if the government has not provided alternative accommodations for them. *Chapman* implies that under Article 8, the Government may have an obligation to provide alternative accommodations to minorities who desire to maintain their traditional lifestyle.

¹⁴ See Application No. 00027238/95, at: <http://hudoc.echr.coe.int/hudoc> and Luke Clements: An Emerging Consensus on the Special Needs of Minorities: The Lessons of *Chapman v. UK*. In *Roma Rights* 2-3/2001, at: http://www.errc.org/rr_nr2-3_2001/legal_defence.shtml.

Study session for persons involved in providing legal assistance to Roma/Gypsy and Traveller communities

Strasbourg, 7 to 9 June 2004

The Council of Europe (Directorate General of Human Rights and Directorate General of Social Cohesion) and the *European Roma Rights Centre (ERRC)* will organise in Strasbourg the 7th study session for persons involved in providing legal assistance to Roma/Gypsy and Traveller communities, from 7 to 9 June 2004.

These study sessions aim at providing participants with practical examples on how to use the Council of Europe Human Rights Conventions in defence pleadings in favour of Roma/Gypsy and Traveller communities.

The sessions involve:

- ✓ Lectures on relevant articles and procedure of the European Convention on Human Rights
- ✓ Practical information on how to submit an application to the European Court of Human Rights
- ✓ A moot trial exercise
- ✓ Lectures on other Council of Europe legal instruments (and in particular this year, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).
- ✓ Information about access to relevant Council of Europe documentation and database.

The study sessions are animated by Council of Europe staff (including lawyers from Registry of the European Court of Human Rights), *ERRC* staff lawyers, and experienced outside experts (Luke Clements, human rights lawyer from the UK, and Monica Macovei, President of the *Romanian Helsinki Committee*).

Participants should be practising lawyers involved in defending Roma/Gypsy and Travellers's cases in any of the Council of Europe member and applicant states. The working language will be English and the Council of Europe will cover all costs.

Applications should reach the Council of Europe Secretariat before 10 May 2004 together with a CV in English.

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Litigating Housing Rights: Some Comments

Although the International Covenant on Economic, Social and Cultural Rights has the most comprehensive housing rights provisions, there is no mechanism under this treaty to bring individual complaints. The treaty can, however, be invoked in domestic court proceedings as it is legally binding on the States that have ratified it.

The scope of the European Race Equality Directive,¹⁵ which should have been transposed into national law in existing EU member states by July 2003 and should be transposed into national legislation by the date of accession for the countries that will join the EU, covers the prohibition of direct and indirect discrimination on racial or ethnic grounds on “access to and supply of goods and services which are available to the public, including housing”. However, it is not clear yet what housing rights are counted as goods or services under the Directive. We await test cases and the jurisprudence of the European Court of Justice to further define the scope of this Directive.

Many housing rights are inter-linked, and may also be linked to other human rights. For example a forced eviction may involve not only the right to protection from forced evictions, but also discrimination, right to respect for private and family life, and in some of the cases cited in this article, torture, inhuman and degrading treatment. Furthermore, lack of security of tenure, affecting many Roma in Europe today, may also involve, as it often happens, denial of fundamental rights.

The denial of residence permits to Roma in some countries, often on the grounds that the owner of the

property where they live does not have legal tenure of the land on which the property is situated, can result in the person not having access to other human rights, such as access to education, healthcare or social benefits. In Slovakia, *ERRC*, together with the Milan Simecka Foundation and the Centre on Housing Rights and Evictions, is implementing a project to defend the housing rights of Roma. Denial of residence permits is one of the test cases that we are bringing, in order to change the misused practice of many municipalities in Slovakia to limit the number of Roma living in the municipality’s area. The project is supported by the British Foreign and Commonwealth Office.

Conclusions

In its Third Report on Slovakia, adopted on 27 June 2003, the European Commission Against Racism and Intolerance said “ECRI is very concerned that the situation as regards housing for many Roma communities remains grave, with large numbers of Roma living in settlements lacking even the basic amenities such as water, sanitation and electricity. The conditions are so critical in some settlements that there is a real threat of health epidemics, while it seems clear that the families – and particularly children – living under such conditions cannot possibly hope to participate in society on an equal footing in other areas of life such as education and employment.”

States are legally bound by international treaties, and this includes provisions on housing rights. There is a positive obligation on States to provide protection of these rights. Governments can be held accountable under law, as we hope has been shown through the cases described in this report. Litigation can be successfully brought to assert housing rights.

¹⁵ Council Directive 2000/43/EC.

Roma Housing Rights in Slovakia

Zuzana Veselská¹

The article that follows is the second in a series of articles on Roma and the right to adequate housing in Slovakia. The article is the product of a one-year joint project of the European Roma Rights Center and the Bratislava-based Milan Šimečka Foundation, with the co-operation of the Geneva-based Centre on Housing Rights and Evictions. The project, entitled, "Defending Roma Housing Rights in Slovakia" was realised thanks to funding from the United Kingdom's Foreign and Commonwealth Office. The first article in the series is available on the Internet at: http://www.errc.org/rr_nr4_2003/research1.shtml.

I STARTED WORKING at the regional museum in the town of Brezno two years ago. Through my work at the museum, I found that despite the fact that there are large numbers of Roma living in the town and the region, there is no county-wide strategy to deal with the problems of the Romani community, with the exception of activities of individuals and non-governmental organisations. I found the project "Defending Roma Housing Rights in Slovakia" to be a useful opportunity to direct the attention of the relevant people and institutions to the situation of Roma in this region.

Telgárt

Telgárt is a village 60 kilometres from the town of Brezno, the county town of Brezno County. According to the 2001 census, there were 1539 registered inhabitants (740 males and 799 females) in Telgárt. The majority of the population declared themselves as being of Slovak nationality, while only 138 people (9%) declared themselves to be Romani. However, according to my research, about 620 people live in the two areas of the village considered to be Romani areas.

There are no Romani members of the ten-member village council, though two Roma work on commissions for the village council. It has been possible to employ Romani assistants at the local primary school; at present, two Romani assistants work there. A preparatory year has been established at the same school for Romani children. The Romani assistants are very highly valued by the director of the school. One hundred and ninety-two children attend the school, of whom 90 are Romani. There is also a special school in Telgárt, which is attended by 80 children. Only one pupil at the special school is non-Romani. Primary school teachers fear that some Romani children are sent to the special school even before the start of compulsory school attendance on the basis of just one 15-minute psychological examination, skewed by a language barrier, and on the basis of the requests of parents who are influenced by the lobbying of the special school teachers who continually fight to justify the existence of their school.

According to official statistics, there are 422 houses in Telgárt, 335 of which are permanently inhabited while 105 are uninhabited. After 1989, the management of land became extremely problematic. Following the Slovak National Uprising at the end of World War II when the village was razed to the ground, new houses

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were built under the socialist regime. This phase of building was carried out with no respect for former property boundaries. This has resulted in a situation whereby it is very difficult to deal with the reallocation and restitution of property, given that, in many cases, houses have existed on the property for half a century.

The average unemployment rate in the village fluctuates around the 48–55% mark, while the average unemployment rate among the Romani population is 90–95%. The majority accepts certain Romani musicians of good “stock”. However, this acceptance has its limits. Not even a Romani musician in Telgárt has the opportunity to build a house in the centre. Despite the attempts by a number of musicians to change their way of life with their own resources, they too respect the existence of racial barriers in the village and do not attempt to move into the village. The situation has fallen into a stalemate: It is hard to say how the town’s non-Romani population would react if a Romani person were to buy a house in the village. Local Roma do not even attempt to buy property in the centre because they are already convinced that such an attempt would be unsuccessful.

The two concentrated Romani settlements known as the “upper Roma hamlet” and the “lower Roma hamlet” are located between the village’s residential areas. Not a single Romani family lives individually like the majority population of the village. Only about 60% of the buildings in the Romani hamlets have deeds for both the land and the house.

The upper Roma hamlet is an integrated part of the village. It comprises 23 houses, inhabited by 354 people. The houses are brick-built or wooden in the building style of the village. In addition to the registered houses, this area also hosts 20 shacks, inhabited by various types of family from single widows to young families with 6–8 children. These shacks are built from wooden planks, sheet metal and chipboard with no kind of thermal insulation. They look ramshackle and improvised, their total area being around 20 m² each.

The lower Roma hamlet is located almost one kilometre away from the village. There is a bus stop nearby, serving local connections. There are 13 houses in this hamlet, of which 3 are illegally constructed. A total of 236 people live in the lower hamlet, 26 of whom did not have permanent residence in

the village at the time of my research. All the houses in this area are brick-built, mostly more than one storey, with the enlargement of living space being arranged on an *ad hoc* basis. All houses are built along an asphalt road that leads through the settlement and runs parallel with the main road. The infrastructure in the lower hamlet copies that of the village. There is no generally accepted form of authority in the lower hamlet. Residents are generally dissatisfied with conditions in the settlement.

The basic politics of the village in relation to the Roma is not clear-cut. Pro-Romani activities are met with general aversion and strategies relating to positive discrimination have no chance of getting past the town council. The philosophy of politics in the village is to stick to the *status quo*, which means to act in such a way that least irritates the non-Romani population and to openly approach Roma in the same manner as the majority, which results in a disadvantaged situation for Roma. In 2001, the PHARE national fund project for the construction of infrastructure in Romani settlements selected 30 villages as eligible: Telgárt was one of these 30. The village was promised financial assistance in the building of a sewage network and water treatment units dedicated to cleaning wastewater originating from the Romani settlements. The mayor of the village, Mr Martin Mekel, informed me that he discarded the offer; for many it was incommunicable that sewage networks would be built for Roma while the rest of the village had no such system of its own. The majority generally regards the conditions in the Romani areas as being very amenable: According to mayor Mekel, “Gypsies have it all! They’ve even got telephone booths”. The village council has also not permitted the construction of rental flats: After calculations including the unemployment rate in the Romani settlements, the high number claiming social benefits, living expenses etc., such a project was seen as unsustainable given the regular payment of rent that would be required of Roma.

The politics of the village are currently orientated towards the development of a tourism industry; this includes efforts to prevent the lower hamlet, which is situated by the main road, from expanding further. One non-Romani resident, with reference to the Romani hamlets, asked me, “What must the tourists think of us when they arrive here and see that?” Village leaders

and some of my non-Romani respondents see the Romani presence in the village as a considerable threat from the viewpoint of the pro-tourist orientation of the village. One of my respondents questioned what tourists would think upon entering a shop and “seeing the whole place full of Gypsies?” The idea for a tourism orientation in the village is the newest concept of the regional government, which promotes the village in relation to agrotourism and the tourist industry.

In 1986, a plan for making a recreational area comprising Švermovo–Šumiac–Kráľova hoľa was approved, which was agreed to by the village council in 1991 and still is valid. According to this plan, it is not possible to build any more constructions on the land near the lower hamlet. Free building lots are, however, located in the upper hamlet, but many Roma

from the lower hamlet refuse to live in the upper hamlet. Because Roma respect the border between the Romani and the non-Romani areas thereby not buying land or homes in the village, the only remaining options, in the case of the lower hamlet, are to build illegally or to improvise on restricted land where there is already a house through extensions, add-ons, etc.), or to possibly live in another village.

The case of Marian Harvan, a Romani activist, illustrates the problems facing Roma wishing to improve their living situation in Telgárt. The 24 members of the Harvan family live in a three-storey brick-built house in the lower hamlet. Since the third generation of the family also has had children, two families are keen to move out and build a house for themselves. One of the families is that of Mr Harvan



3

The area known as Hlavina in Brezno, Slovakia, is the site of a housing project for "unadaptable citizens", meaning Roma. At the time the photo was taken in March 2004, the project had not yet begun, though the buildings shown in the photo, surrounded by a barbed wire fence, are to be used as housing within the project framework.

PHOTO:

who, in 1997, bought property from a local non-Romani resident in an effort to improve the family's housing situation. In 2000, the final transfer of ownership was completed. The property was listed as TTP, a long-term grassy area.

All attempts by Mr Harvan at construction on the property were refused. The village council appealed against the spatial plan and, in September 2002, refused to grant planning permission and proposed that Mr Harvan sell the property to the council. The village refused planning permission despite Mr Harvan having secured the requisite permission from the County Environmental Department. According to Mr Harvan, "They thought that if I built the one house, everyone would start building beside me until we spread all the way to the village". Mr Harvan solicited assistance from the Office of the Slovak Government's Plenipotentiary for Romani Communities and the non-governmental organisation League of Human Rights Advocates and immediately appealed the decision of the village council to higher authorities.

Visits to the site by higher authorities did not have any significant effect. Therefore, in 2003, Mr Harvan built a storage building on his land, which resulted in an investigative visit by the village council on June 30, 2003. According to the minutes of the visit, it was found that Mr Harvan had constructed the building without permission and that the village council had commenced proceedings for the removal of the construction.

