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Return to Europe? The Czech Republic and the EU's Influence on Its Treatment of Roma

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ABSTRACT

The Czech Republic has faced much criticism in the past fifteen years for the treatment of its Romani minority community. The European Union has successfully applied informal, non-legal means of pressuring the Czech Republic into making some changes necessary to improve living conditions for Roma. With the Czech Republic's recent accession to the European Union, legal human rights institutions will likely play a larger role in ensuring that the Czech Republic continues to improve conditions for Czech Roma. The Author uses a case brought by a group of Roma at the European Court of Human Rights to demonstrate the potential that European legal institutions have for bettering the treatment of Czech Roma. The Author concludes that the EU must apply both non-legal pressure and use its own as well as affiliated human rights institutions to promote the improvement of living standards and conditions for Roma in the Czech Republic.

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I. INTRODUCTION: THE ISSUE OF THE TREATMENT OF ROMA

East Central European countries have experienced great economic, political, and social change since the collapse of their Communist governments in the late 1980s and early 1990s.[1] Every country in the region has established a free market economic system and a democratic form of government in the past fifteen years.[2] Six countries in the region have become member states of NATO in the past five years.[3] On May 1, 2004, the Czech Republic, Poland, Slovakia, and Hungary became members of the European Union

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1. This Note will use the term East Central Europe to describe the geographic area including the Czech Republic, Poland, Slovakia, Hungary, Romania, Bulgaria, and the successor states to Yugoslavia. No academic consensus exists on how to refer to this region, but I believe that the term East Central Europe manages to convey both the geographic location of these countries and their commonality of experience at some level in the post-Cold War era.

2. *See Westward, Look, the Land is Bright—Central Europe; Is Central Europe Ready for the Big Leagues?*, ECONOMIST, Oct. 26, 2002.

3. The Czech Republic, Poland, and Hungary became members of NATO in March 1999 and Slovakia, Romania, and Bulgaria recently became member states. *NATO in the 21st Century*, *available at* http://www.nato.int/structur/countries.htm (last visited Aug. 27, 2004).

(EU).[4] In spite of these accomplishments, one blemish exists on the record of every East Central European country in the region in the post-Communist era: the treatment of the region's Roma.[5] The status of the region's Roma has remained poor at the governmental and societal level despite the transition to democratic governance, with its attendant emphasis on equal treatment. Despite pressure from both the EU and human rights organizations to improve conditions for Roma in East Central Europe, some question remains whether the status of Roma in the region has actually improved during this period of time.[6]

The treatment of Roma in the Czech Republic in the past fifteen years can be described as especially disappointing; yet it is nonetheless typical for East Central Europe. The Czech Republic, like other countries in the region, has received much criticism for the treatment of its Romani population. Some have even argued that the level of Romani integration in the Czech Republic is the lowest of any East Central European country.[7] Meanwhile, it is especially disappointing because, as the EU has noted, "[t]he Czech Republic presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights, and respect for and protection of minorities."[8] The poor standard of living for most of the

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4. The Czech Republic, Poland, Hungary, and Slovakia became member states of the EU in 2004. *The European Union at a glance, at* http://europa.eu.int/abc/index_en.htm (last visited Aug. 27, 2004). At this time, Bulgaria and Romania are still negotiating their entry into the EU. *Id.*

5. While Roma have traditionally been referred to as Gypsies, Zoltan Barany states that "[s]ome Gypsies prefer to be referred to "Roma" (which means "men" in the Romani language), the singular of which is "Rom", and the adjective is "Romani." ZOLTAN BARANY, THE EAST EUROPEAN GYPSIES: REGIME CHANGE, MARGINALITY, AND ETHNOPOLITICS 1 (2002). The term Gypsy, while perhaps more common, also tends to carry negative connotations with its usage. This Note, therefore, will use Roma, as it appears to be the less pejorative of the terms and seems to be the more commonly used term in academic literature.

6. Will Guy, *Romani Identity and Post-Communist Policy, in* BETWEEN PAST AND FUTURE: THE ROMA OF CENTRAL AND EASTERN EUROPE 3 (Will Guy ed., 2001).

7. BARANY, *supra* note 5, at 187 (writing that "in my view, the level of Romani integration is highest in Poland followed by Macedonia, Hungary, Bulgaria, Romania, Slovakia, and, finally, the Czech Republic.").

8. *Agenda 2000—Commission Opinion on the Czech Republic's Application for Membership in the European Union*, DOC/97/17 at 15 (1997) [hereinafter *Agenda 2000*]; *see also* ROBIN H.E. SHEPHERD, CZECHOSLOVAKIA: THE VELVET REVOLUTION AND BEYOND 6 (2000). Shepherd argues that the Czech Republic "faces serious problems but it is a secure democracy where the rule of law is respected and the rights of an individual are enshrined in a constitution inspired by liberal values." *Id.* The Czech Republic's well-deserved reputation as the country that produced leading dissidents such as Václav Havel, who then became Czech President, likely increased international expectations with regard to how Roma would be treated in post-communist Czechoslovakia and then the Czech Republic. *Id.* at 39-40. Moreover, expectations for the Czech Republic were certainly greater than for most other countries in the region.

country's Romani population emerged as one of the most contentious issues during the Czech Republic's EU accession negotiations.[9] The EU called for the Czech Republic to "step[] up" its efforts to improve the status of Roma.[10]

On May 1, 2004, the Czech Republic became an EU member state.[11] The EU might be the institution most capable of improving the situation for Roma in the Czech Republic because it has a well-integrated human rights regime and makes policy at a supra-national level. The accession of the Czech Republic to the EU presents an important opportunity to examine what influence the EU has had on Czech policy toward Roma and the potential future influence of the EU and affiliated legal institutions following Czech accession. This Note will assume that the EU has the means of effecting change in the status of Roma in the Czech Republic. Thus, this Note will try to answer two broad questions. First, through an analysis of various problems that have faced Roma in the Czech Republic, it will attempt to discern the influence that the EU has had on the status of Roma in the Czech Republic during the accession process. Second, this Note will analyze the institutional framework of the EU, including its human rights regime and affiliated human rights institutions, and demonstrate how the EU could use this framework to improve the status of Roma in the Czech Republic.

To accomplish these goals, Part I of the Note will provide a brief history of Roma in Europe. Part II will examine specific problems that Roma in the Czech Republic have faced since 1989, and it will attempt to describe the influence that the EU has had in shaping Czech policy toward Roma. Part III will describe pertinent EU human rights institutions and EU-affiliated human rights institutions to which the Czech Republic belongs or will belong. Part IV will analyze a recent case brought by a Romani family against the Czech government at the European Court of Human Rights as a means of examining how EU institutions might provide Czech Roma a new forum in which to air grievances about their treatment. Part V will analyze how the European human rights regime might improve the status of Roma in the Czech Republic in light of the case above.

Many Europeans could remember that prior to World War II, Czechoslovakia had the only functioning democratic government in Central Europe and had several large ethnic groups which coexisted relatively well. *See* JAROSLAV KREJČÍ & PAVEL MACHONIN, CZECHOSLOVAKIA 1918-1992 12-18 (1996).

9. Carol L. Kline, *EU Inconsistencies Regarding Human Rights Treatment: Can the EU Require Czech Action as a Criterion for Accession?*, 23 B.C. INT'L & COMP. L. REV. 35, 45-48 (1999).

10. *See Agenda 2000*, *supra* note 8, at 20.

11. *When frontiers come down*, ECONOMIST, Nov. 22, 2003, at 12.

Finally, Part VI will offer suggestions for what should be done at the EU level to improve the treatment of Roma in the Czech Republic.

II. ROMA IN EUROPE: A HISTORY OF DISTRUST AND PERSECUTION

A brief history of Roma in Europe is essential to understand why Roma, perhaps more than any other ethnic group, have faced incessant discrimination and persecution throughout Europe for as long as they have resided there. This history provides a context in which to analyze the current economic and social problems of Roma in the Czech Republic. Moreover, the historical treatment of Roma by EU member states might have an effect on the overall ability of the EU to improve conditions for Roma in the Czech Republic.

The origins of Roma in Europe remain unclear.[12] Most historians believe that ancestors of the Roma migrated from northwest India toward Europe around 1000 A.D.[13] This migration proceeded across the European continent, arriving first in Persia, continuing to Armenia and Eastern Europe, and finally arriving in Western Europe by the 1400s.[14]

The treatment afforded these newly arrived Roma varied across Europe, but native populations generally treated Roma with contempt or worse. By the 1350s, Rumania had enslaved its Romani population, a condition that would persist until 1856.[15] In other areas, Roma faced persecution ranging from expulsion from the Holy Roman Empire in 1500 to a general condemnation of death in Saxony in 1648.[16] Generally, Roma received somewhat better treatment in locales where they could fill a specific economic niche, usually serving as needed temporary labor.[17] The situation of Roma in Europe did not improve over time: Nazi Germany[18] killed at least a half million

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12. *See* Mary Ellen Tsekos, *Minority Rights: The Failure of International Law to Protect the Roma*, 9 HUM. RTS. BR. 26, 26 (2002).

13. *See* Fred Bertram, *The Particular Problems of the Roma*, 2 U.C. DAVIS J. INT'L L. & POL'Y 173, 175 (1996).

14. *See* Edo Banach, *The Roma and the Native Americans: Encapsulated Communities Within Larger Constitutional Regimes*, 14 FLA. J. INT'L L. 353, 367 (2002).

15. *See* Bertram, *supra* note 13, at 175-76.

16. Barry A. Fisher, What Happens Next?, Remarks presented at Fifteenth Annual Whittier International Law Symposium (Mar. 1, 1998), *in* 20 WHITTIER L. REV. 91, 95 (1998).

17. *See* BARANY, *supra* note 5, at 88-89.

18. According to some scholars, the attempts by Nazi Germany to destroy the European Roma population have been largely ignored, as attention has been focused on Nazi destruction of other groups. *See generally*, Fisher, *supra* note 16, at 95-99. These experts point to the lack of a monetary settlement for Roma victims of Nazism and the fact that Roma "have been largely invisible in current historiography about Nazi genocide" as evidence of this phenomenon. *Id.* at 98.

