

BALÁZS MAJTÉNYI

Where Are They Headed?

The Situation of the Roma Minority in Hungarian and International Law^{*}

At present, the Roma¹ live primarily in Europe. An estimated 8 and 10 million Roma live in Europe, with approximately 70% in Central and Eastern Europe. Statistics on the Roma are rather difficult to gather, and often unreliable for a number of reasons including that due to fears of prejudice and discrimination, Roma do not declare themselves as such. Reading the Regular Reports of the European Commission on the Candidate Countries, for example, it seems that the Commission tries to fix the size of Roma Communities by firing at random with statistical data. In its 1999 Regular Report, the Commission estimated the number of Romanian Roma to be between 1.1–1.5 million, but reported between 1.8 and 2.5 million in its 2002 Report.

International documents regard the Roma as a “transnational people”. Many claim they originate from the North – West of India, from whence they traveled several centuries ago. Regardless of their alleged ancestral origins, the majority believe Roma usually resemble each other physically, and therefore, are bound together by the fact that the non-Roma population regards and calls them gypsies.

Numerous questions concerning Roma in Europe have remained unanswered and it is still doubtful whether they will assimilate into majority society or demand special rights as a national or ethnic minority. I presume the answer will vary country-by-country and by the attitudes and interests of different groups of Roma within one country. Despite this assumption, one

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¹ The term “Roma” used in this paper always refers to the “Gypsy”, “Sinti” and “Traveller” categories.

European Parliament resolution states, „the conditions of life of the Roma people are a problem which can only be tackled at the international level.”² Aside from social integration a much gloomier alternative exists, to permanently remain a disintegrated segment of European society.

If a national legal system offers special minority rights and the free choice of identity, theoretically, the Roma will be granted two possibilities: assimilation or special minority rights. Obviously, the state’s solution and the legal and financial means available to support that decision, makes some difference. The state may provide special minority rights, or it may support various forms of affirmative action promoting the assimilation process, like the quota system in the USA.

To achieve both forms of social integration, states must guarantee the equal enjoyment of human rights. In an era of universal human rights protection, however, this might seem like a minimalist objective.³ Nevertheless, such a minimalist approach must be addressed as the Roma continue to “suffer systematic racial discrimination in virtually all spheres of public life: education, employment, housing, access to public space, and access to citizenship.”⁴ Unfortunately, human rights abuses suffered by the Roma are not limited to the infringement of various forms of positive distinction, but encompass the whole of known human rights violations.

If a state decides to offer special minority rights, it may include autonomy in its conception. “A well thought-out plan of autonomy, agreed to by civil society may, where appropriate, be understood to offer better protection of the rights of both majority and minority; especially the Roma.”⁵ (Although a catalogue of the special rights of minorities would be difficult to compile, at the top of this imaginative hierarchy of rights we would find the autonomy of minorities, which “constitutes the maximum legal status a minority may achieve within a state.”)⁶

² Minutes of 13/07/1995 – Final Edition B4–0974/95 Resolution on discrimination against the Roma

³ “If they have not yet done so, all the rights that are enjoyed by the rest of the population.” Resolution 6 (XXX) of 31 August 1977, the Sub Commission.

⁴ Report by Mr. Glélé-Ahnhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26.

⁵ The human rights problems and protections of the Roma. Working paper prepared by Mr. Y.K.J. Yeung Sik Yuen pursuant to Sub-Commission on the Promotion and Protection of Human Rights decision 1999/109. 46.

⁶ Georg Brunner – Herbert Küpper: European Options of Autonomy: A Typology of Autonomy Models of Minority Self Governance. In Kinga Gál (ed.): *Minority Governance*

The question of ensuring Roma participation in decision-making and both the public and political life of the countries is very important. Hungarian legislation made an attempt towards the latter when it introduced the Minority Act⁷ ensuring autonomy for the Roma minority in Hungary. (Due to territorial distribution of minorities in Hungary the principle of territorial autonomy alone would not have been applicable. Instead, the Act was formulated to combine the principles of personal and local autonomy.) The act proved futile due to the defects of its text.