Mr Harvan stated in the minutes, "I am not going to let the property be expropriated. The mayor stated that there is a possibility of selling the land to a businessman, who would come here with the idea of building some kind of development. [...] I'm not going to give up the land just like that, so I built a shed on the land for storing tools and wood. I'm just about to put a fence around my land."

At the time of research, the dispute continued and both sides were holding firmly to their positions. Mr Harvan was resigned to the fact that there is no solution to the situation. He was determined that if he did not receive the permission of the village council, he would simply build illegally. Mr Harvan perceived the situation in the village as racism and evaluated the whole problem as the result of preconceptions.

He told me, "We Roma are at the bottom of the village hierarchy. There is a high barrier here, a barrier between the Roma and the non-Roma, a proper wall." In my dealings with the village council, it did not provide me with the planned use of the land in question.

Brezno

Brezno is the county town of Brezno County and has a population of 22,452 inhabitants. At the time of the 2001 census, there were 22,875 permanent residents living in the town, with about 11,700 of these being economically active (50%), while more than 65% of the inhabitants are of productive age. Slightly less than 5% of the population identified themselves as Romani (1,060 people), though the actual figure is probably around twice the official figure.

As of September 30, 2003, the level of unemployment in Brezno was almost 20%, compared to the county average of 27.79%. The level of unemployment amongst the Romani community in recent times has been around 95–99%. The town is very keen on promoting itself as a tourist destination, calling itself "the gate to the Tatras". The development of services relating to the tourist industry is, however, relatively limited.

According to statistics, Brezno comprises 1831 permanently inhabited houses (of which 1418 are family houses) and 325 uninhabited houses. Various types of Romani settlements are found in the town: Two partly segregated areas (terraced housing and a line of portacabins on the opposite side of town), integrated individual houses and detached, historical flats or family houses in the centre of town inhabited mainly by Roma, as well as some families living in courtyards of other houses. Buildings owned by the town are dealt with by the housing agency BYPOS, which, on the basis of a Statute of Brezno, is a budgetary organisation of the town. The following locations, inhabited by Roma, are considered problematic by BYPOS:

- ◆ Predné Hálno 10: A block of 13 flats inhabited solely by Roma in one of the areas of a town situated by the main road towards Horehronie, connected to the main water and sewage lines of the town. One hundred and ten people are registered here as permanent residents. The block looks run-down, and,

according to records, it has been this way for almost 40 years. Romani residents refer to the block as “the mill”, however, non-Roma and the media refer to it as the “house of terror”. According to BYPOS, only two of the inhabitants of the block are rent-payers. There is one large-capacity waste container situated by the block. The administration of the block has not increased the rent for a long time and has no records of a repair fund. On August 5, 2003, the local newspaper *Horehronie* quoted the deputy mayor of Brezno, Ms Janka Mihalovičová as having stated, “When they start paying their rent, BYPOS will solve the problems with the sewage lines, and after repairing the outside of the building, they will put in benches, sandpits and swings for the children.” BYPOS has recorded unpaid rent totalling 509,000 Slovak crowns (approximately 12,660 Euro).

- ◆ **Kuzmányho:** Located in the centre of Brezno, the building houses 86 Roma. There are eight flats in the building; one being unoccupied. A homeless, 3-member Romani family inhabits one flat and several Romani families inhabit two flats – one two-room flat houses 5 families, including 23 children. One flat, which served as a warehouse for BYPOS, houses one family. Another flat houses an old woman. One of the flats houses one family and, sporadically, their daughter-in-law and her child. Most of the inhabitants of the flats do not pay any rent and have a collective rental debt to the town totalling 270,410 Slovak crowns (approximately 6,730 Euro). Ground floor flats are in a very run-down condition; inhabitants complain of the space being too damp and mould regularly destroys and the furniture and carpets despite the evident attempts of the families to look after the place. Windows on the ground floor facing onto the street are covered with boards of various materials. Additionally, the building is frequently subject to vandalism by skinheads, according to several of the Romani residents with whom I spoke. Official data on the number of Roma registered as residents of the building was not available.
- ◆ **29 and 37 Rázusová Street:** Located in the centre of town, one of the buildings holds four flats, according to BYPOS, in which 3 Romani families comprising 54 people live, of which 18 are children of up to 5 years of age. In the second regis-

tered house, there are 33 inhabitants in two flats. There is a dry-type WC in the courtyard; only part of the building is connected to the main water supply of the town, despite the fact that the building is in the centre of town and is bordered by family houses and small shops. Several small extensions have been added to the original construction. The space is narrow and restricted, and divided into three parts (kitchen, living room and entrance area). Rickety, steep, wooden stairs lead into this loft. These are extremely unsafe. They are the same kind as lead into haylofts in old country houses. Both buildings have unpaid rents amounting to 68,000 Slovak crowns (approximately 1,690 Euro).

A statement made to me by a BYPOS employee that “None of these Gypsies pay any rent” clarified the general attitude of BYPOS towards Romani residents. As a landlord, BYPOS has a rather indifferent position regarding the above-mentioned housing. Information about these flats was obtained only by chance through emergency services workers, since the town keeps check of and deals with the control of its own property. Ms Eva Kováčová of the Brezno Department of Social Affairs estimated that out of a total of 1,000 applications for flats in the town, about 1/4 were from Roma. On the last occasion that flats were allocated to new occupants in 2003, 3 of a total of 20 were allocated to Romani families. According to Ms Kováčová, this was “more than enough” to be allocated to Roma.

The Town’s Solution to the “Romani Housing Problem”: Segregation

A project entitled “Making the Hamlet of Hlavina Run”, the main investor in which is the town of Brezno, illustrates well the problems inherent in the attempts of Slovak authorities to “solve” the Romani housing problem. The mayor of Brezno, Mr Jaroslav Demian, was quoted in the local newspaper *Horehronie* on February 11, 2003, as having stated, on the topic of the housing settlement known as Hlavina, currently under construction, that it will provide “flats, the rent for which will be affordable even for Roma who have very low financial means, who today are inhabiting standard rented accommodation and are not capable of paying the rent or bills [...]. It is in running Hlavina that we wish to guarantee that a visitor will not come

across dilapidated houses, flat and shacks, e.g. in Predné Hálny, Draksiar, Kuzmányho Street and Rázusová Street [...]. When I speak of these people, I am referring to those with permanent residence in the town. It is, in the end, a commission of the village council composed of representatives and the town's citizens that decides the granting of accommodation."

During a meeting of the Brezno town council on April 28, 2003, Ms Mihalovičová was given the task of "proposing the means of dealing with the housing of socially unadjustable citizens of the town". According to the minutes of an August 26, 2003 meeting, Ms Mihalovičová submitted a report on the living conditions of Roma in the town and solutions for solving the situation based on responses to a questionnaire distributed during visits to various housing estates. The questionnaire addressed such issues as the legitimacy of inhabitants, calculation of the numbers of people living in these areas and calculation of the number of registered permanent residents. Ms Mihalovičová's visits to the Romani households were reportedly similar to raids in that town police accompanied her. In her report, Ms Mihalovičová evaluated the activity of the city council with respect to the accommodation of Roma since the issuance of a 1995 General Mandatory Order and concluded that no concrete steps had yet been taken.

The 1995 General Mandatory Order (VZN) 021 of the Town of Brezno relating to flats and the conclusion of rental agreements (as amended on May 27, 1996 and October 28, 1996) addresses the Romani housing problem, specifically with regards to binding parts of the urban plan of Brezno, which sets out the various types of housing. Areas of the town characterised as "Obytné Uzemie Specificke" ("BŠ" – specifically designated housing area) are potentially and unofficially designated as 'appropriate' for the concentration of Romani housing. BŠ areas comprise family houses and low-rise blocks of flats. The blocks should provide plots of land for growing vegetables, raising household livestock and areas for the storage of tools for craft purposes and small-scale manufacturing services. The kind of activities that are not supported in such housing are those generating noise pollution, odours, or those which result in a lowering of the aesthetic value of the area or which result in heavy traffic. The VZN contains passages suggesting that Roma not be provided with housing in the centre

of town. The VZN for example states, "the (Romani) settlement of the centre of town lowers the value and attractiveness of buildings and their surroundings and generate a barrier against its further development."

The area of Hlavina falls within the category of BŠ. Hlavina is located in the part of town called Zadné Hálny where, in 2003, there was an outbreak of tuberculosis in a wooden house inhabited by 15 Roma. It falls outside the town centre and is fenced off. The whole hamlet was designed under the socialist regime in 1976 as the new "Roma" hamlet. Much of the construction was carried out in an *ad hoc* fashion and after the construction of seven wooden buildings, the goals of the project changed and the project was never completed. Between 1990 and 1996 the constructions served as storage space for the state archive. In 1996, the village council decided to revive the original project. In 1999, a new project began which was concluded – along with some additional projects – in 2002 and 2003.

Construction permission has been granted and the project, set to be up and running by September 2003, had as of March 2004, not yet begun. The original buildings in the area are to be used for accommodation: These wooden constructions with concrete foundations were produced as prefabricated family housing, but are now in bad condition. Therefore, the town plans to reconstruct them. The houses have metal roofs but lack sanitary equipment; there is no kitchen work surface or heating provided in any of the houses. The buildings have electrical connections. There are two unfinished family houses in the area, which may be used later, in the next phase of the project. Reconstruction works in Hlavina were intended to take place between September and December of 2003 to secure a water connection, sewage systems and wastewater treatment equipment. Two large-capacity waste containers were also to be placed in the area and, as of the end of 2003, the houses were to be fitted with running water and showers, a doctor's office and a community centre.


The interim technical report of the project, written by Mr Peter Maršálek in April 2003, states, at page 2, "the hamlet of Hlavina provides accommodation for those socially inflexible inhabitants of Brezno, with whom council bodies have had endless problems." It also states that the project commission declared that

Hlavina fulfils all the requirements for the “concentration of socially unadaptable citizens into a separate hamlet”. This means the communities’ return to their original hamlet. This return would take place a few years after having attempted to re-educate them in order to integrate them into the normal, everyday life in the suburbs”.

In her August 26, 2003 report, Ms Mihalovičová proposed several solutions to the current situation of housing for Roma in Brezno, amongst which was a suggestion to buy off flats in a housing block in a suburban area called Mazornikovo town. In her report, she referred to the fact that inhabitants living in proximity to the planned settlement Hlavina did not agree “with the settling of Roma and non-paying tenants in Hlavina and proposed the use of barracks in the town”. The spatial plan of Brezno and the statements of the deputy mayor, confirm that it is possible that Brezno will soon start dealing systematically with the Roma housing problem through segregation and transfer orders.

Concluding Remarks

Thirty villages, including the county town, fall within the county of Brezno. A considerable Romani community is present in almost half of them, with many Roma dealing daily with the issues described above. There is, however, no countywide strategy to address the housing issues which Roma face. The greatest hindrance in attempting to solve the housing problems of Roma appears to be the majority population’s downright refusal to involve themselves in anything helping the Romani community. The majority of the mayors in the region behave according to the will of their non-Romani voters, but then often blame the district council for not supporting pro-Romani activities. Ignoring Romani issues is evidently part of the local history. Village chronicles occasionally mention Roma, but only hinting at the negative relationship between Roma and non-Roma, for example burning of the Roma “shacks” in the interwar period.



Roma Folklore Classes in Bulgarian Schools: Preparing the Ground for the Desegregation of Romani Education

Deyan Kolev¹

Introduction

Bulgaria has a large “Gypsy”² of approximately 800,000, people or 10 percent of the whole population.³ The problems Bulgarian Roma face in the education system are numerous and serious. Various aspects of these problems have been the target of many projects over the past decade. As a rule, such projects are initiated by non-governmental organisations and sometimes are partially supported by the government (the National Council of Ethnic and Demographic Issues and Ministry of Education and Science, for example). Due to their inherent limitations as NGO projects, these projects cannot provoke a profound change in the education system. Nevertheless, they may lay foundations for and eventually facilitate such a change. Moreover, though these projects have dealt with Romani education, they have never remained limited to strictly education matters and indeed have had the potential to promote Roma-related policies in other areas as well. These NGO projects should be examined at three levels. First, the project results should be compared to the project

goal. Second, the relations established with the education, municipal and other key stakeholders should be examined. Third, account should be taken of the connection between the project and the Romani community for whose benefit it was implemented.

Using these criteria, in this article, I will analyse one of the most successful Bulgarian initiatives in the field of intercultural education – the project “Roma Folklore in the Bulgarian School”, implemented by the *Center for Interethnic Dialogue and Tolerance “Amalipe” (Amalipe)*. I will argue the following points: First, that the project has led to committed involvement of local education and other authorities in finding solutions to the educational problems facing Roma. Second, that it has initiated a process of change in the local educational institutions at a level much deeper than it had envisaged it could do. Third, that it has created preconditions for the general improvement of the education situation of Roma. Finally, that it has stimulated Romani emancipation and has played an important role in Romani community building.