Roma in the Holocaust,[19] Switzerland enacted a policy of taking Romani children from their parents' care and giving them to non-Roma to raise, and Sweden barred Roma from entering the country.[20] This list is not exhaustive, but it provides a general sense of the level of persecution faced by Roma throughout Europe.

In the European societies in which Roma have lived, Roma have existed and continue to exist on the fringes of dominant national societies.[21] The majority nationality's discriminatory attitudes and policies are usually responsible for this outcome.[22] However, this Note would be remiss not to state that Romani culture has contributed to this marginalization to some extent.[23] Most notably, every Romani society possesses a similar concept of *gaje*, or non-Romani individuals.[24] All Romani societies hold *gaje* to be unclean and untrustworthy and encourage Roma to avoid unnecessary contact with *gaje*.[25] Moreover, because Romanes, the Romani language, is primarily a spoken language, non-Roma find it quite difficult to learn.[26] Compounding the linguistic divide, many Roma actively discourage allowing *gaje* to learn their language.[27] Moreover, many Romani customs differ substantially from the *gaje's* customs.[28] For example, Romani girls often marry and give birth at younger ages than girls of other nationalities, which can cause Roma legal difficulties in many European systems.[29]

Even a cursory overview of Romani history in Europe demonstrates the mutual lack of trust and understanding between Roma and dominant European nationalities. This is not an attempt to rationalize the discrimination and persecution that Roma have experienced; instead, it reflects the reality that most European societies do not understand Romani culture and that most Roma are indifferent to whether Europeans understand their culture and customs. This mutual lack of trust and understanding likely serves as

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19. *See* Bertram, *supra* note 13, at 177 (stating that the actual number of Roma killed by Nazi Germany probably exceeded one million).

20. *Id.* at 178.

21. *See* BARANY, *supra* note 5, at 62-64.

22. *See* Alyssa Haun, *The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and the Right to Choose a Residence*, 33 GEO. WASH. INT'L L. REV. 155, 157 (2000).

23. *Id.*

24. *Id.*

25. *Id.* at 158.

26. *See* Bertram, *supra* note 13, at 195. Bertram states that some Roma who have helped to make Romanes available to the *gaje* are viewed as traitors within the Romani community. *Id.*

27. *Id.* at 194-95.

28. *Id.*

29. *Id.* at 192.

one of the foundations of discrimination and persecution in the Czech Republic.[30]

III. ROMA IN THE CZECH REPUBLIC POST-1989:[31] THE ISSUES

Roma in the Czech Republic have faced hostility and discrimination from both the Czech government and Czech society as a whole since the fall of communism in 1989. Because this Note intends to analyze the influence that the EU has had and will continue to have on the status of Roma in the Czech Republic, it will focus primarily on actions taken by governmental entities in the Czech Republic, because the EU has the greatest ability to influence such actions.

A. *Initial Developments and the Velvet Revolution*

The establishment of the Czech government in late 1992 provides a natural starting point for discussing the status of Roma in the Czech Republic.[32] Initially, the Czech government appeared to establish constitutional protections for minority rights, which appeared to include Romani rights.[33] The new Czech Constitution

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30. *See generally* Banach, *supra* note 14, at 371-72.

31. This Note will attempt, as much as possible, to provide a fair depiction of the situation of Roma in Europe and the Czech Republic. I include this statement because, while this is an emotional topic, much of the literature on the matter looks at it from almost purely a Romani perspective. This is not meant to minimize the discrimination and hatred that Roma in the Czech Republic and Europe have faced nearly continually since their arrival. It goes without saying that Roma have suffered terribly because of discrimination and persecution. For a variety of reasons, including Czech discrimination as well as Romani reticence, accurate figures regarding Romani life in the Czech Republic and Europe are quite difficult to find. Several non-governmental organizations, including the European Roma Rights Center (ERRC) and Human Rights Watch, have published damning reports about the status of Roma in the Czech Republic. Without question, these organizations have played and will continue to play key roles in protecting Roma not only in the Czech Republic but around the world. According to Zolton Barany, however, "ERRC has also acquired a reputation of publishing unbalanced reports and pursuing its objectives with rather more zeal and less tact than would be optimal." BARANY, *supra* note 5, at 275. Thus, this Note will use reports of such organizations, but it will attempt to use concrete examples of discriminatory treatment to best demonstrate the treatment of Roma in the Czech Republic.

32, *See Roma in the Czech Republic: Foreigners in Their Own Land* CZECH REPUBLIC (Human Rights Watch), June 1996, at 15 [hereinafter *Roma in the Czech Republic*].

33. *See* Marc W. Brown, *The Effect of Free Trade, Privatization and Democracy on the Human Rights Conditions for Minorities in Eastern Europe: A Case Study of the Gypsies in the Czech Republic and Hungary*, 4 BUFF. HUM. RTS. L. REV. 275, 294-95 (1998).

provided a foundation for human rights and minority rights.[34] Article 1 of the Constitution establishes the Czech Republic as a democratic state based on respect for human rights, while Article 6 states that decisions by the majority must provide protection for the minority.[35] Moreover, Chapter 2, Article 7 of the Fundamental Freedoms states that no one can be subjected to inhumane or degrading treatment or punishment.[36] Romani activists were cautiously optimistic following the establishment of the Czech government.[37] According to Will Guy, "[t]he dramatic change offered hope of greater Romani integration into public life and first omens seemed promising."[38]

Unfortunately, reality would not follow these initial positive signs. Upon the realization that Czechoslovakia would soon disintegrate, fear arose among Czechs that a large influx of Roma from Slovakia would follow.[39] The possibility that an influx of Roma would cause a crime wave caused much consternation among Czechs.[40] This fear reflected a belief held by many Czechs, especially in the early 1990s, that Roma were generally criminals.[41] Making the situation worse, the disintegration of the Communist government had unleashed a dramatic increase in crime in Czechoslovakia, which both the media and politicians often blamed on Roma.[42]

B. *The Czech Citizenship Law*

Against this backdrop, the Czech Republic considered a new citizenship law.[43] Because Czechoslovakia had been a relatively well-integrated union of Czechs, Moravians, and Slovaks, the concept of "state citizenship was largely meaningless" because it had no effect on most citizens of Czechoslovakia.[44] This meant that many Roma

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34. *See* Kline, *supra* note 9, at 45-46.
35. *See* Brown, *supra* note 33, at 295.
36. *Id.*
37. *See* Guy, *supra* note 6, at 293.
38. *Id.*
39. *See Roma in the Czech Republic*, *supra* note 32, at 15.
40. *See* SHEPHERD, *supra* note 8, at 176. This fear of crime was especially salient at this time, as Czechoslovakia had seen large increases in crime since the fall of communism. While the communist Czechoslovak government certainly had its many faults, crime was low. Therefore, the rapid and unexpected rise in crime came as a shock to many Czechs. *See* Barbara Bukovska, *Romani Men in Black Suits: Racism in the Criminal Justice System in the Czech Republic*, *in* ROMA RIGHTS: RACE, JUSTICE, AND STRATEGIES FOR EQUALITY 138-139 (Claude Cahn ed., 2002).
41. *See* Bukovska, *supra* note 40, at 139.
42. *Id.*
43. *See Roma in the Czech Republic*, *supra* note 32, at 13.
44. *Id.*

who moved from Slovakia to Czech areas[45] after World War II did not change their nationality from Slovak to Czech.[46] Some Roma who moved from Slovakia to Czech lands after World War II[47] were still considered to be of Slovak nationality when Czechoslovakia disintegrated in 1993.[48] These Roma likely did not believe that their formal status as either Czech or Slovak under the past regime would determine how easily they would obtain Czech citizenship.[49]

The Law of the Acquisition and Loss of Czech Citizenship (Czech Citizenship Law), passed on December 29, 1992, automatically granted Czech national citizenship to those classified as "Czech" by the Czechoslovak government.[50] The Czech Citizenship Law allowed "Slovaks" to acquire Czech citizenship, subject to meeting several conditions.[51] These conditions included requirements that all applicants demonstrate a clean criminal record for five years prior to applying for citizenship and permanent residency in Czech territory for at least two years before applying for citizenship.[52]

The intent of the Czech Citizenship Law remains an open question, but many claim that it effectively prevented many Roma from obtaining Czech citizenship.[53] Many Roma could not meet the clean criminal record requirement.[54] Some have estimated that the Czech Citizenship Law rendered as much as fifty percent of the total Romani population in the Czech Republic ineligible for Czech citizenship because of the clean criminal record requirement.[55] The Czech Citizenship Law did not consider other factors, such as the severity of the crime committed, that might have mitigated the difficulty in meeting this requirement.[56] Many Roma also found it

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45. Czechoslovakia was composed of two traditional "nations," the Czech and Slovak nations. The Czech nation is further divided into two traditional areas, Bohemia to the west and Moravia to the east. *See* KREJČÍ & MACHONIN, *supra* note 8, at 8-18.

46. *See* Guy, *supra* note 6, at 297.

47. Following World War II, Czech authorities undertook an attempt to introduce Roma to more industrial regions. Because the Benes Decrees had evicted Sudeten Germans from industrial territories especially in Northern Bohemia, many Slovak Roma were moved to this area after World War II where they would remain. *See* SHEPHERD, *supra* note 8, at 118.

48. Guy, *supra* note 6, at 297. Guy states that this was due to the fact that most Roma had their origins in Slovakia and because of the circumstances of federalization of Czechoslovakia in 1968. *Id.*

49. *Id.*

50. Czech Law No. 40/1993.

51. *See* Guy, *supra* note 6, at 297.

52. BARANY, *supra* note 5, at 310.

53. *See* Haun, *supra* note 22, at 164-65.

54. *See* Guy, *supra* note 6, at 297.