The Situation of the Roma and the Minority Act in Hungary

Today the Roma constitute the largest minority in Hungary. In the 2001 census, 190,000 individuals declared Gypsy ethnicity. Sociologists, however, estimate the size of the country's Gypsy population to be about 600,000 persons. The Hungarian Roma belong to three linguistic groups: the Romungro, who speak Hungarian and who call themselves "musician Gypsies", the bilingual (Hungarian and Gypsy) Vlach Gypsies, who call themselves "Roma" or "Rom"; and the Hungarian-Romanian, bilingual Romanian Gypsies, who call themselves "Boyash".⁸

The Act included Roma on the list of national and ethnic minorities, perhaps in protest of the official Roma policy of the previous era.⁹ The Hungarian Minority Act was adopted by Parliament on July 7, 1993, with an overwhelming majority of 96.5%.¹⁰ In 1961, during the socialist times, the Political Committee of MSZMP KB- Hungarian Socialist Working People's Party, Central Committee, insisted that the Roma were not a national minority, and through social-political measures which improved their situation, aimed to assimilate the Roma. Though some results did come of these measures, they quickly disintegrated after the political transition. The concept of autonomy espoused by the Act addresses individual, Hungarian citizens belonging to

in Europe. Budapest: European Centre for Minority Issues – Local Government and Public Service Reform Initiative, 2002. 17.

⁷ Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

⁸ See in this connection István Kemény: Linguistics Groups and Usage among the Hungarian Gypsies/Roma. In Kállai Ernő (ed.): *The Gypsies/the Roma in Hungarian Society*. Budapest: Teleki László Foundation, 2002.

⁹ Georg Brunner: Die rechtliche Lage der Minderheiten in Mittel- Ost- und Südosteuropa. *Osteuropa Recht*, Vol. 40, 1994, 162.

¹⁰ The Act can be considered an "omnibus law": several other statutes contain regulations relating to the situation of minorities.

one of the minorities listed,¹¹ and encourages them to establish corporate entities in public and civil law in villages, towns and districts throughout Hungary.

Debates persist in professional circles and in academia concerning the scope of the Minority Act: was it a good idea to include the Roma among the list of minorities, or would it have been better to pursue assimilation as a more prosperous alternative in regards to social integration? A study by István Kemény and Béla Janky draws a parallel between the Romungro and the Jews in Hungary, emphasizing that both groups speak Hungarian as their first language, and the majority of both groups professed Hungarian ethnicity in the 2001 census.¹² (During the drafting of the Minority Act, Jews rejected the government's offer to include "Jew" among the list of ethnic and national minorities.) The ancestors of Hungarian Jews who entered Hungary around the 18th and 19th Century did not speak Hungarian as their mother tongue. Now, Hungarian Jews speak Hungarian and a great majority claimed Hungarian ethnicity in the 2001 census. The ancestors of the Romungros entered Hungary around the 16th to 18th centuries. They now speak Hungarian as their mother tongue and a large proportion, perhaps the majority, declared Hungarian ethnicity in the 2001 census. Yet, as a result of segregation and exclusion, the number of those declaring themselves to be of the Roma minority has increased. Vlach and Romanian Gypsies, however, appear to be on the road to assimilation. Regardless, researchers and Roma politicians frequently express their doubts over the inclusion of the Roma in the legislation. At the same time, they admit that dissolving the Roma minority self-governments created on the basis of the Minority act would be absurd, if not impossible.

The decision to include Roma among the list continues to be questioned mainly because of the deficiencies of the act. For example, the Hungarian minority electoral system allows any voter to vote for the minority candidate in his/her electoral district. Yet, due to historical experience, (in Central and Eastern Europe in the past, data on ethnicity were frequently misused to persecute and discriminate against minorities) Hungarian legislators rejected registering voters on the basis of ethnic affiliation when adopting the law. As

¹¹ The recognised minorities in Hungary are as follows: Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian.

¹² Kemény, István – Janky Béla: A 2003. évi cigány felmérésről [On the 2003 Survey on the Roma]. In Kállai, Ernő (ed.): *A magyarországi cigány népesség helyzete a 21. század elején.* [The Situation of the Hungarian Roma in the Beginning of the 21st Century] Budapest: MTA Etnikai-nemzeti Kisebbségkutató Intézet, 2003. 7–26.

a result, majority voters voting for minority candidates may be influenced by prejudice and temporary caprice. In fact, the legislation specifies that minority self-government elections and local self-government elections should be held on the same day. And, although no precise data on minorities are currently available, we can safely say that a great number of non-minority voters voted for minority candidates in these elections. Thus, the basic right of minorities is infringed upon whenever it happens that the majority decides who will represent the minority. This clearly goes against the system of minority self-government.