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² About 40 percent of the people defined as “Gypsies” by the majority population speak the Romani language and identify themselves as Roma. The other 60 percent do not identify themselves as Roma. They usually have preferred Turkish, Romanian or Bulgarian identity. Some of them, however, recognise the term “Gypsy” as a self-appellation name. In this article, I use the term “Gypsy” to refer to a number of groups generally identified as “Gypsies” by the majority population in Bulgaria and the term “Roma” – to people who identify themselves as Roma and who speak Romani language.

³ Liegeois, Jean-Pierre. Romi, Tzigani, Chergari. Sofia: Litavra, 1999, p. 35; Marushiakova, Elena and Vesselin Popov. Tziganite v Bulgaria. Sofia: Klub '90, 1993, pp. 94–95. According to the 2001 census, the number of Roma is 370,908. The difference between the official census data and the estimates provided by scholars and Romani activists is due to the fact that many Roma prefer to declare another ethnicity – mainly Turkish, Bulgarian, and Wallachian. I agree with Liegeois, Marushiakova, and Popov that Roma who do not declare themselves as such should nevertheless be regarded as Roma because they have preserved the main characteristics of the community organisation typical for all other Gypsy groups in Bulgaria. Moreover, they have preserved important characteristics of culture, folklore, and social behavior that can be observed only among Roma in Bulgaria. It is also important that the surrounding population (both Bulgarians and Turks) call them “Gypsies” and refuses to accept their declared non-Gypsy identity. See also Tomova, Ilona. The Gypsies in the Transition Period. Sofia: IMIR, 1995, pp. 20–21.

Background

The project “Roma Folklore in the Bulgarian School” was started in September 2002 by *Amalipe* with financial assistance from the Bulgarian Ministry of Education and Science and the *Open Society Foundation*–Sofia. It introduced Romani folklore as an optional class in 14 primary schools in Veliko Turnovo County, central Bulgaria. The idea of the class was to present Romani culture and folklore as well as the relationship between Romani culture and folklore and the folklore of the other ethnic groups living in Bulgaria. This was the first time Romani cultural issues were taught in the public schools as a separate subject. The new course was taught to 30 classes, involving more than 550 students of Romani and non-Romani backgrounds. For the needs of the education process, two textbooks of Romani folklore were published: *Stories by the Fireplace* and *Roads Retold* by Deyan Kolev, Teodora Krumova, and Antonia Krasteva. They presented the most important parts of Romani folklore: fairy-tales, the festive system, wedding customs, and songs. A special section about Romani history was also included. The textbooks contained folklore from most of the Gypsy communities – groups and subgroups in Bulgaria (Yerlii, Kaldarashi, Rudari, Millet, and others). The main idea was to introduce the rich world of the Romani folklore as well as to teach children ethnic and religious tolerance.

Teachers of literature, history, and music in the respective schools were engaged to teach Romani folklore. *Amalipe* organised two workshops to introduce the teachers to Romani folklore, culture, and history as well as to train them to work with Romani children in a multiethnic environment. During the school year, the teachers successfully taught Romani folklore. They also pioneered a methodology of applying multicultural and interactive approaches in the education process.

Romani folklore was taught as a non-obligatory optional course⁴ twice a week. In the 2002/2003

school year, the groups of Romani folklore students organised a number of events (celebrations, concerts, broadcasting, exhibitions) to popularise their lessons, knowledge and skills.

In July 2003, the Ministry of Education and Science and the *Open Society Foundation*–Sofia evaluated the project results as excellent and decided to continue the financial support for the project. In addition, in September 2003, *Amalipe* successfully negotiated financial support for the project from the local authorities of nine municipalities throughout central and northeastern Bulgaria. As a result, at the beginning of the 2003/2004 school year, the project started to be implemented in 32 schools, involving more than 1000 students from Veliko Turnovo, Targovishte, Razgrad, and Shumen Counties.

Evaluation of the Project Impact

The general evaluation of the project indicated that it influenced the education process in the schools where it had been implemented. As well, it had a broader social impact on stakeholders such as the Romani community, the local authorities, etc.

Pedagogical Impact

The evaluation of the pedagogical impact of the project which is presented below draws on the results from the 2002/2003 school year. It is made on the basis of written analyses by Romani folklore teachers and school directors, records of the students’ grades and attendance rates (not only of the Romani folklore classes but also of other classes), students’ participation in events for the popularisation of Romani folklore and culture and, last but not least, the participation of parents. Analysing these sources, we can list 5 variables for measuring the project success:

1. Numbers and ethnic background of the students involved;

⁴ *There are two types of courses in the Bulgarian educational system: mandatory and optional. The optional courses are divided into non-obligatory optional and obligatory optional. In order to study a course as a non-obligatory optional subject at least 12 students are needed. They should freely express their will by writing a letter to the school authority. The letter should also be signed by the student’s parent.*

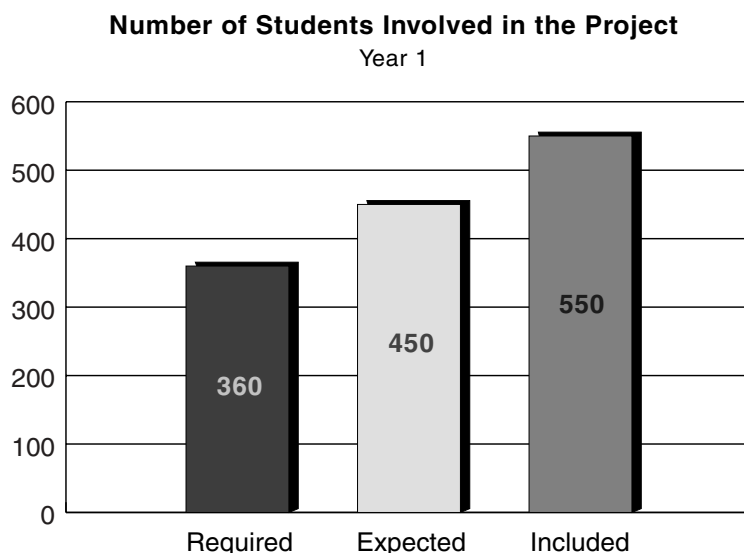
2. Students' engagement: attendance and participation in classes;
3. Change in students' attitudes towards the "others";
4. School achievement and general attitudes toward school and education;
5. Parents' engagement.

The main results in relation to each of these variables are outlined below:

Students: The minimum required number of students for the operation of 30 classes is 360 (30 classes, 12 students per class). At the beginning of the

The Romani folklore classes were generally mixed. Forty-six per cent of the students participating in them were of ethnic Bulgarian or Turkish origin. This composition was in accordance with one of the major goals of the project: to help non-Romani students overcome their prejudices towards Roma.

It was important also that many Gypsy students who do not identify as Roma were included in the classes.⁶ About eighty percent of the Gypsy population in Veliko Turnovo County consists of Millet (Turkish-speaking Gypsies) and Rudari (Wallachian-speaking Gypsies). Thanks to the efforts of *Amalipe* and teachers, par-



project (in September 2002) we expected about 450 students to be enrolled in the Romani folklore classes. The number of students who actually enrolled and attended these classes was over 550. It is important to note that all of them enrolled voluntarily and with the agreement of their parents. *Amalipe* and the teachers had undertaken a campaign to persuade Romani parents that the subject was valuable and important for their children.⁵

ents from the Millet and Rudari groups also enrolled their children in the Roma folklore classes. Advocacy work was also done among ethnic Bulgarian and Turkish parents resulting in the enrollment of children from these ethnic groups in the Romani folklore classes.

Student engagement: In 13 out of 14 schools in which Romani folklore was taught, the Romani folklore classes had the highest rates of attendance of

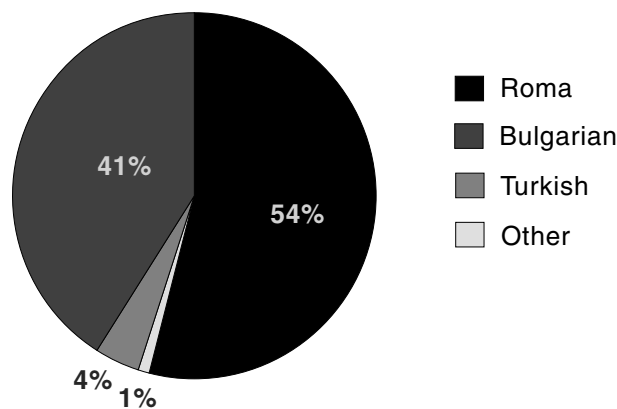
⁵ Due to various reasons, Romani parents are sometimes reluctant to have their children study Romani culture. One reason for this is that Romani children who openly declare their origin may be harassed or picked-on by their classmates and teachers. For example, the efforts of the Ministry of Education and Science to introduce Romani language as a subject in the beginning of the school year 2003/2004 did not achieve any visible success (only 4 classes for the whole country were established), mostly because there were not enough efforts to persuade Romani parents to enroll their children in Romani language classes.

⁶ Sixty-nine percent of the Romani students who studied Romani folklore in 2002/2003 were from Gypsy groups that did not speak Romani.

any class. According to official school documentation, on the days when the Romani folklore classes were held, the attendance rate for all subjects was higher. Also, according to official school documentation, none of the students attending the Romani folklore classes dropped out of school in the course of the 2002/2003 school year. School directors and teachers reported another promising fact: in some schools children who had dropped out in the previous year took part in events organised by Romani folklore students.

documentation on parent engagement. Despite this, there were reports by seven schools where teachers systematically engaged parents (especially Romani parents) in school activities. In three of the schools, parents took part in the lessons by playing music, telling fairy-tales, or demonstrating rituals and customs. In the other four schools parents (both Romani and non-Romani) took an active part in the preparations of the extra-curriculum events. According to teachers, unlike previous lack of interest for the school

The ethnic origin of the children included in the project (2002/2003)



The increased level of attendance was accompanied by active student involvement in the classes and in the extra-curriculum events organised by the Romani folklore groups. Finally, high levels of ethnic and religious tolerance and mutual respect were recorded in the end of the school year on the basis of the questionnaires that the students had filled in at the beginning and at the end of the school year. Greater tolerance for differences was also evident in the students' essays and poems written at different stages of the Romani folklore educational process.

School achievement: According to official school documentation, Romani folklore students improved their grades in all subjects. This fact was reported by teachers and school directors. Their explanation was that the higher achievement had been possible due to student activity and self-confidence stimulated by the Romani folklore classes.

Parent engagement: It is rather difficult to measure this variable because of the lack of any school

activities on the part of the parents, Romani and non-Romani parents were easily engaged in activities connected with the Romani folklore classes. Parent involvement, however, had been secured *ad hoc* rather than in a systematic way and the development of a mechanism for the systematic engagement of parents is recommended for the future.

Social Impact

The social impact of the project is evaluated in terms of the impact of the project activities on educational authorities, local authorities, and Romani communities. Although this particular impact is difficult to measure precisely, some effects of the project on social relations effecting education are worth mentioning. In this respect the Project Manager Teodora Krumova explained: "Very often, in the course of the implementation of the project, we had to solve problems that were not necessarily related to the education process but had to do with

human rights, Romani emancipation and community building. It would be a limitation to assess the project only as a new course in the school curriculum. It has a more profound nature.”

Educational authorities: These can be divided into two groups: officials from the Ministry of Education and Science and school directors. There was a clear understanding of the need for this project and a strong support for it from the Ministry of Education and Science. The Ministry’s Regional Inspectorate of Education (RIE) based in the Veliko Turnovo County was also very supportive. RIE, for example, helped the project leaders solve several administrative problems connected with securing the school documentation necessary for the start of the project. At the same time, *Amalipe* helped RIE officials become familiar with the education problems of Romani children at national and local levels as well as with current efforts for their solution (for example, NGO-led desegregation projects in several municipalities). As a result of this cooperation, several serious problems connected with Romani students in Veliko Turnovo County were solved at the beginning of 2003/2004.⁷

Dealing with individual schools was far more problematic. A major obstacle was the conservatism of the Bulgarian education system regarding multicultural education. Up to 2002, there were no lessons about the history and culture of minorities.⁸ Two school directors refused to allow the participants in Romani folklore classes to present their achievements through public events, with the argument that such events would provoke resentment on the part of the ethnic Bulgarians. Supported by teachers and the RIE, *Amalipe* eventually managed to organise the planned events, the public reaction to which did not bear out the directors’ anxieties. A second serious obstacle was the widespread prejudices among educationalists about the capacity of Romani children to follow the standard education process. At the beginning of the year, the teachers in one of the schools tried to reduce the Romani folklore classes to music lessons,

ignoring the theoretical lessons in Romani history and culture, with the excuse that they were too sophisticated for the Romani children. In the course of the project, *Amalipe*, working in cooperation with teachers, had to convince the school authorities and staff that the Romani children’s capacity for normal education was the same as that of any other children.