55. *Id.*

56. *See Roma in the Czech Republic*, *supra* note 32, at 18. There is also considerable sentiment that this clause in the Czech Constitutional Law has an even

difficult to meet the permanent housing requirement.[57] Human Rights Watch states that many Roma decided not to request documentation from municipal housing authorities because they lived in housing that did not conform to municipal housing regulations.[58] Although no reliable estimates exist as to how many Roma did not receive Czech citizenship because of these requirements,[59] evidence suggests that the law left some Roma in the Czech Republic stateless and led to the deportation of others to Slovakia.[60]

The Czech Republic received a chorus of disapproval from human rights groups, among other organizations, regarding the effects of the Czech Citizenship Law on Roma seeking Czech citizenship.[61] Despite criticism, Prime Minister Václav Klaus and President Václav Havel defended the law as non-discriminatory because it did not facially discriminate against Roma.[62] The Czech Republic applied for membership to the EU in January 1996.[63] Both the Council of Europe (COE) and the High Commissioner of the Organization for Security and Cooperation in Europe (OSCE)[64] maintained that, even if only *de*

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more profound effect on Roma because Roma criminality tends to be monitored and prosecuted more closely than corresponding Czech crime. *See* Bukovska, *supra* note 40, at 138-41 (comparing the situation to that of African-Americans in the United States).

57. *See Roma in the Czech Republic*, *supra* note 32, at 18.

58. *Id.* at 19.

59. The Czech government maintains that only 200 former Czechoslovak citizens had been denied Czech citizenship as of December 31, 1995. *Id.* Some NGOs and other groups have placed the number of Roma denied Czech citizenship under the Czech Citizenship Law at more than 20,000. *See* Brown, *supra* note 33, at 296. Thus, it is an exercise of futility to attempt to quantify those affected.

60. *See* Guy, *supra* note 6, at 297-98.

61. *See Roma in the Czech Republic*, *supra* note 32, at 13-14. Human Rights Watch reported that "[m]ajor national and international bodies, such as the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe and the United States Commission on Security and Cooperation in Europe (Helsinki Commission), publicly stated that the law did not comport with international legal principles." *Id.* A report by UNHCR concluded that:

> those who were permanently resident in the Czech Republic should not, in January of 1993, have been classified as Slovak citizens. The individuals ... were not resident in Slovakia and had a genuine effective link with Czech territory. The attribution of Slovak citizenship to non-residents who have no effective link and have indicated, in fact, their link to be elsewhere does not conform with generally accepted rules of international law."

The Czech and Slovak Citizenship Laws and the Problem of Statelessness, The Office of the United Nations High Commissioner for Refugees, February 1996, 27 [hereinafter *Czech and Slovak Citizenship Laws*].

62. *See Roma in the Czech Republic*, *supra* note 32, at 14.

63. Carson W. Clements, *A More Perfect Union? Eastern Enlargement and the Institutional Challenges of the Czech Republic's Accession to the European Union*, 29 SYRACUSE J. INT'L L. & COM. 401, 417 (2002).

64. The OSCE is concerned with issues relating to minorities across Europe. *See generally* OSCE website, *at* www.osce.org.

facto discriminatory, the Czech Constitutional Law failed to comport with international law.[65] The OSCE sent a letter to Prime Minister Klaus, explaining that "[w]e believe that the current Czech citizenship law significantly contributes to a climate of intolerance directed against [Roma]. We urge you to repeal the exclusionary elements of the Czech citizenship law as a concrete manifestation of your government's stated desire to integrate Roma more fully into Czech society."[66]

Stung by such criticism, and wary that the EU "[would] simply not open its doors to the Czech and Slovak Republics as long as the Roma problem persist[ed],"[67] the Czech government amended the Czech Citizenship Law in 1996.[68] This amendment effectively removed the controversial "clean criminal record requirement" by exempting those living in the Czech Republic on December 31, 1997.[69]

The passage of this amendment did not stop EU criticism that the Citizenship Law still prevented Roma from obtaining Czech citizenship. The Czech government drastically amended the Citizenship Law in 2000 in response to such criticism.[70] These changes demonstrated that the EU possessed the ability, through non-legal mechanisms, to pressure the Czech government into making changes that were positive for Roma in the Czech Republic.

C. *Discrimination by Czech Governmental Actors Against Roma*

Roma in the Czech Republic have faced governmental discrimination and segregation in housing, employment, and the use of public facilities at various times since 1989 despite the constitutional guarantee against discrimination.[71] As demonstrated by the following examples, this discrimination has occurred with some frequency since 1989. Such discrimination takes various forms and can be implicit or explicit. Generally, as this section will demonstrate, the Czech government has taken effective steps to end explicit, overt discrimination against Roma. The important issue today is whether the Czech government can effectively end less overt forms of discrimination against Roma. This part of the Note will

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65. *See Roma in the Czech Republic*, *supra* note 32, at 14.
66. *See* SHEPHERD, *supra* note 8, at 118-19.
67. *Id.* at 176-77.
68. *See* Guy, *supra* note 6, at 298.
69. *See* Haun, *supra* note 22, at 166.
70. *See* Guy, *supra* note 6, at 302.
71. Roma have also faced societal discrimination with regard to housing, employment, public accommodation, and entrance into public places. *See generally id.* at 285-307. This Note will focus on the discrimination most closely connected to governmental action, however, in keeping with its theme of analyzing how the EU might improve the situation for Roma in the Czech Republic.

examine both implicit and explicit discrimination by governmental actors against Roma, and it will analyze EU reaction to such discrimination.

1. The Wall in Ústí nad Labem

If a single incident catapulted the social problems of Roma in the Czech Republic into the spotlight around the world, then it was certainly the wall built in Ústí nad Labem in 1998.[72] This wall separated a building in which several Romani families lived from buildings in which Czech families lived.[73] Ústí city officials maintained that they erected the wall in response to complaints from neighbors about incessant noise and garbage from the Romani building.[74] Ústí's Mayor referred to the fence as "a symbol of law and order."[75] Unsurprisingly, Roma in Ústí had an entirely different perception of the wall; a Romani man living in an apartment enclosed by the wall reportedly compared it to a concentration camp.[76] For him, and other Roma, the wall invoked images of the segregated ghettos of World War II and the genocide of European Roma that followed.[77] For Europeans, this wall in an insignificant Czech city served as an unwanted reminder of not only Europe's dark past, but also continuing racism against Roma in Europe.[78]

Czech politicians and the EU vociferously condemned the wall.[79] President Václav Havel alluded to the rhetorical "wall" that "seems to get larger and higher every day, and soon we won't be able to see

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72. *See, e.g., Czechs' Wall for Gypsies Stirs Protest Across Europe*, N.Y. TIMES MAG., Oct. 17, 1999, at 4.

73. *Id.*

74. *Reports Submitted by States Parties Under Article 9 of the Convention: Czech Republic*, Committee on Elimination of Racial Discrimination, 56th Sess., Addendum 1, 1401-02d mtg., ¶ 181, U.N. Doc. CERD/C/372/Add.1 (2000) [hereinafter *U.N. Report on Racial Discrimination*].

75. See *Czechs' Wall for Gypsies Stirs Protest Across Europe*, *supra* note 72. Complaints about their Romani neighbors are, in many instances, constant. According to Barany, Czechs often have a litany of complaints against their Romani neighbors. *See generally* BARANY, *supra* note 5, at 192. Among them are that Roma "use staircases as toilets; incessantly torment them with their loud music and interminable parties; throw garbage out the window; and make passing on the street or in hallways a chancy proposition." *Id.* Moreover, he writes that it has become a somewhat paradoxical situation, as Czechs have relatively few paths for remedying their concerns given the amount of pressure from outside groups to improve the situation of Roma. *Id.*

76. *Czechs' Wall for Gypsies Stirs Protest Across Europe*, *supra* note 72.

77. *See* Guy, *supra* note 6, at 300.

78. *See* Stefan Wagstyl, *Fortune Frowns on the Gypsies*, FIN. TIMES (LONDON), Aug. 18, 2001, at 22.

79. *See* Banach, *supra* note 14, at 381.

Europe over it."[80] Romano Prodi[81] cautioned that "Europe will never accept new walls separating European citizens from one another. We have had enough walls in the past."[82] The Czech government, aware of the EU's focus on the Romani issue in the Czech Republic, was stung by the EU's direct criticism.[83] The Czech national government ordered Ústí to take down the wall.[84] After some debate, Ústí officials agreed to remove the wall in exchange for money from the national government.[85] Again, this incident demonstrates the considerable influence wielded by the EU, as it compelled the Czech government to take action simply by making its condemnation of the wall in Ústí unmistakably clear.[86]

2. Discrimination with Regard to Usage of Municipal Facilities

Other types of discrimination against Roma have also persisted in the Czech Republic. Reports state that some municipalities have restricted the ability of Roma to use municipal or state facilities.[87] For example, the city of Kladno prohibited Romani children under the age of fifteen from entering the city's municipal swimming pool.[88] Kladno's Deputy Mayor defended this facially discriminatory policy by arguing that an outbreak of viral hepatitis within the Romani population necessitated such action for public health reasons.[89] In this case, the justice system successfully dealt with the discriminatory conduct when the Prague Regional Court upheld the conviction of the Deputy Mayor for inciting ethnic and racial hatred.[90]

Human rights groups have cited numerous other examples of discrimination by Czech officials against Roma. For example, in the early to mid-1990s, advertisements for public-sector jobs sometimes

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80. *Id.* (quoting AGENCE FRANCE-PRESSE, Nov. 24, 1999).

81. Prodi is now the European Commission's President and was previously the President of Italy from 1996-1998. *See President Romano Prodi - CV, at* http://europa.eu.int/comm/commissioners/prodi/president/cv_en.htm (last visited Aug. 29, 2004).

82. *See Czechs' Wall for Gypsies Stirs Protest Across Europe, supra* note 72.

83. *See* Banach, *supra* note 14, at 382.

84. *Id.*

85. *Id.*

86. *Id.*

87. While Roma have faced discrimination in using municipal or state-owned facilities, the situation has been much worse with regard to other public places, such as restaurants, discos, hotels, and pubs. *See Roma in the Czech Republic, supra* note 32, at 4. Again, however, this Note will focus primarily on those areas of Czech government control.

88. James A. Goldston, *Race Discrimination in Europe: Problems and Prospects*, 5 EUR. HUM. RTS. L. REV. 462, 468 (1999).