On International Legislation

Along with equal enjoyment of human rights, both government solutions require a form of positive distinction for the Roma. Minorities need positive distinction to combat the disadvantages of being in a minority situation. Positive measures taken to eliminate disadvantage fit the Aristotelian concept of 'equality as justice', which is based on the idea that in the same situation, everyone should be treated in the same way. In this view, one acts justly by treating similar cases similarly and different cases differently.¹³

Of the two possibilities mentioned above, the international documents seem to have committed themselves to guaranteeing special minority rights, and thereby strengthening the concept of Roma nation. This approach is most obviously present in the documents of the Council of Europe (CoE). In one of its recommendations, the Parliamentary Assembly of the CoE stated: "The majority population must accept Roma into society without assimilating them, and support Roma as a disadvantaged social group."¹⁴ Or, "Roma must be treated as an ethnic or national minority group in every member state, and their minority rights must be guaranteed."¹⁵ Member states are usually recommended to guarantee the Roma implementation of provisions included in three – to some extent normative – international minority documents: the International Covenant on Civil and Political Rights (Article 27), the Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages.

¹³ See in this regard Kymlicka, Will: *Multicultural Citizenship*. Oxford, Oxford University Press, 1995. Ch. 6., 107–130. Sajó, András: *Jogosultságok*. [Rights] Budapest: MTA JTI-Seneca, 1996. Chapter VI.: Nemzetérzület és alkotmányos jogok. [National feelings and constitutional rights] 177–202.

¹⁴ Recommendation 1557 (2002) The legal situation of Roma in Europe 9. point

¹⁵ Recommendation 1557 (2002) The legal situation of Roma in Europe 6. point

As regards the European Union's treatment of minorities, one must note that the Commission addresses the Roma question in its Regular Reports not in the general framework of political and civil rights, and/or economic, social and cultural rights, but in a separate chapter for the protection of minorities and minority rights. EU devotion to minorities might seem strange when Western European states like France do not even recognize the existence of national minorities. This approach, however, is supported by international organizations who, when dealing with the Roma issue, often limit their attention to Central and Eastern Europe. In fact, this is not an unusual practice in the field of minority protection; provisions for minorities accepted by the League of Nations in the pre-WWII period only covered Central and Eastern Europe, and today, the High Commissioner on National Minorities only exerts its activities in this region. Therefore, it's not unique that the EU only demanded in candidate countries the guarantee of special rights for minorities.

On the Security Based Approach

The minority question is, being treated both in the framework of human rights protection and as a security question in the East and the West, and this attitude unambiguously presents itself on the international stage as well. International organizations treat the international protection of minorities as a part of international human rights protection,¹⁶ but they sometimes regard it as a security policy issue.¹⁷ Present in the documents of the OSCE (Organization for Security and Co-operation in Europe), we may also encounter this

¹⁶ One can read, for instance, in Article 1 of the Council of Europe's Framework Convention for the Protection of National Minorities the following: "The protection of national minorities and of rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and such falls within the scope of international co-operation." In connection to the human rights approach, see in detail Felföldi Enikő: *The Characteristics of Cultural Minority Rights in International Law – With Special Reference to the Hungarian Status Law*. In Zoltán Kántor – Balázs Majtényi – Osamu Ieda – Balázs Vizi – Iván Halász: *The Hungarian Status Law: Nation Building and/or Minority Protection*. Slavic Eurasian Studies No. 4, Sapporo: Slavic Research Center, Hokkaido University, 2004. 431–460.

¹⁷ In connection to this, see in detail: Fernand De Varrenes: *Minority Rights and the Prevention of Ethnic Conflicts*. UN Commission on Human Rights Sub-Commission on Promotion and Protection of Human Rights Working Group on Minorities, Sixth session, 10 May 2000. E/CN.4/Sub.2/AC.5/2000/CRP.3; Ted Gurr - Barbara Harff: *Minorities at Risk: a Global View of Ethnopolitical Conflicts*. Washington D.C.: U.S. Institute of Peace. 1995; Ted Gurr: *Peoples versus States: Minorities at Risk in the New Century*. Washington D.C.: U.S. Institute of Peace 2000.

outlook in several resolutions of the Parliamentary Assembly of the CoE and in the regular reports on former accession countries made by the European Commission as well. The relationship between the security policy approach and the current idea on human rights creates some tension as it could lead to a utilitarian concept of human rights presently rejected by the current theory of human rights. It could result in the legalization and institutionalization of a dangerous viewpoint from which one could diverge from the general protection of human rights in two ways. On the one hand, the human rights of persons endangering peace and security are restricted in certain cases, as in the Iraqi jail of Abu Graib, or in Guantanamo. On the other hand, granting special minority rights might appease security menaces in the interest of greater social usefulness. On the contrary, according to current legal theory, the threat of individuals, or groups of individuals, to security may not lead to any infringement of general human rights, or to the provision of special rights. As human rights are based on the fact that a human is a moral creature and that every man is equally valuable, only in very exceptional cases can we accept measures restricting human rights for the public good. If we resign ourselves to utilitarianism, these individuals or groups of individuals might become a tool of lofty community objectives.