Finally, high levels of conservatism among the school directors proved to be a serious obstacle too. Many of the directors we had to approach had been in this position for a long time, preserving the stereotypical and conservative attitudes towards Roma and multiculturalism that characterised the pre-1989 era. Our project team worked with 14 principals in 2002/2003. Eleven of them were relatively “new”, appointed after 1989. Eight of them genuinely helped with the project activities, while the other three were indifferent (i.e. they neither helped nor obstructed the classes). The remaining three principals were “old” principals, holding their positions since the time before 1989. They did not consider the Roma folklore classes a priority; they saw these classes as merely “reading and writing” classes and were not supportive of giving publicity to the classes. In addition, two of them (as well as three other principals) shared the opinion that the school should receive significant material support from *Amalipe* and the Ministry of Education and Science in exchange for participating in the project.

Local authorities: Since most of the primary schools in Bulgaria are funded by the municipalities, the relations with the local authorities during the project were crucial in many respects. There were no Romani officials in any of the seven municipalities included in the project in 2002/2003. The officials’ attitudes towards Roma were generally positive but the solving of the Romani problems was not a priority on the municipal agendas. During meetings with authorities in September 2002, the project team found a lack of understanding about the nature of the education problems of Romani children. For example, in August 2002 the

⁷ For example, thanks to the cooperation between *Amalipe* and the RIE, the formation of segregated “Gypsy classes” in several schools was prevented and Romani children were placed in mixed classes.

⁸ After 1992, the subject “mother tongue” was introduced in the Bulgarian educational system, allowing minorities to be educated in their native language. While Turkish language classes were taught systematically, Romani language classes were limited in number and lasted only for a few years. As a rule, minority language classes were not attended by ethnic Bulgarian children.

Municipal Council of the town of Gorna Oryahovitza had approved the proposal of Paisii Hilendarski Primary School director for the segregation of two “Gypsy classes” in a building separated from the main body of the school. At the same time, the Mayor of Gorna Oryahovitza was among the public officials most open to work for solutions to Romani problems.

As a result of the campaign carried out by the project team to familiarise local officials with the nature of the education problems of Romani children and the possible solutions to these problems, in the 2003/2004 school year, the municipalities where the Roma folklore classes were implemented, provided half of the funding for these classes.⁹

Romani communities: The project was carried out in villages and towns with marginalised and disempowered Gypsy communities. It catalysed processes of Romani emancipation and community development that will certainly continue after the end of the project activities. Teacher reports indicated that there was a lot of interest among the local Roma for the two textbooks in Roma folklore. Roma also actively participated in the public events organised by the Roma folklore students. In January 2004, Gypsy communities in nine municipalities organised for the first time public celebrations of Vasilica – the Romani New Year.¹⁰

To sum up, the introduction of the Romani folklore course in several Bulgarian schools has achieved significant involvement of the local education and other authorities in the work on Romani education issues and has started to foster a deep change in the education system at the local level. It has also contributed to the Romani emancipation and Romani community development.

Looking Forward

The Romani folklore course has proven its capacity for strengthening the Romani identity as well

as for cultivating ethnic tolerance, solidarity, and friendship among all students. It has also proven its role in increasing school attendance and stimulating student participation in the educational process. Our objective is to see this course included in the obligatory curriculum of Bulgarian schools. When this stage is reached, we may be able to say that the Bulgarian state protects and fulfills the cultural rights of Roma.

It is also important to analyse the possibilities for the general improvement of the education status of Roma opened by the project activities. Of particular importance is the link between the project and the desegregation of Romani education which the Bulgarian government has committed to achieve in the coming years. The government Draft Strategy for the Integration of Pupils and Children of Minority Ethnic Communities in Bulgaria has envisaged a crucial role of the municipalities in the process of solving the educational problems of Romani children. The municipalities should prepare and implement municipal plans for desegregation of the so-called “Gypsy schools” as well as for overcoming all disadvantages in the education of minority children.¹¹

As a whole, the project “Roma folklore in the Bulgarian school”, implemented by *Amalipe*, demonstrated a successful model for creating the conditions for a profound change of the educational system. This model contains four features:

1. Preparing teachers to work in a multicultural environment: The role of the teacher in the education system is extremely important. Student attitudes towards school, student participation and engagement as well as student success depend to a high extent on the teacher. The desegregation of Romani education will depend on the capacity of the teachers in the so-called “receiving schools” (the schools that will enroll the Romani children from the segregated all-Romani schools) to create an environment in which Romani and non-Romani children can study together.

⁹ The other half was financed by the Ministry of Education and Science. In the school year 2002/2003 all classes were financed by the Ministry of Education and Science.

¹⁰ Information for this initiative is available at: <http://www.geocities.com/amalipe2002/>.

¹¹ See Strategiya za integratsiyata na detsata i uchenitsite ot maltsinstvenite etnicheski obshtnosti v Bulgaria (proekt), available at: http://www.minedu.government.bg/normativni_doc/proecto_doc/malcinstva.htm.

In this regard, the experience cultivated by *Amalipe* can be used as a model. The teachers trained to teach Romani folklore can be role models for their colleagues in other schools because they have already gained knowledge of Romani culture and experience in working with children of different ethnic backgrounds.

2. Preparing children to study in a multicultural environment: The project helps children to overcome their prejudices against each other and promotes ethnic tolerance and friendship. Without this, any process of desegregation will be a failure.
3. Making school directors sensitive to the problems of Romani children: In the course of the project implementation, the directors of the schools have demonstrated greater awareness of the education problems of Roma and have changed, more or less, their attitudes towards Romani children.
4. Building cooperation with local authorities (municipal authorities and the Regional Inspectorates

of the Ministry of Education and Science): Support from the local authorities is indispensable for the sustainability of any initiative. Moreover, working together with the local authorities provides an opportunity to make them more sensitive to the problems facing Romani children in the educational system and to advocate implementation of policies to address these problems.

By way of conclusion, it could be noted that the project "Roma Folklore in the Bulgarian School" has served a twofold purpose: On the one hand, it has had a role in promoting Romani culture and the right of Roma to develop their own culture. Its further implementation will lead to the strengthening of the Romani identity and the emancipation of the Romani communities. Without this, the education reform will provoke not integration but assimilation of Romani people.

On the other hand, this project prepared the ground for the more profound reform in the education system that the Bulgarian government has committed to pursue in the decade to come, i.e. the elimination of the segregated education of Roma.

Germany Before the Committee on the Elimination of Discrimination Against Women:

Lack of Effective Measures to Combat Multiple Discrimination against Sinti and Romani Women

Zarine Habeeb¹

IN RECENT TIMES, the United Nations human rights mechanisms have become more sensitive to the particular forms of discrimination experienced by women belonging to vulnerable groups such as ethnic and religious minorities, the disabled, the poor, refugees, etc.² There is an emerging consensus that the discrimination experienced by these women should be viewed as a phenomenon resulting from the intersection of a range of factors including race, gender, and, where relevant, class and alien status, rather than as a phenomenon conditioned by any one of these factors taken separately.³

The UN Committee on the Elimination of Discrimination against Women (hereinafter the “Committee”) in its Concluding Observations on Germany’s fifth periodic report (hereinafter the “State report”) took note of the impact of intersectional discrimination on Sinti and Romani women in Germany, stating that Sinti and Romani women “suffer from multiple forms of discrimination based on sex, ethnic or religious background and race”.⁴ The Committee called upon the government to “to take effective measures to eliminate discrimination against migrant and minority

women, both in society at large and within their communities, and to respect and promote their human rights, through effective and proactive measures, including awareness-raising programmes.”

The conclusions of the Committee have a lot of significance for Romani women’s rights advocacy and come in the wake of the submission to the Committee of a joint shadow report on the situation of Sinti and Roma women in Germany by the European Roma Rights Center and the Open Society’s EU Accession Monitoring Program (hereinafter “ERRC/EUMAP report”).⁵

The ERRC/EUMAP report argues that even though Germany has several policies and programmes to promote gender equality, the existing legislative and policy framework is insufficient to deal with the intersectional discrimination that Sinti and Romani women experience. Germany’s failure to fully transpose the European Union equal treatment directives into its domestic law as well as its failure to date to ratify Protocol 12 of the European Convention on Human Rights is also highlighted in the report.⁶ One over-

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² See generally, Committee on the Elimination of Racial Discrimination “Gender related dimensions of racial discrimination.” CERD General recommendation No. 25 20/03/2000; Committee on the Elimination of Discrimination against Women General Recommendation No. 18 (tenth Session, 1991). Disabled Women; Fourth World Conference on Women: Platform of Action, Annex II to Report of the Fourth World Conference on Women (Beijing, 4–15 September 1995) A/CONF.177/20, available at <http://www.un.org/esa/gopher-data/conf/fwcw/off/a-20.en> (last visited on 5 March 2004).

³ See generally, United Nations Division for the Advancement of Women of the United Nations, Report of the Expert Group Meeting on Gender and Racial Discrimination, 21–24 November 2000, Zagreb, Croatia available at <http://www.un.org/womenwatch/daw/csw/genrac/report.htm> (last visited on 5 March 2004).

⁴ Committee on the Elimination of Discrimination against Women Thirtieth session 12–30 January 2004. Concluding comments: Germany, para. 30, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw30/GermanyCC.PDF> (last visited on 5 March 2004).

⁵ The full report is available at <http://www.errc.org/publications/legal/>.

⁶ Ibid., pp. 14–16.

arching theme of the report is the pervasiveness of prejudice against Sinti and Roma in Germany among the mainstream German public and officials in the police, social services, health, education, etc. The report reveals how this ethnic prejudice operates in the lives of Sinti and Roma women and prevents them from achieving their full potential as human beings.

Romani women's "invisibility" in the German government's policies for promotion of women's rights is manifested in the absence of data that is disaggregated on the basis of both gender and race/ethnicity. While some Sinti and Roma harbour legitimate worries about state initiated data collection given the unfortunate history of data collection by the Nazi regime, to date, the German government has done little to allay these fears by pro-actively engaging with the community on this crucial issue. The *ERRC/EUMAP* report notes that "... an important general impediment to serious research on the situation of Sinti and Roma women in Germany remains the lack of detailed statistical data disaggregated by both ethnicity and gender. Accurate information in a number of key sectoral fields, such as health, employment, housing, education and access to justice, as relating specifically to Sinti and Roma women and girls, was simply not available and German authorities have apparently made no serious efforts to make such data available to the public."⁷

Due to lack of data, it is not possible to formulate and implement targeted policies and programmes that take into account the particular kind of disadvantage experienced by Romani women. During the discussion of the state report at the Committee, Ms. Dubravka Simonovic, expert from Croatia, noted that "Data disaggregated by sex was necessary to determine possible multiple discrimination of minority

women, especially Roma women."⁸ The government delegation responded by pointing out the sensitivities of the Sinti and Roma to data collection. Wrapping up the discussion, the Chairperson of the Committee, Ms. Feride Acar, called on the government to provide "gender disaggregated data on migrant and minority women, including for Sinti and Roma women, especially regarding their access to education, health and employment."⁹

Violence against women has been an important theme in the work of the Committee. In its Recommendation No. 12, the Committee requires States Parties to act to protect women against "violence of any kind occurring within the family, at the work place or in any other area of social life".¹⁰ This has special significance for Sinti and Roma women. Violence against these women by public authorities stands on a different footing from the kind of violence experienced by Sinti and Roma men on the one hand, and women belonging to the majority community on the other. For instance, the *ERRC/EUMAP* report notes that "Police personnel are reportedly also more likely to be disrespectful towards Sinti and Roma women than either in relation to women from the majority population or in relation to Sinti and Roma men."¹¹

At the discussion, the German delegation emphasised that stopping violence against women was a priority of the government. The expert from Cuba, Ms. Maria Yolanda Ferrer Gomez, noted that there had been an increase in violence against women, particularly minority and foreign women. She felt that stereotyping contributed to this, and inquired how it was being tackled.¹² In its concluding observations, the Committee called on Germany to "include data and information on the nature and scope of violence against women, including within the family and any new forms of vio-

⁷ Ibid., p. 7.

⁸ Statement by Ms. Dubravka Simonovic at the 639th & 640th Meetings of the Committee on Elimination of Discrimination against Women, at: <http://www.un.org/News/Press/docs/2004/wom1428.doc.htm> 9 (last visited on 5 March 2004).

⁹ Ibid., Statement by Ms. Feride Acar.

¹⁰ Committee on the Elimination of Discrimination against Women General Recommendation No. 12 (Eighth Session, 1989). Violence against women, Preamble.

¹¹ *ERRC/EUMAP Report*, p. 16.