89. *Id.*

90. *Id.*

specified that "no Roma" should apply.[91] Generally, such overtly discriminatory advertising has ceased as sophistication regarding Romani rights has increased.[92] Still, Romani advocates maintain that many employers, including the state, persist in discriminating against Roma, because prospective employers can easily distinguish between Czechs and Roma (in most cases).[93] In its final report on the Czech application for EU membership, the EU noted that "the multi-faceted discrimination and social exclusion faced by the Roma continues to give cause for concern."[94] Still, the EU did not make specific policy recommendations, instead stating only that "considerable efforts should aim at improving the situation of the Roma."[95]

3. The Czech School System

Romani advocates also argue that the Czech education system plays a role in creating a *de facto* segregation of Czech society.[96] They maintain that this segregation occurs because Romani children are placed in special schools at much higher proportion than Czech children,[97] primarily because of deficient Czech language abilities.[98] The European Roma Rights Center (ERRC) claims that Romani children are fifteen times more likely to be placed in special schools than Czech children.[99] A study conducted by the ERRC in 1999 found

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91. *See* Brown, *supra* note 33, at 306.

92. *See* BARANY, *supra* note 5, at 312.

93. *See, e.g.*, European Roma Rights Centers, *Discrimination Against Roma in Access to Employment in the Czech Republic*, *at* http://www.errc.org/cikk.php?cikk=1073 (last visited Aug. 29, 2004).

94. *Comprehensive Monitoring Report on the Czech Republic's Preparation for Membership*, European Union, 34 (Nov. 5, 2003), *available at* http://europa.eu.int/comm/enlargement/report_2003/cmr_cz_final.pdf (last visited Sept. 6, 2004) [hereinafter *Comprehensive Monitoring Report*].

95. *Id.* at 35.

96. *Reports Submitted by States Parties Under Article 9 of the Convention: Czech Republic*, Committee on Elimination of Racial Discrimination, 66th Sess., Addendum 1, 1590-91st mtg., ¶ 119, U.N. Doc. CERD/C/419/Add.1 (2003) [hereinafter *Reports Submitted by States*]. This report does not itself criticize the Czech school system's approach, but it notes what is criticized by other organizations. *Id.*

97. These "special schools" are intended to help children who score poorly on psychological and physiological tests by providing them with smaller classes and increased attention. *See* Laura Laubeova, *Inclusive School – Myth or Reality?*, *in* ROMA RIGHTS: RACE, JUSTICE, AND STRATEGIES FOR EQUALITY 86 (Claude Cahn ed., 2002). Some Romani advocates maintain that, instead of helping such children, the schools ultimately have the effect of stigmatizing and separating Romani children from other children. *See* European Roma Rights Center, *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic* [hereinafter *A Special Remedy*], *at* http://www.errc.org/db/00/23/m00000023.rtf (last visited Aug. 29, 2004).

98. *See Reports Submitted by States*, *supra* note 96, ¶ 119.

99. *See A Special Remedy*, *supra* note 97.

that, in nine remedial schools in Ostrava, a large Moravian city, Romani children accounted for more than half of the enrollment in six of the schools.[100] Romani activists argue that this constitutes *de facto* segregation that not only prevents Czech and Romani children from interacting, but also provides Romani children with an inferior education.[101] It should be noted that others, including some Roma, argue that Romani children actually benefit from these remedial schools, where they receive individual attention that is rare in the chronically underfunded Czech education system.[102] Laura Laubeova, who serves on the faculty at the School of Social Services at Charles University in Prague, explains that, "[a]ccording to some experts, including many Roma, separate schooling on secondary level, if well funded and with high quality standards, may compensate for past discrimination and moreover provide special knowledge to Romani students that would help them in the process of enhancing the whole Romani community."[103] The EU has not explicitly stated a position with regard to these special schools.[104] This stems from the EU's belief that "[e]ducation, training and youth is [sic] primarily the competence of the Member states."[105] The EU has recommended that the Czech Republic "phas[e] out . . . the system of special schools," but it has not made this a priority.[106] It appears that the European Court of Human Rights[107] will have the opportunity to decide whether these schools comport with EU human rights law.[108] In 2000, Romani students at special schools sued the Czech government at the European Court of Human Rights (ECHR) after exhausting their domestic remedies.[109] The case, which is pending, will give the ECHR

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100. *See* Laubeova, *supra* note 97, at 86.

101. *See A Special Remedy*, *supra* note 97. The ERRC states its belief that the Czech education system has the effect that "Romani children are thereby effectively condemned from an early age to a lifetime of diminished opportunity and self-respect." *Id.*

102. *See* Laubeova, *supra* note 97, at 92.

103. *Id.*

104. *See Agenda 2000*, *supra* note 8. While this document discusses the Czech education system, it does not mention the special schools.

105. *See Comprehensive Monitoring Report*, *supra* note 94, at 37.

106. *Id.* at 34-35.

107. *See infra* section IV (describing the EU human rights regime's major principles and analyzing the EU institutions allowing Roma to seek recourse against the Czech Republic).

108. *See generally*, European Roma Rights Center, *Barriers to the Education of Roma in Europe: A Position Paper by the European Roma Rights Center*, *at* http://www.errc.org/cikk.php?cikk=3858archiv=1 (last visited Sept. 7, 2004).

109. *Id.* at n. 5. According to the ERRC,

> [l]egal complaints challenging racial segregation of Roma in special schools in the Czech Republic, filed in June 1999 by parents of a group of Romani children in Ostrava, assisted by local counsel and the ERRC, were unsuccessful at the

a chance to influence the role of these special schools in Czech education.[110]

4. Czech Criminal Justice System

Romani advocates have labeled the inability or unwillingness of the Czech criminal justice system to provide Roma with equal treatment as a further injustice against Czech Roma. What is problematic is that while statistics and anecdotes demonstrate discrimination, even Romani activists admit "most racist behaviour [within the criminal justice system] today is not openly expressed," thereby making remedies difficult to apply.[111] This section will examine two key ways in which the Czech criminal justice system has failed to provide equal treatment to Roma. First, it will examine claims that the Czech police do not treat Roma equally to Czechs. Then, it will examine claims that the Czech judicial system treats crimes committed by or against Roma differently from other crimes.[112] The Note will also try to discern if the situation is improving in the criminal justice system and what role, if any, the EU has played in this endeavor.

i. Unequal Treatment of Roma by Czech Police

International human rights groups have criticized Czech police for failing to protect Roma and for pursuing Romani criminals with greater enthusiasm than Czech criminals.[113] At a minimum, many Roma share the sentiment that Czech police sometimes do not protect

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domestic level. In its decision of October 20, 1999, the Czech Constitutional Court, acknowledging the "persuasiveness" of the applicants' arguments, nonetheless rejected the complaints, ruling that it had no authority to consider evidence demonstrating a pattern and practice of racial discrimination in Ostrava or the Czech Republic. The Court effectively refused to apply applicable international legal standards for proving racial discrimination. Having exhausted all domestic remedies, on April 18, 2000, representing 18 Romani children from Ostrava, the ERRC and local counsel filed an application with the European Court of Human Rights in Strasbourg.

Id.

110. *Id.*

111. *See* Bukovska, *supra* note 40, at 140.

112. It should be noted that Roma in the Czech Republic "enter the criminal justice system in a disproportionate number to their percentage in the general population." *Id.* at 139. This is a topic that is beyond the scope of this Note. Several explanations are proffered for this discrepancy, including: economic disadvantage, inability to hire attorneys, inherent racism in the system, and/or that Roma simply commit more crimes than Czechs. *Id.* This Note does not endorse any of these conclusions.

113. *See Roma in the Czech Republic*, *supra* note 32, at 5.

Roma when needed.[114] For example, Romani advocates argue that Czech police sometimes refuse to pursue those who attack Roma.[115] Human Rights Watch reported that

> [s]ome Roma reported that, when the police were called, they either did not come or came too late. When they did arrive, they were often slow to take action. Very rarely would the police interfere ahead of time to diffuse a potentially explosive situation.[116]

The U.N. Report Committee on the Elimination of Racial Discrimination stated that "[l]ack of confidence in the police and the claim that their security is not guaranteed appear very frequently among the reasons stated by Roma applicants for refugee status in Canada and Western European countries."[117]

Many Roma also allege that Czech police treat crimes committed by Roma differently from those committed by Czechs.[118] Human Rights Watch reported that a 1995 internal study conducted by the Czech Interior Ministry concluded that "racism [is] a serious problem within the police force."[119] Many Roma argue that racist sentiment within the police force leads to unfair treatment and discriminatory actions against Roma.[120]

To its credit, the Czech government has implemented steps to improve relations between police and Roma, particularly in the past five years. In 1997, the Czech government told the Ministry of the Interior that police training should include training on the issue of extremism.[121] Other programs have also been created to better inform police about Romani relations. For example, the Police Academy of the Czech Republic instituted specialized training courses titled, respectively, "The Charter of Fundamental Rights and Freedoms and the Application of the Constitutional Right to Security of Person in the Czech Republic" and "Racism in our Country."[122] The Ministry of the Interior has also taken steps to better define improper

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114. *Id.* The report states that "[m]any Roma told Human Rights Watch/Helsinki that they did not report incidents to the police because they did not believe it would do any good." *Id.*

115. *Id.*

116. *Id.* at 6.

117. *See U.N. Report on Racial Discrimination*, *supra* note 74, ¶ 84.

118. *See* Guy, *supra* note 5, at 295.

119. *See Roma in the Czech Republic*, *supra* note 32, at 6.

120. *See* Bukovska, *supra* note 40, at 139-45. As an example of the predisposition of police to believe in Romani criminality, some have pointed to a case in which a Romani teenager was thrown to the ground and arrested by a policeman for simply walking past an unguarded construction site near Ostrava. *Id.* at 137. The Romani teenager was accused of attempting to steal from the construction site and sentenced to 13 months imprisonment. *Id.* Such examples only lead to further estrangement between Roma and Czech police.

121. *U.N. Report on Racial Discrimination*, *supra* note 74, ¶ 166.