¹² Statement by Ms. Ms. Maria Yolanda Ferrer at the 639th & 640th Meetings of the Committee on Elimination of Discrimination against Women, at: <http://www.un.org/News/Press/docs/2004/wom1428.doc.htm> (last visited on 5 March 2004).

lence against women, including migrant women, and to provide this information in its next periodic report.”¹³

The Platform of Action of the Fourth World Conference on Women emphasises the necessity to develop the full potential of the girl child.¹⁴ In this regard, an area of vital importance is the right to education. The *ERRC/EUMAP* report notes the disadvantages faced by Sinti and Roma girls in education and argues for targeted programmes to raise the educational standards including the appointment of Romani women mediators, a model that has been successfully used in some schools.¹⁵ One of the drawbacks of the state report was the absence of information on representation of minority girls, including Sinti and Roma girls, in schools. The state report focused almost exclusively on the measures taken by the government to promote representation of women in higher education, in research institutes and universities.¹⁶ The *ERRC/EUMAP* report notes serious problems facing Sinti and Roma girls in education, including prejudices of the administration against them, school abandonment and placement of a disproportionate number of them in special schools for children with developmental disabilities. School education probably did not merit inclusion in the State report because of the near absence of barriers for girls belonging to the majority community in accessing school education. This fact once again demonstrates that the state is almost blind to the particularity of the disadvantages faced by women and

girls belonging to minority communities, especially Sinti and Roma. Ms. Simonovic, the expert from Croatia, also noted the prevalence of early marriages and higher drop out rates among Sinti and Roma women and girls and asked the government whether it had formulated any specific programmes for such persons.¹⁷

The low level of Sinti and Roma women’s participation in education results in their inability to access employment. This is compounded by the prevalence of prejudice against the Sinti and Roma on the labour market. The *ERRC/EUMAP* report notes the great deal of interest shown by Sinti and Roma women to work as mediators in schools and health care facilities, providing a link between public services and the community.¹⁸ In its Concluding Observations, the Committee criticised the state for not providing detailed information on the ability of minority women, including Sinti and Roma women, to fully access public services in education, health care and employment.¹⁹

In its General Recommendation no. 23, the Committee notes that “despite women’s central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process. . .”²⁰ and went on to observe that “the concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both”²¹

¹³ *Committee on the Elimination of Discrimination against Women Thirtieth session 12-30 January 2004. Concluding comments: Germany, para. 23, at: <http://www.un.org/womenwatch/daw/cedaw/cedaw30/GermanyCC.PDF> (last visited on 5 March 2004).*

¹⁴ *Fourth World Conference on Women: Platform of Action, para. 39. Annex II to Report of the Fourth World Conference on Women, (Beijing, 4-15 September 1995) A/CONF.177/20, at: <http://www.un.org/esa/gopher-data/conf/fwcw/off/a-20.en> (last visited on 5 March 2004).*

¹⁵ *ERRC/EUMAP Report, pp. 22–25.*

¹⁶ *Fifth periodic report of the Federal Republic of Germany to the UN Committee on the Elimination of Discrimination Against Women, pp. 28-36, at: <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/250/50/PDF/N0325050.pdf?OpenElement> (last visited on 5 March 2004).*

¹⁷ *Statement by Ms. Dubravka Simonovic at the 639th & 640th Meetings of the Committee on Elimination of Discrimination against Women, at: <http://www.un.org/News/Press/docs/2004/wom1428.doc.htm> (last visited on 5 March 2004).*

¹⁸ *ERRC/EUMAP Report, p. 27.*

¹⁹ *Committee on the Elimination of Discrimination against Women Thirtieth session 12-30 January 2004. Concluding comments: Germany, para. 30, at: <http://www.un.org/womenwatch/daw/cedaw/cedaw30/GermanyCC.PDF> (last visited on 5 March 2004).*

²⁰ *Committee on the Elimination of Discrimination against Women General Recommendation No.23 (16th Session 1997). Political and Public Life, para. 9.*

²¹ *Ibid., para. 14.*

The Committee conceives of political participation in “civil society, including public boards and local councils and the activities of organisations such as political parties, trade unions, professional or industry associations, women’s organisations, community-based organisations and other organisations concerned with public and political life”.²² The *ERRC/EUMAP* report found that while Sinti and Roma women were active in community-based organisations, their participation in mainstream civil society and political and administrative office is currently very insufficient. The report pointed out that the few Sinti and Roma employed in the administration tended to be men, and that there was little evidence that Sinti and Roma women were consulted by the government in matters of relevance to the community.²³

The *ERRC/EUMAP* report also examined issues relating to the health of Sinti and Roma women. A number of Sinti and Roma families live in substandard living conditions, a factor that contributes to poor health. The prevalence of prejudices against Sinti and Roma among health officials hinders their complete access to health care. Several European countries have developed innovative techniques to address the health needs of the community, such as for instance the training of Romani health workers. The report calls for adoption of strategies that are tailored to meet the needs of Sinti and Roma in Germany.²⁴

Another issue of importance to Sinti and Roma women’s rights advocacy in Germany is the situation of migrant Romani women in Germany who, owing to their different legal status, experience a range of disadvantages. The *ERRC/EUMAP* report notes the precarious legal status of many of the foreign Roma in Germany; Germany’s policy of forcible expulsion of Romani families and individuals to Serbia and Montenegro, Kosovo, and Romania even

though they have developed substantial ties to Germany; the vulnerability of migrant Roma women, especially asylum seekers, to xenophobic and racist violence; and the difficulties they encounter in accessing a number of services, including health services.²⁵ Several Committee members questioned the German delegation about the socio-economic situation of migrant women, particularly violence against them and in her final comments, the Committee’s Chairperson, Ms. Feride Acar, noted that “protection of the human rights of foreign and minority women in Germany “still leaves much to be desired”.²⁶

Conclusion

The policies of the German government towards Sinti and Roma women can be summed by the phrase “All women are German and all Sinti and Roma are men”.²⁷ In other words, the government’s policies for enhancing gender equality take the situation of the majority ethnic German women and generalises that to the situation of all women in Germany. Its policies towards Sinti and Roma do not take account of how gender discrimination intersects with racial discrimination, creating and perpetuating structures of disadvantage that affect Sinti and Romani women differently than men belonging to the same community.

The submission of the *ERRC/EUMAP* report specifically analyzing the situation of Sinti and Roma women in Germany is a small but significant step in advocating Roma women’s rights at the international level. The Committee’s discussions and its concluding observations on the situation of Sinti and Romani women in Germany demonstrate its willingness to take into account the diversity of women’s oppression and hold governments responsible.

²² *Ibid.*, para. 5.

²³ *ERRC/EUMAP Report*, pp. 18–20.

²⁴ *Ibid.*, pp. 27–31.

²⁵ *Ibid.*, pp. 10–11; p. 14; and pp. 31–32.

²⁶ *Statement by Ms. Feride Acar at the 639th & 640th Meetings of the Committee on Elimination of Discrimination against Women*, at: <http://www.un.org/News/Press/docs/2004/wom1428.doc.htm> (last visited on 5 March 2004).

²⁷ *I owe this phrase to the title of the book All the Women are White, All the Blacks are Men, but Some of Us Are Brave: Black Women’s Studies by Glorial Hull, Patricia Bell Scott and Barbara Smith. The Feminist Press, New York, 1982.*



ERRC Human Rights Workshops: An Emerging Local Debate About School Desegregation of Roma

Larry Olomoofe¹

THE ERRC'S HUMAN RIGHTS EDUCATION DEPARTMENT (HRED) recently embarked upon a project that entailed implementing a series of workshops and roundtable discussions on the issue of segregation in education in four Central and East European countries – Croatia, Hungary, Serbia and Montenegro, and Slovakia. The primary aim of the project was to provide a forum where the sensitive issues related to segregated schooling could be discussed critically, openly and honestly. The hope was that by providing an open forum for discussion, potential solutions to the egregious practice could be posited and grounds for their implementation could be explored. The project was generously funded by the British government's Foreign and Commonwealth Office (FCO) through the British Embassy in Hungary. The ERRC expects the various in-country follow-up initiatives agreed upon by the various participants in the workshops to represent a concerted effort to address segregated schooling in the aforementioned countries.

The ERRC views the various outcomes from these workshops to be positive "first steps" in the quest to eradicate the practice of segregating Romani children in the sphere of education in the CEE region. These initiatives must be viewed as pilot schemes where contemporary educational methodologies and pedagogies can be applied in innovative ways and hopefully, after discerning their successes, be transposed to other national educational policies in the region.

On October 10–11, 2003, the ERRC and partners held a workshop in Košice, Slovakia with a broad range of relevant stakeholders to further

mainstreaming of Romani education. Participants included representatives of the Ministry of Education, Ministry of National Minorities, Plenipotentiary on Roma Affairs, local NGO partner *Project Schola*, local NGO partner *League of Human Rights Advocates* (LHRA), local lawyers, the Slovak office of the *Open Society Fund*, school directors and teachers, local government representatives, representatives of the *Open Society Institute's Roma Education Initiative* (OSI/REI), parents, activists, journalists from the NGO *Roma Press Agency*, *Public Interest Law Initiative* (PILI), and the *Open Society Institute's Roma Participation Program* (OSI/RPP).

The seminar succeeded in bringing together the main protagonists in the education of Romani children from across Slovakia to constructively discuss objectives, competing agendas, and various government initiatives as well as exploring various suggestions for future collaborative projects.

The two-day session began with a brief introduction to international law, and in particular the EU anti-discrimination *acquis*, as well as a short historical overview of the phenomenon of segregation and the terms of reference that it generated. The presenter moved from the American context (which provided the general framework for this part of the discussion) to more localised manifestations of the problem. This allowed the participants to grapple with issues such as *de facto* and *de jure* forms of segregation as well as examining methods that were aimed at addressing the onset of these forms of segregation. The discussion subsequently moved on to issues emanating from segregation and the consequences these had on the children, primarily, and on Slovak society

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in general.² Proceeding in this fashion allowed participants to explore the rationale of segregated education prevailing in Slovak society. Roughly, this rationale suggested that since segregation was a “natural” thing and already existed, educational authorities were compelled to teach children under these conditions since (they asserted) it was their duty to teach and not to initiate social change. Similarly, “ghetto schools”, i.e., schools in local Romani settlements, exclusively attended by Romani children, were defended by a number of local activists, who were passionately convinced that education of the children was paramount and that there was no argument (including desegregation) that would allow for the children being deprived of their right to education. This defence of “ghetto schools” was predicated upon the assumption that these schools, albeit consequences of segregation, were the *only* schools where Romani children could at least attend school and receive education, no matter how poor the level of education provided at these schools. These axiomatic points provided the framework for much of the proceeding discussion, with advocates of these relative positions presenting conceptual, social, political, and moral expositions to justify their stances. Much of the first day’s activities was focused on the theoretical side of the debate and included presentations from the various government officials in which they presented the government’s plans to implement a policy of integrated education across Slovakia.

The following day’s activities were geared towards initiating concrete action that might succeed in facilitating the desegregation of the Slovak education system. Pedagogical experts from the *Open Society Institute’s Roma Education Project* (REI) provided useful presentations of methodology (multicultural teaching methods, anti-bias training, and Roma teaching assistants) all aimed at addressing the implicit and

explicit biases of teachers working within the segregated schooling system. This was important, according to the “experts”, since the teachers were inadvertently propagating practices of segregated schooling and had to be made aware of the fact.³ There was much resistance to this suggestion (an implied criticism) but the understanding of the efficacy of the newer methodologies prevailed and an agreement of sorts – that the Ministry of Education should fund a broad training initiative for teachers based upon the multicultural approach – was reached.

The event was concluded with a tentative agreement to explore future follow-up initiatives aimed at desegregating Slovakia’s schooling system. However, it should be mentioned that there were participants, who were wholly unhappy with the event and vowed to continue their own work in “ghetto schools”. This was a rather disappointing assertion to hear, one that hinted that much work still needs to be done before Slovak Romani children can enjoy equality (access and quality) in their education.

On October 24–25, 2003, the *ERRC* and partners held a workshop in the southern Serbian town of Niš, including as participants representatives of the Ministry of Education, the NGO *Roma Education Centre* (REC), the NGO *Centre for Interactive Pedagogy* (CIP), the NGO *Roma Information Centre* (RIC), the NGO *Minority Rights Centre* (MRC), the University of Niš department of Romology, local school directors and teachers, parents, the *Public Interest Law Initiative* (PILI), and others. Once again, the purpose of the event was to provide the forum for the four main parties (parents, teachers, Romani activists, and the Ministry of Education) involved in the education of Romani children to convene and explore a range of possibilities regarding the integration of Romani children into mainstream schooling.

² For more information about segregated education of Roma in Slovakia, see Written Comments of the European Roma Rights Center Concerning the Slovak Republic For Consideration by the United Nations Human Rights Committee at its 78th Session, July 14–August 8, 2003, pp. 18–22, at: <http://errc.org/publications/legal/index.shtml>.

³ It should be stressed that the group designated the “expert” label comprised a number of people who had requisite qualifications and experience in educational methodology as well as a number of people who had little or no specialised training or qualifications in the field of educational development/pedagogy. In some cases, the most experience these people had was the day-to-day organising of school activities for Romani children. Whilst this may qualify people like these as having experience of the schooling of Romani children in certain conditions and contexts, they would not normally be described as “educational experts”.

As they did in Slovakia, the project implementers began with an historical overview of racial segregation and international law, moving on to the issue of segregation in a local context. As the discussion proceeded, it quickly became clear that the fundamental question regarding the education of Romani children in Serbia was the issue of *access* to education and not racial segregation per se.⁴ This brought about a shift in the discussion, focussing on the issue of access, and segregation was discussed in terms of how to prevent segregation occurring once Romani children had achieved access to schooling. Owing to the chronic nature of the lack of access to schooling faced by Romani in Serbia, the discussion focussed upon how to create a process through which Romani children could enjoy their right to education and not have to rely upon the current ad hoc arrangement of receiving an education in poorly funded ghetto schools where the teaching duties were largely carried out by under-qualified “teachers” and laypeople.

Representatives from the Niš-based *Roma Education Centre* (REC) then presented a number of their own initiatives which helped fill the void where governmental obligations to Romani children’s education fell short. They presented their catch-up classes initiative (part of the OSI Step-By-Step programme), desegregation projects (funded by the *Open Society Institute’s Roma Participation Program*), and a number of joint initiatives with the Belgrade-based NGO *Centre for Interactive Pedagogy* (CIP). Significantly, they also presented their draft national strategy for Roma inclusion which was being considered by the government as a possible basis for their own national program for inclusion. At the time, the upcoming general elections had delayed the consultation process since many people expected a change of government and were waiting to see what resulted from the general elections. The good news was that the incumbent government had recognised the need for a national programme of integration and were including locally-based NGOs in the process.

During their presentation, the REC representatives identified five forms of segregated education in Serbia. These were:

1. Special schools
2. Separate classes for Roma
3. Isolation within classes
4. Evening schools with high percentage of Roma
5. Ghetto schools

Further discussion focused upon the possible remedies for manifestations of segregated schooling practices and during the group work sessions, each of the five groups were given one of the problems to tackle and find possible solutions. This proved to be a highly successful part of the workshop, since it allowed all the participants the opportunity to grapple with these issues in a collaborative way, looking for areas of joint activity. Each group subsequently reported back at the plenary session and stressed that they had all identified areas for possible future joint initiatives. Suggested follow-up initiatives included:

- ◆ Co-ordinate actions of NGOs, local government, etc.
- ◆ Create different levels of Roma studies, i.e., there should be comprehensive levels of Romani scholarship across the board similar to that of non-Roma students in the education system in Serbia
- ◆ Implement programmes of regular studying
- ◆ Conduct regular 2 year studies aimed at monitoring Roma education in Serbia
- ◆ Educational reforms that will allow graduates from high school (Roma or non-Roma) to acquire the title of ‘Romologist’
- ◆ Create a Department of Roma Studies at university level
- ◆ Workshops for parents (Roma, non-Roma)
- ◆ Various training initiatives focusing on how to work with and educate the majority population.
- ◆ Workshop/ session/ round-table with parents, teachers, NGOs and local authorities
- ◆ Initiatives that aim to empower / include individuals within the system of discussion, advocacy and change

The overwhelming consensus amongst all the participants was that this was a timely and relatively successful workshop. Despite the initial tension and

⁴ For more information regarding the problems facing Romani children in education in Serbia and Montenegro, see „*The Protection of Roma Rights in Serbia and Montenegro. Memorandum Prepared by the European Roma Rights Center (ERRC) in association with the UN Office of the High Commissioner for Human Rights, Human Rights Field Operation in Serbia and Montenegro (UN OHCHR), April 22, 2003*”, pp. 26–29, at: <http://errc.org/publications/legal/index.shtml>.

skepticism (mainly from teachers) that marked the early discussions, there was always a palpable sense of collegiality amongst those present. It is fair to say that everyone was motivated to address the fundamental issues and explore ways and means to improve the current situation faced by Romani children in the Serbian education system. This augurs well for the future and it is hoped that the *ERRC* will continue to participate (in the capacity of facilitator) in any future initiative geared at addressing the schooling of Romani children in Serbia.

From January 22–25, 2004, the *ERRC* held a desegregation workshop in Zagreb, Croatia. Participants included the Ministry of Education, the Ministry for National Minorities, the *Croatian Helsinki Committee*, the *Open Society Fund* (Zagreb office), teachers, parents, activists, journalists, local lawyers working on Roma rights issues, the *Public Interest Law Initiative (PILI)*, and the *Open Society Institute's Roma Participation Program (RPP)*. The seminar succeeded in bringing together the main protagonists in the education of Roma children from across the country in Zagreb to constructively discuss objectives, competing agendas, the *ERRC*'s lawsuit against the Croatian government alleging segregation of Romani children in the field of education, as well as to explore various suggestions for future collaborative initiatives.

The main topic discussed over the two days was the *ERRC*'s ongoing lawsuit, where the legal specificities were presented by the local lawyer Ms. Lovorka Kusan and the *ERRC*'s legal director, Branimir Pleše.⁵ The rationale behind the decision to sue the Croatian government was explained, which elicited reactions from the Ministry of Education representative and her legal counsel, as well as a disavowal from the teachers. Despite the passionate posturing of some of the participants, there was a palpable sense of wanting to do something about the continued segregation of Romani children within the Croatian education system. To this effect, much attention was placed on the Government's National Strategy for Roma presented by Ms Maria Kleiner

from the National Minorities Ministry. The strategy paper included a policy to integrate Romani children within the educational sector that provided a potential foundation for other initiatives aimed at addressing the chronic marginalisation of Roma in education and other spheres of Croatian society.

The strategy paper also provided the basis for concrete follow-up initiatives which allowed the respective participants to explore "what next" steps in greater detail despite the fact that nothing substantive was agreed at the completion of the two days, according to many of the participants present, this was the "most constructive" discussion between the participant on the vexed issue for a long while. It would be true to characterise the event as a fractious meeting between vested interests firmly entrenched in their relative positions. However, there was a commitment to address the issue and to follow-up with further meetings that will hopefully translate into concrete action in Croatia. Currently, however, the only concrete act on the ground remains the *ERRC*'s lawsuit and it is hoped that a number of government initiatives will be implemented aimed at addressing the continued segregation of Romani children in Croatia's education system.

On March 3, 2004, the *ERRC* held a desegregation workshop in Hajduhadhaz, Hungary, including the following participants: representatives of the Ministry of Education, the Mayor of Hajdúhadház and the local municipality, Local Romani Self-Government, local school directors and teachers, parents, the NGO *Roma Education Centre (REC)* (Serbia), the *Open Society Institute's Roma Participation Program (RPP)*, and the *Public Interest Law Initiative (PILI)*. Once again, the purpose of the event was to provide the forum for stakeholders involved in the education of Romani children to convene and explore a range of possibilities regarding the integration of Roma children into mainstream schooling. The day started off with a visit to a local school Szabo Gabor utca in the town by a group that comprised representatives from the *ERRC*, *PILI*, *RPP*, and representatives from the *REC* in Niš, Serbia. The tour was conducted by the

⁵ For more information concerning the *ERRC* lawsuit against the segregation of Romani children in education in Croatia, see Branimir Pleše. "Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action". In *Roma Rights 3–4/2002*, at: http://www.errc.org/rr_nr3-4_2002/legal_defence.shtml.

school director, Mr Vass Laszlo who provided useful information regarding the total number of students attending the school, the various ages, courses being offered there and the total yearly budget. The school was attended solely by Romani pupils and was one of 3 Roma only schools in the town. The trip lasted about one hour after which, the group proceeded to the local municipal office where the general meeting was being held.

The main event was held in the main meeting hall of the local self-government building and was attended by over 60 people. The bulk of the audience comprised of various stakeholders including local Romani parents who seized the opportunity to express their concerns at the meeting. Another important group present were teachers. Initially, they felt very disappointed, since the general tone of the event seemed to be laying the blame for the current practice of segregating Romani pupils into Roma-only classes with them. They reacted defensively and refused to participate in the proceedings, preferring to keep their counsel and offering mild defence for their activities. The Hungarian Ministry of Education was represented by Ms. Viktoria Mohacsi, who attended in her official capacity as Ministerial Commissioner for Integration and who had played a prominent role in getting the event staged in Hajduhadaz. She came to provide details of the government Integration programme that provides grants aimed at assisting schools that had accepted to initiate a policy of integration of the student population. There were also a number of non-governmental actors in attendance (ostensibly local Romani activists from the local Roma self-government).

The meeting was jointly chaired Mr Edwin Rekosh (Executive Director of *PILI*) and Ms. Dimitrina Petrova (Executive Director of the *ERRC*). After the initial introductions by these two representatives, the meeting delved into the vexed issue of desegregation of local schools focussing attention on Roma-only schools. The focus narrowed during Ms. Mohacsi's presentation onto the single issue of integration and the various forms of assistance available to schools that were willing to implement the government's integration policy. During her exposition, she castigated the local school authorities for not applying for the integration grant being offered to them by the government.

This elicited an aggressively defensive response from the teachers, who felt that were being wrongly and harshly criticised for a situation they had little control over. In fact, as it later turned out, the local education authority in Hajduhadaz had just applied for the government's integration grant. This piece of information was eventually gleaned from the director of one of the local schools after a full debate that had involved the local Romani activists and other stakeholders, Ms. Mohacsi, the representatives of the *ERRC*, *PILI* and *RPP*, as well as some other people present at the meeting. The teachers were the only people who had stubbornly refused to participate in the general discussion, preferring to react defensively to the often implied suggestions that they were the ones responsible for separating Romani children into Roma-only schools/classes. Once they had revealed that they were indeed seeking governmental assistance in integrating their Romani pupils, the meeting took on the air of businesslike commitment with the two main parties, i.e., government and teachers, negotiating concrete follow-up plans aimed at expediting the intention to integrate the children as quickly as possible. This represented a positive turn of events and indicated the success of the event in facilitating the dialogue between the major parties. Currently, there is an agreement for the teachers to come to Budapest and visit the Ministry of Education to discuss the next step on the road to integration.

This was a major achievement of the meeting which marked the *ERRC*'s first fully-fledged collaboration with local partners in Hungary from the inception to the execution of the project. In the build-up to the event, *ERRC* representative, the Human Rights Trainer, had participated in a number of meetings with their local partners (*PILI* and *RPP*) in Budapest, the Government's Department of Education, local Roma representatives in Debrecen and Hajduhadaz, local self-government representatives (the Mayor and the Notary's office) as well as a number of other local Roma representatives in Hajduhadaz, Debrecen, and Budapest. Much work went into the preparation of the event that involved a number of contributions from a wide range of actors and the concrete, positive outcome of the event is a testimony of the efforts of all involved. It also provides a good model of collaborative effort aimed at achieving substantive and tangible results. This augurs well for the future for the *ERRC* in terms of joint initiatives with local grassroots Romani activists and NGOs.

**Romani
Language
Publications**



Dokumento/Ĉarteri Europake Politikane partiengo pala na-rasistikano societato/amalipe

Foro Utrecht, 28-to Februari 1998-to berŝ

Romani-language translation of the Charter of European Political Parties for a Non-Racist Society. The Charter is a non-binding document affirming the will of political parties joining the document to work in the spirit of human rights and anti-racism, and to refuse to undertake activities which foster prejudice, hostility or division among people of different ethnic or national origins or religious beliefs. A list of political parties to have joined the Charter as of November 2003 is appended at the end of the Charter.