122. *Id.* ¶ 168.

conduct by the police and to help ensure that the police react correctly in situations involving Roma.[123] These steps, combined with a concerted effort to recruit Romani police officers,[124] have led some to conclude that relations between Czech police and Roma have improved slightly.[125]

ii. Unequal Treatment of Roma Within the Czech Judicial System

Critics charge that the Czech court system has failed Roma in several ways. First, some argue that Romani defendants face disproportionately stiff penalties for their crimes compared to Czech criminals.[126] Second, it is argued that the Czech judiciary has refused to apply antidiscrimination laws intended to protect minority groups, especially in cases involving Roma.[127] Finally, many Roma allege that some judges hand down lenient sentences when adjudicating cases involving Czechs accused of committing acts of violence against Roma.[128]

Statistics demonstrate that, for similarly situated defendants,[129] Roma receive disproportionately long sentences compared to other defendants.[130] For example, male Romani defendants charged with attacking a public official "receive on average 8.2 months longer imprisonment than non-Romani defendants" charged with the same crime.[131] Statistics regarding other crimes are quite similar: male Roma charged with drug trafficking receive imprisonment 6.5 months longer than non-Roma charged with the same crime; for murder, the discrepancy is 12.9 months; and for robbery the difference is 17.1 months.[132] Of concern is that the reasons for the discrepancies are less than clear, thus making them difficult to remedy.[133]

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123. *Id.* ¶ 169.

124. *See id.* ¶ 85. According to this report, the Ministry of the Interior prepared police training courses for Roma who wished to join the police. In the first year, five out of seventeen passed the course. While not a high percentage, the U.N. Report notes that this represents an improvement over previous courses. *Id.*

125. *See generally* BARANY, *supra* note 5, at 315-17.

126. *See* Bukovska, *supra* note 40, at 142.

127. *See* Guy, *supra* note 6, at 294.

128. *Id.*

129. Meaning defendants who are alleged to have committed similar crimes and who are of similar age and background. Bukovska, *supra* note 40, at 142.

130. *Id.*

131. *Id.*

132. *Id.*

133. As Bukovska notes, such discrepancies in sentencing do not occur solely in the Czech Republic. For example, wide-ranging studies have concluded that in the application of capital punishment in the United States, the race of the victim has emerged as the most consistent factor in when a state decides to pursue capital punishment. Defendants charged with killing white victims were 4.3 times more likely to be sentenced to death than defendants charged with killing African-American

Critics of the Czech judicial system have also claimed that it is failing to adequately punish Czechs accused of racially motivated crimes against Roma.[134] Several bases exist in Czech criminal law for the implementation of more serious penalties for racially motivated crimes. At the constitutional level, the Charter of Fundamental Rights and Freedoms protects essential human rights by several means, one of which is an antidiscrimination provision protecting minorities.[135] Furthermore, the Czech Republic has ratified several treaties obligating it to provide protection to victims of racially motivated violence or discrimination.[136] For example, the OSCE requires participatory states to

> [t]ake the necessary measures to prevent discrimination against individuals . . . [and to] make provision, if they have not yet done so, for effective recourse to redress for individuals who have experienced discriminatory treatment on the grounds of their belonging or not belonging to a national minority, including by making available to individual victims of discrimination a broad array of administrative and judicial remedies.[137]

Although not binding, the Commission on Security and Cooperation in Europe (CSCE) requires that states

> [c]ommit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic, or religious identity, and to protect their property.[138]

Moreover, in response to a spate of racially motivated violence in the early 1990s, the Czech Republic adopted a penalty scheme that allows for stiffer penalties for racially motivated crimes.[139]

Nevertheless, evidence suggests that many Czech courts have not handed down maximum sentences in cases of racially motivated crimes against Roma. A case involving the brutal murder of a Romani man serves as an example. In May 1995, four skinheads entered the

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victims. *Id.* at 141-42. Despite such statistics, there is no indication that decisive steps are being taken to remedy such discrepancies. *Id.*

134. *See Denial of Justice in Czech Race Crimes*, [ERRC], Number 1, 2002 available at http://lists.errc.org/rr_nr1_2002/snap15.shtml (n.d.) [hereinafter *Denial of Justice*].

135. *See* Kline, *supra* note 9, at 46.

136. *See Roma in the Czech Republic*, *supra* note 32, at 25-27 (listing numerous international agreements to which the Czech Republic is party, and that require the Czech Republic to protect human rights).

137. Report of the CSCE Meeting of Experts on National Minorities, Geneva, July 19, 1991, pt. IV, 30 I.L.M. 1692 (1991).

138. Document of the Copenhagen Meeting on the Conference on the Human Dimension of the CSCE, Paragraph 40.2, (G.S.C.E., June 29, 1990).

139. *Roma in the Czech Republic*, *supra* note 32, at 7.

home of Tibor Berki, a Romani man, and murdered him by beating him with a baseball bat.[140] The prosecution in the case sought the maximum penalty for racially motivated murder, alleging that the skinheads had stated in a pub that they would "get a Gypsy" before murdering him.[141] The Court, however, held that the prosecution had presented no proof of racial motivation.[142] It reasoned that because the attackers were silent while killing Berki, it could not impute racial motivation to their act.[143] Both the Czech government and human rights groups protested the Court's ruling, and the Court eventually increased the lead perpetrator's prison sentence to the legal maximum.[144]

In the aftermath of the Berki case, the Czech parliament modified the penal code to direct prosecutors to seek the highest possible sentences in racially motivated crimes.[145] The results of this renewed emphasis on punishing racially motivated crimes appear mixed. Statistics indicate that prosecutors charge defendants more often with racially motivated violence against Roma.[146] Still, there are reports of cases in which judges have refused to recognize violence against Roma as racially motivated.[147] For example, when a Czech youth threatened Romani boys because of their presence on a train "for whites only," the judge held the crime could not have been racially motivated because Roma are "of the Indo-European race."[148] Moreover, in July 2000, a Czech judge held that racial motivation played no role in the beating of an American teacher by skinheads after the teacher attempted to protect a group of Roma from their harassment.[149]

In light of these episodes, many Roma believe that the Czech justice system cannot provide justice. According to Klára Veselá-Samková, a prominent Romani attorney in the Czech Republic, Roma stand very little chance of winning a lawsuit against a Czech, especially in smaller towns.[150] She states that some judges implicitly, if not actively, support Czech defendants accused of crimes against

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140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.* at 9.
146. *See* BARANY, *supra* note 5, at 316.
147. *See Denial of Justice*, *supra* note 134.
148. James A. Goldston, *Claiming Civil Rights for Roma*, CHRISTIAN SCI. MONITOR, Sept. 3, 1997 at 20.
149. *See* HUMAN RIGHTS WATCH: WORLD REPORT 2001, *at* http://www.hrw.org/wr2k1/europe/czech.html (n.d.).
150. *See* BARANY, *supra* note 5, at 316.

Roma.[151] Moreover, Human Rights Watch has reported that many lawyers refuse to represent Roma either because of financial concerns or because of the fear of stigma for representing a Romani person against a Czech.[152]

These factors have combined to create situations in which the criminal justice system has failed to provide just sentences or verdicts, often in cases involving Czech violence against Roma. The U.N. Committee on the Elimination of Racial Discrimination's 2000 report on the Czech Republic cited several instances of lenient sentencing for defendants convicted of committing violent acts against Roma.[153] For example, in 1998, a group of skinheads physically attacked several Romani men, one of whom was run over by a vehicle after sustaining injury in the attack.[154] The Court convicted the defendants of attempt at light bodily harm and breach of the peace, acts which carry only suspended sentences.[155] In another case, skinheads threw a Romani woman to her death in a river after racially insulting her, but the Czech defendants were convicted of "extortion resulting in death" and not murder.[156]

Evidence indicates that the judicial system has become somewhat more hospitable to Roma in the past five years. In 1998 and 1999, the number of individuals prosecuted for racially motivated crimes and the number who were handed non-suspended sentences both increased.[157] Still, according to Human Rights Watch, "[r]acist attacks on Roma [have] continued, but police and prosecutors [have] frequently failed to adequately investigate and prosecute Roma

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151. *See Roma in the Czech* Republic, supra note 32, at 8. The Human Rights Watch report includes a summary of one case involving Czech violence against a Romani in which observers claimed that the courtroom was packed with skinheads who shouted at witnesses. According to the observers, the judge did little to quiet the skinheads and seemed to support them. *Id.*

152. *Id.*

153. *See UN Report on Racial Discrimination, supra* note 74, ¶¶ 75-58 (providing examples of lenient treatment).

154. *Id.* ¶ 78.

155. *Id.* The Appellate Court reversed this decision and then took jurisdiction away from the original district court. *Id.*

156. *Id.* ¶ 77.

157. *Id.* ¶ 83. According to this report,

> [i]n 1998, the courts in the Czech Republic handed down final sentences to 138 persons (eight more than in 1997) for racially motivated offences, including 13 who were sentenced to prison terms without suspension. . . . During the first half of 1999 - as indicated by the records of the Ministry of Justice- the Czech Police investigated 266 persons for racially motivated offences and actions were filed in 238 cases. Over the same period, 81 persons received final verdicts for offences motivated by racial intolerance, including seven terms without suspension.

Id.

complaints."[158] The Czech justice system recently found itself in the spotlight once again, after a court's verdict against three Czech men who broke into a Romani household and beat a pregnant Romani woman and her husband.[159] Disregarding the suggested sentencing guidelines of three to ten years for such actions, the Court granted the Czech perpetrators freedom with a conditional sentence.[160] Such examples demonstrate that, while the Czech government has taken steps to improve the criminal justice system, discrimination against Roma in that forum continues to occur.

IV. EUROPEAN UNION HUMAN RIGHTS INSTITUTIONS

As this Note has demonstrated, the EU has played an important role in shaping Czech policy toward Czech Roma, in large part because it indicated to the Czech government that its EU membership depended, at least in part, on its treatment of Roma.[161] Even with the Czech Republic's recent accession to the EU, the EU and its affiliated institutions will continue to wield considerable influence over Czech policy toward Roma. In the future, however, more of the EU's power will emanate from institutions designed to adjudicate complaints brought by Roma against the Czech government. This means that the EU's influence will likely come increasingly from its formal legal institutions. This part of the Note will provide a brief description of the EU human rights regime's major principles and will then analyze the EU human rights institutions that will allow Roma to seek recourse against the Czech government.

The EU cooperates closely with the COE, an intergovernmental consultative organization described by the EU as the "oldest institutional watchdog of human rights principles, pluralistic democracy and the rule of law [in Europe]."[162] Article 303 of the EU treaty provides the legal basis for the EU's cooperation with the COE.[163] In 1987, the European Commission and the COE reached an agreement providing for regular high-level meetings "to discuss and

158. *See* HUMAN RIGHTS WATCH: WORLD REPORT 2002, *at* http://hrw.org/wr2k2/europe8.html (n.d.).