Amen, demokratikane politikane partie andar i Europa,

Gindosa, pala maŝkarthemutne manuŝikane ĉaĉimaske instrumenturasave si somnime thaj ratifikuime katar amare thema save si membrura Europake Uniake, specialo andi relacia Jekhethaneske Nacienge Konvenciako pala Phagavipe/Eliminacia svakone formako Rasistikane Diskriminaciako,

Gindosa, pala artiklo/kotor 1 kadale Konvenciako, savo kerel definicia/sikavel so si kodo rasistikani diskriminacia sar “...svako distinkcia, ekskluzia, restrikcia vaj protekcia savi si bazirime pe rasa, kolori, vica/fela vaj nacionalo thaj etnikani buĉimkasko ares si vaj efekto te phagavel/kerel eliminacia vaj te kovljarel pind•aripe, linipe thaj utilizacia pe egalutni baza/fundo manuŝikane ĉaĉimaski thaj fundamentale slobodengi po politikano, ekonomikano, socialo, kulturako vaj aver tereno publikane d•ivdimasko ...”,

Gindosa pe angluno vakaripe/preambula Europake Dokumentosko ande savo e thema save si membrura Europake Komunitetosko vazde opre kaj trubun te butjaren khetane te keren promocio/te sikaven demokratiaki pe baza fundamentale ĉaĉipengi save si pind•ardine ande maj bare zakonura e themenge save si membrura, andi Europaki Konvencia pala protekcia/arakhipe Manuŝikane Ĉaĉipengo thaj Fundamentale Slobodengo thaj Europake Sociale Dokumentosko/Ĉarterosko,

Gindosa, pala o kontrakto andar foro Amsterdam savo na del ŝaipe Europake Komunitetonge te “...keren laĉhe akcie po drom te phagaven thaj te maren pes mamuj diskriminacia savi si bazirime pe ... rasistikani vaj etnikani buĉim, religia vaj patjavipe/belief...” thaj zurarel/del zor politikake thaj juristikane kooperaciake ando fremo Europake Uniako pala prevencia thaj phagavipe rasizmosko thaj ksenofobiako,

Pind•aripasa, kaj si e fundamentale ĉaĉipa sar phangline ande e maŝkarthemutne ĉaĉipaske instrumentura somnime thaj ratifikuime katar thema membrura Europake Uniake intjaren ande peste ĉaĉipe pala slobodo thaj korkorevojako politikano vakaripe/vorba thaj debata,

Gindosa, kaj andi relacia kadale egalutne maŝkarthemutne manuŝikane ĉaĉipaske instrumenturenca politikane slobode naj absolute andi relacia egalutne fundamentale ĉaĉipasa te aves protektuime mamuj rasistikani diskriminacia thaj godolese/vaŝodi politikane slobode naŝti aven mukline te von naj godo so trubun te aven/vaj te si varekstar bilaĉhe xatjardine andi relacia e rasasa, kolorosa, etnikane buĉimosa vaj nacionalitetosa vaj areslimasa te astaren pes simpatie/kamipe katar elektoratura,

Gindosa, pala speciale aktivitetura thaj responsabilitetura politikane partiengo sar aktora ande demokratikane politikane procesura, save protektuin/arakhen, keren artikulacia thaj len pe

peste sa pharipa pala fundone principura demokratikane societatosko; arakhipe thaj dinipe e platformako pala diskusia pe teme/issues kaj šaj aven diference ando gindipe, integracia averčhande gindipengo ando proceso keripasko politikane decizjako, thaj kade opril/či del šaipe e societatoske te phagavel čingara/konfliktura pala intereso thaj gindipa averčhande/diferente sociale grupe maj but maškar dialogo deso maškar te muken avri o konflikto; keripe/alosaripe thaj selekcia e reprezentanturengo pe difefrente levelura pala aktivo participacia/lethanipe ande plitikane procesura,

Gindosa, kaj slobodo utilizacia jekhe politikane čačipasko šaj thaj musaj te d•al katar vast d•i kaj vast zurale kamipasa thaj mangipasa e principurengo pala na-diskriminacia sar vasne kotoresko ando demokratikano proceso,

Gindosa, maj dur kaj reprezentacia e etnikane minoriturenge grupengo ando politikano proceso integralo thaj vasno kotor demokratikane procesurengo, vi godolese kaj e politikane partie trubun vaj musaj te maren pes po drom te aven refleksia e societatoski,

Tradel (del obligacia) korkore amenge te maj dur d•as po drom te astaras speciafikane principura pala lači praksa:

- ◆ **Te arakhas/protektuis** fundone/bazikane manuškane čačipa/xakaja thaj demokratikane principura thaj te čhudas svako forma rasistikane violenciako/čaikamipasko, ispidipe/tradipe pe rasistikano čikamipe thaj harazmento sar vi svako forma rasistikane diskriminaciako.
- ◆ **Te či das** te sikavel pes, te publikuin pes vaj te si publikuime, te distribuin pes vaj te garantuin pes ande svako konteksto gindipa thaj pozicie save miškin opre/stir up vaj save akharen pe čikamipa/prejudices, vaj katar save ad•ukarel pes te miškin opre po bilačhipe vaj te akharen po čikamipe/prejudices, pharavipe maškar manuša katar averčhande/diferente etnikane vaj nacionale bučima/origin vaj religikane patjavipa, vaj te aven andi konekcia varesave rasistikane xatjaripasa maškar korkore piri kategorija.

- ◆ **Te lel pes sama, te del pes responsabiliteto thaj amalipe** kana kerel pes varesavi politikani buti savi si andi relacia pala e teme save si vasne kadale grupenge thaj te našel pes katar lengo lad•avipe.
- ◆ **Te našel pes katar** svako forma politikane amalipasko vaj kooperaciako pe sa levelura e politikane partienca save traden vaj kamen te traden po vazdipe thaj buxljaripe etnikane čikamipasko sar vi rasistikane čikamipasko.
- ◆ **Te d•al pes thaj te kerel pes** amalikani/fer reprezentacia opre sikadine grupengo pe sa levela e partiengi speciale responsabilitetosko pala partiako šerutnipe/leadership, te kerel pes stimulacia thaj te •util pes te alosaren pes/regrutuin pes e kandidatura katar gasave grupe pala politikane funkcie sar vi pala membripe/membership.
- ◆ **Maj dur te kerel pes obligacia** pala keripe lače akciako po drom te del pes zor te sa manuša save butjaren vaj save khetanin pes maškar peste po drom te keren lačo rezultato pe politikane alosaripa/elekcie vaj aver aktivitetura trubunl te avel lenge ando gindo te len sama pe opre ramosardine/skrinisardine principura.

Background

O ramosaripe/skrinisaripe ande kava dokumento/Čarteri si sugestia dindi katar EU Konsultativo Komisia pala Rasizmo thaj Ksenofobia pala politikane partie andi i Europaki Unia. Kava ramosaripe/skrinisaripe savo si lindo (adoptuime) katar komisia po 5-to Decembro 1997-to berš, sasa xurdes thaj cerra pharuvdini (nevljardini) pe konferencia savi akharda pes-*politikane partie thaj na-diskriminacia* savi si kerdini ando foro Utrecht, them Nederlandia, katar 26-28 Februari 1998-to berš. Pe kadi konferencia reprezentantura katar štarvardeš politikane partie andar thema save si membrura Europake Uniako sesa prezentuime, sar vi reprezentantura katar šerutne Na-Governoske Organizacie (NGO) sar vi indepedante ekspertura katar thema save si membrura.

Signatories Charter

EU signatora/ko somnisarda o lil

Dokumento/Čarteri Europake Politikane Partiengo
vaš na-rasistikano societato

1. AUSTRIA

Die Grünen – Zeleno Partia
Liberales Forum – Liberalo Forumo
Sozialdemokratische Partei Österreichs – Austriaki
Socialo Demokratikani Partia (SPÖ)

2. BELGIA

Parti Socialiste – Socialistikani Partia (PS)
Parti Réformateur Libéral – Liberalo Reformikani
Partia (PRL)
Anders gaan Leven – Flemish Zeleno Partia
(AGALEV)
Ecolo – Walloon Zeleno Partia
Parti Social Chrétien – Kristiano Socialistikani
Partia (PSC)
Socialistische Partij – Socialistikani Partia (SP)
Christelijke Volkspartij – Kristiano manuŝengi
Partia (CVP)
Volkunie – Vlaamse Vrije Democraten –
Manuŝengi Unia – Flemikane Slobode
Demokratura (VU)
Frankofono Demokratikano Fronto – Front
Démocratique des Francophones (FDF)
Mouvement des Citoyens pour le Changement
(MCC)
Vlaamse Liberalen en Democraten – Flemish
Liberals and Democrats (VLD)

3. DANIA

Socialdemokratiet – Socialo Demokratikani Partia

4. FINLANDIA

Suomen Sosialdemokraattinen Poulue – Finlandiaki
Socialo Demokratikani Partia (SDP)

Suomen Keskusta – Finlandiaki Centroski Partia
(KESK)
Kansallinen Kokoomus – Nacionalo Koaliciaki
Partia (KOK)
Vasemmistoliitto – Stungo Aliansa
Vihreä Liitto – Finlandiaki Zeleno Partia (VIHR)
Svenska Folkpartiet/Ruotsalainen Kansanpuolue –
Švedikani Manuŝengi Partia (SFP/RKP)
Suomen Kristillinen Liitto – Finlandiaki Kristiano
Aliansa (SKL)
Liberaalinen Kansanpuolue – Liberalo Manuŝengi
Partia (LKP)
Nuorsuomalainen Puolue – Ternengi Finlandiaki
Politikani Partia (NOURS)
Remonttiryhmä – The Reformikani Grupa
Perussuomalaiset – E Čače Finlandura

5. FRANCIA

Parti Socialiste – Socialistikani Partia (PS)
Parti Communiste français – Francikani
Komunistikani Partia (PCF)

6. GERMANIA

Bündnis 90/ Die Grünen – Aliansa 90/ E Zelene
Sozialdemokratische Partei Deutschlands – Socialo
Demokratikani Partia e Germaniaki (SPD)
Freie Demokratische Partei – Die Liberalen –
Slobodo Demokratikani Partia – E liberalura
(FDP)

7. GRECIA

Prasini Politiki – Zeleno Politika
Synaspismos tis Aristeras kai tis Proodou – Koalicia
pala stungo rig thaj anglunipe/progreso (SYN)
Panellinio Socialistiko Kinima – Panhelenikano
Socialistikano Miŝkipe (PASOK)
Nea Demokratia – Nevi Demokratia (ND)

8. IRELANDIA

Fine Gael
E Laburikani/butjarni Partia

9. ITALIA

Democratici di Sinistra – Demokatura e stungo rigako (DS)
Socialisti Democratici Italiani – Italiake Demokratikane Socialistura (SDI)
Federazione dei Verdi – E Zelenenongi Federacia

10. LUXEMBOUGO

Parti Ouvrier Socialiste Luxembourgeois/
Luxemburger Sozialistische Arbeitspartei –
Socialistikani Butjarnengi Partia andar o
Luxemburg (POSL–LSAP)
Parti Chrétien – Social du Luxembourg/Christlich
– Soziale Volkspartei Luxemburgs –
Kristiano Socialistikani Partia andar o Luxemburg
(CSV)
Demokratesch Partei/Parti Democratique –
Demokratikani Partia (DP)
Déi Gréng – E Zelene
Aktionskomitee fir Demokratie a
Rentegerechtegheet/
Comité d’ Action pour la Démocratie et la Justice
Sociale (ADR)
Déi Lénk/Die Linken/La Gauche – Pe stungo rig
Kommunistische Partei Luxemburgs/Parti
Communiste Luxembourgeois – Komunistikani
Partia andar o Luxemburg (KPL/PLC)

11. NEDERLANDIA

Partij van de Arbeid – Laburistikani Partia (PvdA)
Christen Democratisch Appèl – Kristiano
Demokratikani Partia (CDA)
Volkspartij voor Vrijheid en Democratie – Liberalo
Partia (VVD)
Democraten 66 – E Liberalura 66 (D66)
Groen Links – Zelene Stungo Rigaki Partia

12. PORTUGAL

Partido Socialista – Socialistikani Partia (PS)
Partido Social Democrata – Socialo Demokratikani
Partia (PSD)

13. ESPANJA/Španjoliko Them

Partido Socialista Obrero Español – Španjolikani
Socialistikani Butjarnengi Partia (PSOE)
Izquierda Unida – Khetane Stungo (IU)
Eusko Alkartasuna – Baskiaki Nationalo
Demokratikani Partia
Unió Valenciana – Valensiaki Unia (UV)
Partido Andalucista – Andaluziaki Partia
Coalición Canaria – Kanariaki Koalicia
Unió Democrática de Catalunya – E Kataloniaki
Demokratikani Unia (UDC)

14. ŠVEDIA

Socialdemokratiska Arbetarepartiet – Socialistikani
Demokratikani Butjarnengi Partia (SAP)
Folkpartiet Liberalerna – Liberal People’s Party

15. UNITED KINGDOM/ANGLIA

Nationalistikani Partia andar i Škotia (SNP)
Laburistikani/Butjarimaski Partia
Konzervativo Partia
Angliaki thaj Welsoski Zelene Partia
E Liberale/Slobode Demokatura
Socialo Demokratikani thaj Laburistikani Partia
(SDLP)
Aliansaki Partia pala Opruni/ Nothern Irelandia

16. EUROPAKE POLITIKANE PARTIE

Europake Liberalura, Demokatura thaj
Reformaciaki/nevljarimaski Partia (ELDR)
Partia e Europake Socialisturengi (PES)
Europaki Federacia pala Zelene Partie (EFGP)
Europako Parlamento, Ex Prezidento José Maria
Gil-Robles
Europako Parlamento, O Vice-prezidento Luis
Marinho
Parlamentaro Grupa pala Europake Manušengi
Partia (EPP Group)
Parlamentaro Grupa e Europake Socialisturengi
(PSE Group)

Politikane Partie save somnisarde o dokumento/čarteri katar na-EU (Europake Uniake) Thema

1. CYPRUS

Kinima Oikologon Perivallondisten – E Cyprus Zeleno Partia

2. ČEHIKANI REPUBLIKA

Komunistická strana Cech a Moravy – Komunistikani Partia katar Bohemia thaj Moravia (KSCM)
 Česká Strana Sociálně Demokratická – Čehikani Socialistikani Demokratikani Partia (CSSD)

3. ESTONIA

Moodukad – Moderates

4. HUNGARY/UNGRIKOTHEM

Magyar Szocialista Párt – Ungrikani Socialistikani Partia (MSZP)

5. LITHUANIA

Lietuvos Socialdemokratu Partija – Litvaniaki Socialistikani Demokratikani Partia (LSDP)

6. MALTA

Partit Laburista – Laburikani/Butjarimaski Partia andar i Malta (MLP)

7. ROMANIA

Partidul Democrat – Demokratikani Partia (PD)

8. SAN MARINO

Partito Socialista Sammarinese – Socialistikani Partia andar San Marino (PSS)

9. SLOVAKIA

Sociálnodemkratická strana Slovenska – Socialistikani Demokratikani Partia andar i Slovakia (SDSS)

10. SLOVENIA

Združena lista socialnib demokratov – Khetanimaski Lista/lil pala Sociale Demokatura (ZLSD)

11. SVICERLANDIA

Sozialdemokratische Partei der Schweiz/Parti Socialiste Suisse/Partito Socialista Svizzera – Socialistikani Partia andar i Svicerlandia (SP/PS)

Found Path

Rita Izsák

I FIRST LEARNT OF THE *ERRC* in 2002, when a friend of mine came to the restaurant where I was working during the night to be able to pay my university tax. I remember her shining face when she entered the place, took a seat at a table, and wrote down on a piece of paper: “I found an organisation that could give you a scholarship! They could cover a big part of your costs! You could even do an internship there!”

So, in the following days I visited the *ERRC*. I remember many publications and folders with names of different countries – Macedonia, Romania, Kosovo, Slovakia – written down on them. And I remember the feeling that I had: How come that I have never heard about this organisation before and they are dealing with Roma from all over Europe? I began to read *ERRC* publications and check the website. And beginning in September 2002, after having been luckily chosen from among many applicants, I became a legal monitor of the *European Roma Rights Center*.

I was born to a Romani mother and a Hungarian father and grew up in a non-Romani community. My mother had been placed in an orphanage and grew up there with her younger sister. They don't have any relationship with any of their family members. My mother has only a few memories of the Romani community of the village where she was born and where she lived 11 years. So, for me the Romani origin meant only some songs, some Beash Gypsy words and something mysterious – maybe for her as well.

In my memories, the first time I had to face my origin was when somebody shouted after me in the street with a humiliating tone: “Gypsy!”. The irony was that this had been a boy whom I liked so much. I was about 8 or 9 years old and ran home crying. My mom

sat down with me and asked: “Do you want me to change my name so that people won't threaten and hurt you any more?” (My mom is named Orsós which is one of the most common Gypsy family names in Hungary.) And for me it was so obvious to answer immediately: “NO!” If she could live with this name and achieve everything that she wanted in her life, how could I ask her to change such an important part of her personality?! My mom completed her primary and secondary school and moreover, she graduated as a kindergarten teacher – as one among the first Romani women with a diploma in the country. I was proud of her and, therefore, of her name as well.

And how could I forget the efforts of my daddy to make his family accept my mom? I was told that in 1977, employees of one of the national radio stations went to my father's parents' place and conducted an interview with my grandparents about the possibility of a marriage between my parents. My grandfather was shouting and beating the table with anger. He said that if they entered a restaurant, they had to sit at a table by themselves, because no one else would take a seat by the side of this Gypsy woman. Despite my grandparents' resistance, in the following year, my mom and dad got married. Today, my whole family thanks God to have sent such a lovely wife my dad's way... I thought that if my parents were ready to face and struggle against these prejudices and difficulties because of my mom's name – which revealed her origin – how could I, their child, escape from this fight and fake my origin?

A more painful story was one that happened just three years ago. I worked for an agency that provided assistants for the national holidays and was funded by the previous Hungarian government (1998-2002). I even helped in logistics for the director of the agency. Then, after some time, they stopped inviting me to the Parliament to work, whereas all of my class-



mates and friends from the university continued to host these events. The explanation was given by my best friend who one day, when asked about the possible reasons for this, told me the truth: the director told her that my Romani origin was so obvious that he could not afford this in “such elite company”.

So, the sad truth had to be faced at an early age – despite of my mom’s hard work and the efforts that we both made in our life to be fully accepted, in today’s society, the colour of your skin still does matter, regardless of your education, abilities, behaviour or achievements. And I think that it is the recognition of this sad reality that can keep together such otherwise divided groups like Roma.

So, the way to the movement defending the rights of the Roma and struggling against these intense prejudices was straight. However, when in 1999, I learnt that I passed the entrance exam to the law faculty, I began to cry. Not because I was happy. In fact, I was desperate. I thought that I would not be able to survive in such a snobbish environment. The law faculty was not among my first choices, and I had never seriously thought that I would have to attend a law faculty.

During the first years at the law faculty, I never managed to rid myself of the feeling that I was there by accident. I felt like an absolute outsider at the university. I never had the fancy clothes, a big car or even a driving licence which seemed to be the minimum requirements at the faculty. Luckily, I managed to find some friends who felt similarly.

In May 2003, I went to a hearing to Nyíregyháza. It was an *ERRC* case filed together with the *Hungarian National Bureau for National and Ethnic Minorities (NEKI)*, where a young Romani woman was the client. The case was on appeal at the second instance and being heard by three judges. The woman was asked mercilessly about her family life, religious habits, about the role of the children in her community and so on. I myself felt embarrassed during this interrogation. However, the worst part of the hearing came when she was asked about the numbers of her marriages. She immediately answered: two. But the judges didn’t accept the answer. They asked again: “Please, think again. How many husbands have you had in your life?” She said again: “Two”. Judges were smiling. “Dear Mrs, we know you had only one since this is written in your official documents. Why do you keep on telling us that

you have had two?” The woman began to cry. The lawyer provided her with a tissue. I myself felt the tragedy. I knew that the woman came from a traditional Romani community where sexual relations are equal to marriage. That was the moment when I first felt any kind of commitment to the law. This was the time when I experienced how much the lack of any knowledge about Roma can lead to such painful outcomes. I saw the woman crying; the others thinking of her as a liar or as somebody who was so stupid she had forgotten about her marriage, and I felt: No way I will ever accept this humiliation of Roma just because the elite of society is not willing to take any efforts to get closer to the Roma and to their everyday life. That day, I was determined to become a good lawyer.

That day, everything fell into place for me. It became clear why I was born Roma, why I was in that court, why I had passed the entrance exam for the law school, why I started working for a public interest law organization, why exactly for the *ERRC* and why for its legal department. And finally, I began to feel good in my skin.

I am happy that last year, the Parliament of Hungary amended the Educational Act and adopted an Anti-Discrimination Act, both of which provide us with a stronger weapon to fight for our rights. I am happy that beginning in 2005, schools can be closed down if they practice segregation. And I am happy that the Public Foundation for Hungarian Roma registers year after year an ever-larger number of applications for scholarships by university and college students who are of Romani origin.

Although I am sure that it will take a long time until Roma will feel the difference in their everyday life, I am also sure that we are on the right track. However, every Romani person should acknowledge that in order to take advantage of the possibilities provided for us, we have to forget about our internal divisions when the issue is the protection of our rights. We have to get up, stand up and fight for our rights with one voice.

Finally, please let me cite from the Bible:

“And the LORD said, Behold, the people is one, and they have all one language; and this they begin to do: and now nothing will be restrained from them, which they have imagined to do.” (Genesis, Chapter 11:6)



Chronicle

Publications

February 2004: Published *ERRC* Country Report No.13, *The Non-Constituents: Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*

Campaigning, Conferences and Meetings

January 5, 2004: Submitted a letter of concern to the United Nations Committee on the Rights of the Child reviewing Germany's compliance with the Convention on the Rights of the Child, at its 35th session, January 12-30, 2004.

January 12, 2004: Submitted, jointly with the European Union Monitoring and Advocacy Program of the Open Society Institute, a document detailing concerns with respect to Romani women's rights in Germany to the UN Committee on the Elimination of Discrimination against Women (CEDAW).

January 22–23, 2004: Held a workshop on school desegregation issues as part of a project funded by the United Kingdom's Foreign and Commonwealth Office, Zagreb, Croatia.

January 28, 2004: Participated in a Panel Discussion on Roma in Austria and within Europe, convened at the European Parliament by a group of Austrian MEPs, Brussels, Belgium.

February 2, 2004: Submitted a Written Statement for consideration by the United Nations Commission on Human Rights, at its 60th session, March 15-April 23, 2004, regarding the segregation of Roma, particularly in the fields of education, housing and health-care. In addition, on March 23, 2004, an *ERRC* staff member delivered an oral state-

ment on the same topic the Commission in Geneva, at the meeting discussing Racism, Racial Discrimination, Xenophobia and Related Intolerance.

February 3, 2004: Gave a presentation on international advocacy strategies as part of a seminar series held by the Human Rights Students Initiative of the Central European University, Budapest, Hungary.

February 13–14, 2004: Participated in the conference "Roma within the context of European policies: The Action Plan regarding the improving of the situation of Roma and Sinti within the OSCE Area", in Bucharest, Romania.

February 20–22, 2004: Organised a meeting with 15 Ukrainian Romani non-governmental organisations, on which a 3-year project financed by the European Commission was launched, Kijev, Ukraine.

February 26, 2004: Hosted a study visit by representatives of the government of Bosnia and Herzegovina, Budapest, Hungary.

February 27, 2004: Submitted a written statement to the United Nations Committee on the Elimination of Racial Discrimination (CERD) on the Occasion of its Thematic Discussion on "Non-

Citizens and Racial Discrimination” at its 64th Session, February–March 2004.

February 27, 2004: Participated in an ad hoc meeting of the Specialised Group on Roma/Gypsies – MG-S-ROM – on the draft recommendation on improving housing conditions for Roma/Gypsies and Travellers, in Strasbourg, France.

March 1–2, 2004: Attended a session of the United Nations Committee on the Elimination of Racial Discrimination on the subject of “Non-Citizens and Racial Discrimination” and gave a presentation on *ERRC* concerns related to EU law, Geneva, Switzerland.

March 2, 2004: Attended a session of the UN Working Group on Minorities and gave an oral presentation recommending that the UN Sub-Commission on Human Rights step up its efforts in the field of Roma rights, Geneva, Switzerland.

March 3, 2004: Co-organised, together with the Public Interest Law Initiative, a seminar on educational issues and desegregation strategies at the local level, Hajduhadház, Hungary.

March 6–7, 2004: Held a training workshop for Romani activists on "International Law and the Right to Adequate Housing" in partnership with the Milan Simečka *Foundation and the Centre for Housing Rights* and Evictions in Košice, Slovakia.

March 8–12, 2004: Co-organised, together with the Network Women’s Programme of the Open Society Institute, a training on human rights advocacy for Romani women, Budapest, Hungary.

March 9, 2004: Submitted written comments to the Human Rights Committee, reviewing Germany’s compliance with the International Covenant on

Civil and Political Rights, at its 80th session, March 16, April 3, 2004.

March 13–14, 2004: Attended a workshop on environmental justice as part of a nascent Coalition on Environmental Justice, Central European University, Budapest, Hungary.

March 18, 2004: Hosted a study visit by members of the U.K. police.

March 18, 2004: Participated in a conference “All Different, AU Equal: ECRI, Ten Years of Combatting Racism”, Strasbourg, France.

March 19, 2004: Participated in an ECRI consultation with international NGOs, Strasbourg, France.

March 22, 2004: Took part in the panel discussion “Intercultural Dialogue: A Means to Combat Racism” organised by the UN High Commissioner for Human Rights on the occasion of the International Day for Elimination of Racial Discrimination, Geneva, Switzerland.

March 23, 2004: Attended a steering committee meeting of ongoing project to draft a report on “Roma in an Enlarged Europe”, Brussels, Belgium.

March, 24, 2004: Spoke at the European Parliament at a workshop “Diversity with Equality: Roma in a Widening Europe”, organised by the Liberal Democrats group, Brussels, Belgium.

March 29–30, 2004: Participated in the 17th meeting of the Specialised Group on Roma/Gypsies – MG-S-ROM, Strasbourg, France.

April 2–3, 2004: Organised a training for Romani activists on “Professional Methods of Monitoring Roma Rights and Relations with the Police”, and a round table discussion with police officials, Samara, Russia.

SUPPORT THE *ERRC*

The *European Roma Rights Center* is dependent upon the generosity of individual donors for its continued existence. If you believe the *ERRC* performs a service valuable to the public, please join in enabling its future with a contribution. Gifts of all sizes are welcome, bank transfers to the *ERRC* account are preferred. Please send your contribution to:

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Bank address: **Báthori utca 1, 1054 Budapest**
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