159. *Romanies Have Reason to Emigrate After Jesenik Verdict*, C.T.K. Daily News, Jan. 13, 2004, at 2004 WL 64347725.

160. *Id.*

161. *See supra* Section III (discussing how the EU has influenced actions taken by the Czech government in response to discrimination against Roma).

162. *See* E.U. website, *at* http://europa.eu.int/comm/external_relations/coe/index.htm (n.d.).

163. *See id.*

assess co-operation in areas of mutual interest."[164] A "Joint Declaration on Co-operation and Partnership," agreed upon on April 3, 2001, further solidified the institutions' cooperation by dictating that the meetings of senior officials should be used to "draw up objectives, plan activities, monitor joint programmes and evaluate their implementation and that an annual progress report shall be drawn up for the European Commission and the Council of Europe."[165] Furthermore, the EU recognizes the unique role that the COE has played in improving human rights conditions in East Central European countries such as the Czech Republic.[166] An example of the COE's work in East Central Europe is an EU/COE joint project titled *Roma under the Stability Pact* that aims to improve the status of Roma across Europe.[167]

It should be stressed that the EU and COE are independent actors.[168] Their history of close cooperation demonstrates, however, that the COE plays an important role in improving human rights in EU member states.[169] The EU has stated that its recent enlargement will only provide more reasons for cooperation.[170] For example, the COE has mentioned the possibility of forming an associate partnership.[171] Even the current working relationship between the COE and the EU demonstrates the closeness of their cooperation.

Both the EU and affiliated human rights organizations, such as the COE, have expanded their human rights regimes in the past decade.[172] This extension has coincided with the EU's eastward expansion in Europe and also an increase in racially motivated violence across the continent.[173] In response to these developments, the Council of Europe has asked member states to take on additional human rights obligations, while granting individuals in member states greater access to European human rights institutions.[174]

The European Convention on Human Rights (Convention), signed in 1950, constitutes the foundation of the European human rights regime.[175] The Czech Republic has adopted the Convention and

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164. *See id.*
165. *See id.*
166. *See id.*
167. *See id.*
168. *See id.*
169. *See id.*
170. *See id.*
171. *See id.*
172. *See* Maxine Sleeper, *Anti-Discrimination Laws in Eastern Europe: Toward Effective Implementation*, 40 COLUM. J. TRANSNAT'L L. 177, 178-79 (2001).
173. *Id.* at 178.
174. *See generally* Peter Leuprecht, *Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Reinforcement?*, 8 TRANSNAT'L. L & CONTEMP. PROBS. 313 (1998).
175. *Id.* at 314-15.

incorporated it into its domestic law.[176] Somewhat paradoxically, the Convention itself "does not have a specific minority rights provision."[177] Therefore, some argue that "the Convention only provides a partial and indirect protection for members of minorities."[178] Protection for minorities stems from the articles of the Convention, some of which are particularly relevant for analyzing the status of Roma in the Czech Republic.

Article 1 of the Convention states that "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms" included in the Convention, which are basically the rights included in the Universal Declaration of Human Rights.[179] Article 14 of the Convention prohibits discrimination generally.[180] Although the ECHR has interpreted Article 14 relatively broadly, thus increasing its effectiveness, a party bringing an action under the Convention must invoke Article 14 in conjunction with another Convention right, somewhat limiting its effectiveness.[181] Article 3 guarantees that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment."[182] Article 5 of the Convention prohibits arbitrary state action.[183] Article 6 of the Convention builds upon Article 5 by providing that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."[184] Finally, Article 13 states that "[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority."[185]

The ECHR has become the most important European institution for ensuring the application of the rights included in the Convention.[186] In the past, individuals had to rely on their state to

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176. Gabor Kardos, *Human Rights and Foreign Policy in Central Europe: Hungary, the Czech Republic, and Poland*, *in* HUMAN RIGHTS AND COMPARATIVE FOREIGN POLICY [NEED FIRST PAGE OF ARTICLE], 232 (David P. Forsythe ed., 2000).

177. KRISTIN HENRARD, DEVISING AN ADEQUATE SYSTEM OF MINORITY PROTECTION: INDIVIDUAL HUMAN RIGHTS, MINORITY RIGHTS AND THE RIGHT TO SELF-DETERMINATION 69 (2000).

178. *Id.*

179. *See* Leuprecht, *supra* note 174, at 315. The Universal Declaration of Human Rights is available at http://www.un.org/Overview/rights.html.

180. *See* HENRARD, *supra* note 177, at 70.

181. *Id.* at 70-72.

182. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Section I, Art. 3, U.N.T.S 221 (as amended Nov. 1, 1998) [hereinafter European Convention on Human Rights].

183. *Id.* Section I, Art. 5.

184. *Id.* Section I, Art. 6.

185. *Id.* Section I, Art. 13.

186. *See* Leuprecht, *supra* note 174, at 316-17.

bring an action on their behalf at the ECHR.[187] Now, however, individuals can file suits at the ECHR not only against other parties, but also against the state itself.[188]

The ECHR was originally created as a means of enforcing the Convention, but has evolved significantly since its founding in 1959.[189] The original Convention established two part-time monitoring agencies, the European Commission of Human Rights and the ECHR.[190] In the beginning, both states and individuals could file complaints with the European Commission of Human Rights, but only if an individual's country had explicitly agreed to allow the Commission to hear such complaints.[191] Moreover, the actual court could not hear cases brought by individuals.[192]

By the early 1990s, the Council of Europe realized that it would have to reconfigure the ECHR to deal with its eastward expansion and to make the expanding European human rights regime more effective.[193] Protocol No. 11, which became effective on November 1, 1998, addressed the most glaring weaknesses of the European human rights regime by creating a "full-time, single Court to replace the Convention's former monitoring machinery."[194] More important, under Protocol No. 11, "the right of individual application is now mandatory and the Court [ECHR] now has automatic jurisdiction with respect to all inter-State cases brought before it."[195] The granting of *locus standi* to individuals "dramatically changed" the "supervisory system of the Convention."[196]

The procedures of the ECHR under Protocol No. 11 are relatively straightforward.[197] "Any contracting state, individual, or group of individuals claiming that a contracting state violated their [sic] rights

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187. *See* Antonio Augusto Cancado Trindade, *The Consolidation of the Procedural Capacity of Individuals in the Evolution of the International Protection of Human Rights: Present State and Perspectives at the Turn of the Century*, 30 COLUM. HMN. RTS. L. REV. 1, 7 (1998).

188. *See* Robert W. Stannard, *The Laws of War: An Examination of the Legality of NATO's Intervention in the Former Yugoslavia and the Role of the European Court of Human Rights in Redressing Claims for Civilian Casualties War*, 30 GA. J. INT'L. & CONTEMP. LAW 617, 621 (2002).

189. *See* The European Court of Human Rights (hereinafter ECHR website) *at* http://www.echr.coe.int/Eng/EDocs/HistoricalBackground.htm (n.d.).

190. Andrew Drzemczewski, *The European Human Rights Convention: Protocol No. 11 Entry Into Force and First Year of Application*, 224, (Nov. 1999) *at* http://www.gddc.pt/actividade-editorial/pdfs-publicacoes/7980-a.pdf.

191. *See* ECHR website, *supra* note 189.

192. *Id.*

193. *See* Leuprecht, *supra* note 174, at 326-27.

194. *See* Drzemczewski, *supra* note 190, at 225.

195. *Id.* at 224.

196. *See* HENRARD, *supra* note 177, at 69.

197. *See* Drzemczewski, *supra* note 190, at 236-39 (describing the procedure necessary to bring a claim under Protocol 11).

under the Convention may file a complaint."[198] Each application is then submitted to a Section of the ECHR, which may deny admissibility only by a unanimous vote.[199] If the Section deems the application admissible or does not unanimously reject the application, then the application is forwarded to a Chamber, consisting of seven judges, that decides both the admissibility and the merits of the claim.[200] A Chamber decides the merits of the claim after receiving written submissions and possibly holding oral hearings.[201] If the claim raises a serious question about the application of the Convention, a party may file an appeal to the Grand Chamber of seventeen judges.[202] All member states must respect final judgments of the ECHR and carry out the recommendations of the ECHR.[203]

Proposed Protocol No. 12 to the Convention represents another significant step toward allowing individual claims of racial discrimination.[204] Protocol No. 12, adopted by the Committee of Ministers of the Council of Europe in June 2000,[205] includes a much broader prohibition of racism and discrimination than other current agreements. It states that "[t]he enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."[206] Although adopted by the Council of Europe in November 2000, Protocol No. 12 has yet to garner the ten ratifications from member states necessary for it to take effect.[207]

If ratified, Protocol No. 12 could have a significant effect on antidiscrimination laws across Europe.[208] Unlike other provisions of the Convention, Protocol No. 12 allows individuals to file suits in their domestic courts, citing discrimination as the fundamental claim.[209] Thus, such individuals would not have to cite a specific

198. *Id.* at 236.
199. *Id.* at 237.
200. *Id.*
201. *Id.* at 238.
202. *Id.*
203. *Id.* at 239.
204. *See* Sleeper, *supra* note 172, at 185 (discussing how Protocol 12 removes current discrimination restraints under ECHR).
205. *Id.*
206. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 2000, art. I(1), European Treaty Series, No. 177.
207. At this time, only eight of the thirty-three countries that originally signed Protocol 12 have ratified it, including San Marino, Georgia, Cyprus, Croatia, Netherlands, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, and Bosnia-Herzegovina, *available at* http://conventions.coe.int/Treaty/EN/cadreprincipal.htm.
208. *See* Sleeper, *supra* note 172, at 185-86.
209. *Id.* at 185.

article of the Convention to allege discriminatory treatment.[210] Moreover, because the ECHR has binding jurisdiction over member states of the Council of Europe, it could require that member states bring their domestic laws into compliance with the Convention.[211]

V. THE APPLICATION OF EU HUMAN RIGHTS INSTITUTIONS: *MARGITA ČERVEŇÁKOVÁ AND OTHERS V. THE CZECH REPUBLIC*

As previously discussed, the EU will likely have to rely to a greater extent on legal institutions to monitor and influence the social and legal status of Roma in the Czech Republic.[212] Since the Czech Republic has already gained accession to the EU, the EU can no longer place conditions on Czech accession. This Note will analyze a case brought by a Romani family against the Czech government at the ECHR[213] to demonstrate the potential of European human rights institutions to provide redress to Roma claiming discrimination by the Czech government. The case itself seems relatively mundane, but the case serves as an example of how Roma in the Czech Republic can use European institutions, and especially the ECHR, as a vehicle for justice.

A. *Case Background*

The case involves six Roma (Applicants) who lived in Ústí nad Labem in 1993, five of whom were of Slovakian nationality at that time.[214] The Applicants reported that police entered their flats in February 1993 and removed their belongings without their permission.[215] According to the Applicants, the police told them to return to Slovakia because of the dissolution of Czechoslovakia.[216] The police informed the Applicants that they would obtain housing, work, and welfare benefits once in Slovakia.[217] Upon their arrival in Slovakia, however, Slovakian authorities informed the Applicants that they were not eligible to receive welfare benefits or housing.[218] Without benefits or housing, the Applicants lived at the Prešov train

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210. *Id.* at 185-86.
211. *Id.* at 186.
212. This will likely result from the Czech Republic's accession to the EU.
213. *See* Červeňáková et Autres c. République Tchèque, App. No. 40226/98 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html.
214. *Id.* The applicants all received Czech citizenship by 1994. *Id.*
215. *Id.*
216. *Id.*
217. *Id.*
218. *See* Červeňáková et Autres , App. No. 40226/98 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html .

station in Slovakia for one month before returning to the Czech Republic.[219] Upon their return to Ústí, the Applicants lived alternatively in a park and garage from April to November 1993 until the city provided them with substitute flats.[220]

B. *Procedural History of the Case in Czech Courts*

In May 1993, the Applicants filed suit against Ústí nad Labem in the District Court seeking access to their former flats.[221] Because their claim languished at the district court level for more than two years, the Applicants filed a constitutional claim against the Ústí District Court on January 3, 1996, alleging that the proceedings were unconstitutionally slow.[222] At the same time, they also filed an action against Ústí officials seeking protection of their personal rights.[223]

On November 5, 1996, the Czech Constitutional Court held that the Ústí District Court violated the Applicants' constitutional rights by not conducting the proceedings within a reasonable period of time.[224] When the District Court failed to respond to this ruling, the Applicants filed a second constitutional complaint on July 21, 1997, reiterating their objections to the proceedings' length.[225] On September 24, 1997, the Constitutional Court dismissed this second complaint, judging that the delay did not abridge the Applicants' rights.[226]

On June 25, 1998, the District Court finally issued a somewhat convoluted judgment with regard to the Applicants' initial claims. The Court held that the first two complainants should have access to their original flats, but it failed to clarify whether they were still actual tenants of the flat.[227] The District Court ordered the city to sign an indefinite lease with these two applicants.[228] With regard to the Applicants' other complaints, however, the District Court refused to grant relief, reasoning that the Applicants already had satisfactory housing.[229]

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219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. *See* Červeňáková et Autres, App. No. 40226/98 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html.
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. *See* Červeňáková et Autres, App. No. 40226/98 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html.
229. *Id.*

On July 14, 1998, the Applicants appealed to the Regional Court.[230] When the Regional Court rejected this appeal, the Applicants filed a constitutional complaint, claiming that the regional court violated Article 6(1) of the Convention by stripping them of their right to a proper defense during the hearings.[231] On September 5, 1999, the Constitutional Court dismissed the Applicants' constitutional claim.[232] After two more appeals, the Regional Court dismissed the Applicants' final appeal on June 27, 2002.[233]

C. *Taking the Case to the ECHR*

Having failed to obtain suitable redress in the Czech judicial system, the Applicants filed suit at the ECHR.[234] They maintained that Ústí officials violated Article 3 and Article 8 of the European Convention on Human Rights[235] by forcing the Applicants to live in unacceptable conditions.[236] The Applicants also alleged that the length of the domestic proceedings breached Article 6 of the Convention.[237] Moreover, the Applicants argued that the Czech Republic violated Article 13 of the Convention because the length of the domestic proceedings rendered any remedy ineffective.[238] The Applicants based these allegations in conjunction with Article 14 of the Convention.[239]

Before the ECHR could actually hear the case, however, the parties agreed on a settlement providing that the Czech government would pay the applicants 900,000 kč (approximately U.S.$33,000) in return for dropping the case at the ECHR.[240] According to the Declaration of Application announcing the settlement, "the above-mentioned sum is to cover any damage that might have been caused

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230. *Id.*

231. *Id.*

232. *Id.*

233. *See* Červeňáková et Autres, App. No. 40226/98 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html.

234. *Id.*

235. Article 3 of the European Convention on Human Rights prohibits inhuman or degrading treatment and Article 8 grants a right to respect for private and family life. *See* European Convention on Human Rights, *supra* note 182, arts. 3, 8.

236. *See* Červeňáková et Autres, App. No. 40226/98 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html..

237. *Id.*

238. *Id.*

239. *Id.* Article 14 is a general ban on discrimination. *See* European Convention on Human Rights, *supra* note 182, art. 14.

240. *See* Červeňáková et Autres, App. No. 40226/98, ¶¶ 2, 5 (Eur. Ct. H.R. 2003) *at* http://www.worldlii.org/eu/cases/ECHR/2003/402.html. (Declaration to Application No. 40226/98).

to the Applicants by the Czech Republic through its authorities, including legal expenses."[241]

D. *Analysis of* Červeňáková

For the purposes of this Note, the settlement was unfortunate because it meant that the ECHR did not have the opportunity to decide the case on its merits. Because the ECHR did not actually adjudicate the case, it remains unclear whether the group of Roma would have prevailed on the merits. The settlement lends itself to several conclusions, however, regarding the role that the ECHR will play in shaping Czech policies toward Roma in the future. First, the Czech government's willingness to pay a settlement indicates that it respects the legitimacy of the ECHR and its right to render decisions regarding actions taken (or not taken) by the Czech government. Second, the applicants obtained monetary redress only by taking their claims to the ECHR; the domestic courts granted them no monetary redress in eight years of proceedings. This demonstrates that, if discrimination in the Czech judicial system does exist against Roma, the ECHR possesses the potential to counteract such discrimination. Third, and perhaps most important, this case likely represents only a small portion of the ECHR's potential for improving the status of Roma in the Czech Republic. If Romani individuals can successfully bring suits against the Czech government at the ECHR, then the Czech government would probably be more likely to take the necessary actions to ensure that its actions are in compliance with EU human rights law.

VI. THE EU'S INFLUENCE: HAS THE EU IMPROVED THE SITUATION FOR ROMA IN THE CZECH REPUBLIC?

This part of the Note will attempt to tie together its findings before suggesting how the EU can positively affect the status of Roma in the Czech Republic in the future. As discussed above, this Note's goal is to analyze how the EU, through informal pressure and its legal institutions, has influenced how the Czech government treats Roma. The EU has effectively used informal pressure to change specific policies or actions with regard to Roma during the Czech Republic's accession negotiations with the EU. The influence of EU human rights institutions is less clear at this point, but the *Červeňáková* case demonstrates the potential that EU human rights

241. *Id.* ¶ 3.

institutions have for improving the treatment of Roma in the Czech Republic.

No consensus exists whether the status of Roma in the Czech Republic improved during negotiations for Czech accession to the EU. Some analyses cite improvement,[242] while other Romani advocacy groups maintain that discrimination and persecution of Roma remain prevalent.[243] Any attempt to quantify or summarize the influence that the EU has had on the treatment of Roma in the Czech Republic would likely be inconclusive.[244] Instead, the influence of EU informal pressure should be analyzed in specific situations before looking at the whole picture.[245]

Most important, it should be remembered that, despite some skepticism on the part of the Czech populace about Czech accession to the EU,[246] the Czech government has fully supported the accession process since at least 1998.[247] President Václav Havel has adamantly maintained that his country would only truly "return to Europe" by joining the EU.[248] The EU, however, made clear to the Czech government that it would make the Czech Republic's accession status

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242. *See, e.g.*, BARANY, *supra* note 5 , at 323 (arguing that across the region, including in the Czech Republic, "[i]n spite of all the difficulties associated with helping the Roma, by the late 1990s there was a marked improvement in state policy almost everywhere in the region. There is much less discrimination on the national and regional levels, although in local settings the Gypsies are still often disadvantaged.").

243. The ERRC, especially, maintains that there have been no noticeable improvements in the status of Roma in the Czech Republic in the past decade. *See generally Written Comments of the European Roma Rights Center Concerning the Czech Republic*, European Roma Rights Center, (April 2002) *at* http://lits.errc.org/publications/legal.

244. There are simply so many factors and such divergent viewpoints on whether progress has been achieved that any overall conclusions would be difficult to reach.

245. The World Bank noted that "[r]ecently, following EU and other international concern, the national authorities have begun to address the situation of the Roma people, and a broad program of actions on many fronts has been drawn up, though initially with only limited resources allocated for its implementation. [However], at the local level where changes have to be implemented, there continue to be frequent manifestations of prejudice against Roma." THE WORLD BANK, CZECH REPUBLIC: TOWARD EU ACCESSION (MAIN REPORT) 212 (1999).

246. Euroskeptics in the Czech Republic, at times led by Prime Minister (now President) Václav Klaus, believe that EU membership will erode Czech sovereignty. *See* Peter Bugge , *Czech Perceptions of EU Membership: Havel vs. Klaus, in* I THE ROAD TO THE EUROPEAN UNION: THE CZECH AND SLOVAK REPUBLICS 180, 187-91 (Jacques Rupnik & Jan Zielonka eds. 2003).

247. *See* Jacques Rupnik, *Joining Europe Together or Separately: The Implications of the Czecho-Slovak Divorce for EU Enlargement, in* I THE ROAD TO THE EUROPEAN UNION: THE CZECH AND SLOVAK REPUBLICS 16, 40-43 (Jacques Rupnik & Jan Zielonka eds. 2003).

248. *See* BUGGE, *supra* note 246, at 183-87 (discussing Havel's views regarding the European Union).

contingent on improving its treatment of Roma.[249] Evidence indicates that Czech leaders took this threat quite seriously and at least attempted to improve the situation for Roma.[250]

The Czech government's lingering doubt about its accession status seems to have influenced specific policies enacted by the Czech national government in the past decade. On multiple occasions, as demonstrated in this Note, the EU condemned specific actions and policies taken against Roma. The two most obvious examples occurred when Ústí erected the wall separating Romani and Czech housing, and when the international community realized that the Czech Citizenship Law prevented Roma who had lived in the Czech Republic for many years from obtaining Czech citizenship.[251] In both cases, the Czech government took the actions necessary to end the discrimination against Roma, but only after the EU applied considerable pressure.[252]

Other policies implemented by the Czech government in the past decade, including antidiscrimination plans, efforts to recruit more Romani police officers, and increased sentencing for racially motivated crimes, also indicate that EU pressure affected Czech policies in some ways. In the end, the EU concluded that the Czech government had taken sufficient steps to improve the status of Roma and granted its accession to the EU.[253] In its final report regarding

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249. *See* Lenka Anna Rovna, *The Enlargement of the European Union: The Case of the Czech Republic*, *in* PERSPECTIVES ON THE ENLARGEMENT OF THE EUROPEAN UNION 193, 200-03 (Cameron Ross ed., 2002).

250. *See id.* at 203-04 (describing a document entitled "Concept of the Government Policy towards Members of the Roma Community" which was developed in response to EU criticism of Czech treatment of Roma with regard to issues such as education, employment, housing, and the fight against discrimination.); *see also* BARANY, *supra* note 5, at 323-24 (stating that the Czech government had "put the Roma's predicament as a priority on their agendas after 1997-98 is the well-nigh relentless pressure of international organizations, especially the European Union and its related agencies.").

251. *See, supra*, Section III (describing the Ústí wall and the Czech Citizenship Law.)

252. *See, supra*, Section III (This discusses the pressures applied by the EU and the actions the Czech government ultimately took. The effectiveness and timeliness of these measures taken by the Czech government can also be debated, of course. This Note only argues that the government did take action in response to international pressure, specifically from the EU.)

253. There are arguments on both sides of this issue. On the one hand, the Accession Agreement between the Czech Republic and EU called on the Czech Republic to take steps to improve the status of Roma in the Czech Republic. *See Agenda 2000*, *supra* note 8, at 19-20. Therefore, since the EU approved Czech accession, it can be surmised that the Czech government took such steps. On the other hand, many argue that the EU is essentially unconcerned with discrimination against Roma, and many member countries want improved Czech efforts only to ensure that Roma do not migrate to their countries when borders are opened between the Czech Republic and EU.

Czech preparations for accession, the EU stated that "[t]he Czech Republic is essentially meeting its commitments and requirements arising from the accession negotiations in the areas of . . . social inclusion and social protection."[254] However, the report cautioned that "considerable efforts should aim at improving the situation of the Roma minority."[255]

The EU should continue to issue reports and monitor the treatment of Roma in the Czech Republic despite the Czech Republic's recent accession to the EU. The EU has demonstrated that it can use formal and informal pressures to affect member states' policies, even with regard to their internal affairs.[256] This indicates the EU's willingness to criticize and even sanction its own member states, meaning that Czech officials should not assume that their country's accession marks the end of EU criticism regarding the treatment of Roma.

The influence that European human rights institutions will have on the treatment of Roma in the Czech Republic is not, at this time, as clear as the influence of informal pressure. As previously discussed, an important case regarding the legality of special schools for many Romani children is pending at the ECHR.[257] How the ECHR deals with this case could have a lasting effect on Romani integration in Czech society in the coming years. *Červeňáková* demonstrated that European human rights institutions might play an important role in how Roma are treated in the Czech Republic in the future and in how Roma obtain redress for discriminatory treatment.[258]

There are several grounds for believing that *Červeňáková* represents a positive fundamental change in the judicial process. First, the human rights regime under the ECHR allows individuals to bring suits against their government for alleged violations of Convention human rights law.[259] Generally, in other international legal fora, a state must specifically agree to allow its citizens to raise

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254. *See Comprehensive Monitoring Report*, *supra* note 94, at 35.

255. *Id.*

256. An example demonstrating that the EU will remain active even with regard to the internal affairs of its members is the rise of Jörg Haider's Freedom Party in Austria, which captured twenty-seven percent of the parliamentary elections in October 1999. *See* Richard Mitten, *Austria all Black and Blue: Jörg Haider, the European Sanctions, and the Political Crisis in Austria*, *in* THE HAIDER PHENOMENON IN AUSTRIA 179, 179 (Ruth Wodak & Anton Pelinka eds. 2002). In response to the Austrian government making Haider's party a junior partner in their coalition, the other fourteen members of the European Union placed diplomatic sanctions on Austria. *Id.*

257. *See*, *supra*, Section III.C.iii.

258. *See*, *supra*, Section V.D (discussing the possible implications of the Červeňáková case).

259. *See* Trindade, *supra* note 187, at 11.

a human rights complaint.[260] Second, while Roma can obtain redress in the Czech judicial system, past discrimination has created a great degree of mistrust that taints any current decisions regarding Roma.[261] If the ECHR upholds an action taken by the Czech government, then Roma might view the decision as being more legitimate than if a Czech court reached the same conclusion. Finally, the European human rights regime has broadened and expanded its jurisdiction. It therefore possesses a legitimacy and distinction that other human rights regimes do not possess. It should have the necessary political capital to make difficult decisions with regard to issues of discrimination against Roma in the Czech Republic and elsewhere.

VII. RECOMMENDATIONS AND CONCLUSIONS

As this Note has demonstrated, the EU has the capacity, through human rights institutions and non-legal pressure, to improve the treatment of Roma in the Czech Republic. Whether the Czech Republic's Romani population will notice an improvement as a result of the country's accession to the EU is debatable. Most current EU member states, after all, hardly maintain an exemplary record when it comes to their treatment of Roma. The EU should remember that its ability to use informal pressure as a means of influencing Czech policies toward Roma could be lessened if Czechs perceive EU hypocrisy in its calls for improved conditions for Roma in the Czech Republic.

Another likely stumbling block will be the issue of free movement within the European Union. Prior to EU expansion, the citizens of all fifteen EU member states enjoyed the "freedom to move to another Member State in order to take up employment there; [the] freedom to establish themselves in other Member States . . .; and [the] freedom to provide or receive services on an equal footing to nationals, in a Member State other than their own."[262] Fearing an influx of cheap labor from East Central European countries, however, Germany and Austria have been granted an exception by the EU to deny Czechs and other East Central Europeans the right to live and

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260. *See* LAMMY BETTEN & NICHOLAS GRIEF, EU LAW AND HUMAN RIGHTS 13 (John A. Usher ed., 1998).

261. While it might not be possible to prove the existence of this taint, the general feeling of many Roma that the Czech judicial system is biased against them would almost certainly mean that Roma would be suspicious of a Czech court's holding against Roma.

262. FREIDL WEISS & FRANK WOOLDRIDGE, FREE MOVEMENT OF PERSONS WITHIN THE EUROPEAN COMMUNITY 11 (K.J.M. Mortelmans ed., 2002).

work in their countries for seven years after accession.[263] Other EU member states fear a sharp increase in Roma from the Czech Republic seeking access to state welfare benefits.[264] Support has emerged in Great Britain, for example, for reforms of the social welfare system intended in part to discourage Roma from relocating to Great Britain.[265]

Despite these concerns, the EU must continue to play an active role in bettering social and economic conditions for Roma in the Czech Republic. As demonstrated throughout this Note, EU pressure appears to make it easier for the Czech government to take actions necessary to end overt discrimination against Roma. The EU and its member states, however, must take certain actions to ensure the persuasiveness and legitimacy of its positions.

First, the EU should ensure that a citizen's right to free movement continues, even for new member states, as soon as practicable. The right to free movement has been a cornerstone of EU policy since the signing of the European Community Treaty.[266] Any perception that the EU has divided itself into first- and second-class citizens might harm the legitimacy of the EU in trying to improve the status of Roma across East Central Europe. Especially if Czechs see other EU member states acting hypocritically with regard to Czech treatment of Roma, the EU will likely find it more difficult to positively influence Czech policies toward Roma within the Czech Republic.[267]

Second, the EU must continue to monitor the social and economic progress of Roma in the Czech Republic and apply pressure when necessary to encourage action by the Czech government. Although the EU allowed Czech accession despite concerns about the status of its Romani population, this should not mean that the EU has abdicated its monitoring role. The EU should continue to prepare reports concerning Roma in the Czech Republic and ensure that the Czech Republic makes progress. If possible, the EU should attempt to make specific recommendations to the Czech government with regard to actions that the Czech Republic should take.

Finally, EU member states must continue to strengthen European human rights institutions. The ECHR, through Protocol

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263. Zuzana Kawaciukova, *Work Stoppage*, PRAGUE POST, Jan. 22, 2004, at 9.

264. *Those Roamin' Roma – Immigration from Central Europe*, THE ECONOMIST, Feb. 7, 2004, at 54.

265. *Id.*

266. *See* WEISS & WOOLDRIDGE, *supra* note 262, at 11-12.

267. *See* Michael Mainville, *Support for EU Hits Record Levels*, PRAGUE POST, Apr. 10, 2002, at 2 (describing the resolution of disputes regarding the right to free movement within the EU as one of the major reasons that support for EU membership rose among Czechs.).

No. 11, provides an effective means of recourse for an individual discriminated against by his or her government. The ratification of Protocol No. 12 would represent another step forward for the EU human rights regime; however, only five countries have yet ratified Protocol No. 12.[268] An integrated human rights regime that allows individuals to bring claims against their government for discriminatory acts would foster justice and act to initiate change in the Czech Republic's treatment of its Romani population. Europe already has an admirable human rights regime, but it should ensure that Roma from both the Czech Republic and all EU countries have access to its redress.

The EU has demonstrated that it can have a positive influence on the status of Roma in the Czech Republic. It must not allow the Czech Republic's accession to thwart its ability to influence Czech treatment of Roma.

*Matthew D. Marden**

268. It should also be kept in mind that none of the countries which have ratified Protocol No. 12 are current EU members, nor are they countries that will be joining in May. This seems to indicate that such countries may have ratified Protocol No. 12 in an effort to favorably impress the EU with regard to possible future membership in the institution.

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