The security policy approach is reflected in the limited mandate of the OSCE High Commissioner on National Minorities,¹⁸ and in its documents addressing the Roma issue. It also seems justified by the fact that the European Union was particularly interested in the fate of the Roma minority during the accession process. While the Regular Monitoring Reports dealt with Roma living in accession countries in great detail, the Comprehensive Monitoring Reports, which were accepted at the end of the accession process, gave limited space to the Roma question.

Furthermore, several statements contained within international documents can be interpreted only in light of the security approach. For example, one can find among the European Parliament Resolutions: “recognizing that there is widespread discrimination against the Roma in practically every country where they are settled, but that their numbers in Central and Eastern Europe make the problem particularly acute.” Or in the Report of the OSCE High Commissioner on

¹⁸ The office of the High Commissioner was established to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between participating States. In relation to this, see CSCE Helsinki Document 1992. The Challenges of Change II. See in detail: Walter Kemp: *Quiet Diplomacy in Action*. The Hague: Kluwer Law International, 2001.

National Minorities one can read the following concerning positive distinction: “Policies should be also considered and instituted in such a way that intra-community tensions are not exacerbated by (the appearance of) unfairly favorable treatment for one group over others.”¹⁹

Deficiencies of the International Documents

International organizations also lack consistency. This can be seen especially in the case of the Regular Reports of the European Commission, which in one year address a question in a separate chapter, and in the next year, drop the issue entirely, only to take it up again later. The Regular Report of 2000 on Poland, for example, mentions “some acts of discrimination by public authorities and violence against Roma do take place.”²⁰ In reports for the following years, however, no mention is made about discrimination by public authorities, from which one might deduce that the problem was meanwhile satisfactorily solved. Or, the Bulgarian Report mentions, for example, that “police protection is inadequate,”²¹ and later says nothing about the matter.

In some cases one might even note a confusion of concepts. For instance, minority education related to the Roma is often confused with, or dealt together with, the segregation of Roma at school.²² Consequently, international documents often do not separate theoretically negative discrimination and positive distinction. Thus, it’s not by accident that a recommendation of the Committee of Ministers – while supporting and promoting minority education for Roma children – draws attention to the danger of this “lead[ing] to the establishment of separate curricula, which might lead to the setting up of separate classes.”²³

Now and then we can even find prejudiced views in these documents. *The Human Rights Problems and Protections of the Roma*, UN working paper, speaks of the building of the notorious wall in the Czech town of Usti nad Labem, (the wall separated the Roma and non-Roma population). The paper mentions the following:

¹⁹ Report of the OSCE High Commissioner on National Minorities to Session 3 (“Roma and Sinti”) of the Human Dimension Section of the OSCE review Conference, Vienna, 22 September 1999.

²⁰ Poland 2002 Report (Minority rights and the protection of minorities)

²¹ Bulgaria 1999 Report (Minority rights and the protection of minorities)

²² The practice of systematically routing Roma students to “special schools” for the mentally disabled is the most widespread form of segregation in certain countries.

²³ Recommendation of the Committee of Ministers to Member States on the Education of Roma/Gypsy Children in Europe Recommendation No. R (2000) 4.

“Whilst it cannot be denied that the municipal authorities of that town might have had some genuine cause for concern or could have taken reasonable action to eliminate the noise and visual pollution coming from the two blocks of flats which were source of inconvenience to the non-Roma neighborhood, the proposal to build a wall to separate and segregate the two communities was most disquieting since it amounted to an affront to human dignity and was a clear breach of the principle of equality of individuals before the law.”²⁴

This document also stated: “Roma children are usually breastfed till they are 6 or 7 years old and thus have barely been exposed to mainstream influence, including language, when they start their schooling.”²⁵ This is the sole instrument adopted at the universal level that focuses exclusively on the situation of the Roma.

Documents adopted by international organizations concerning the Roma are frequently incoherent, making it difficult to deduce any common regulatory elements from them. At most, one can claim that in general, these documents are characterized by a security policy approach and regularly recommend the prohibition of discrimination. Furthermore, while perhaps overly committed to the concept of the Roma-nation, they fail to take into consideration the possibility of alternative forms of positive distinction.

Index of International Documents

UN

- Report by Mr. Glélé-Ahnhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26
- Discrimination against Roma: 16/08/2000.
/International Convention for the Elimination of All Forms of Racial Discrimination, CERD General Recommendation 27 (General Comments) (Fifty-seventh session, 2000)/
- The Human Rights Problems and Protections of the Roma. E/CN.4 Sub.2/2000/28, 23 June 2000
Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-second session.

²⁴ The Human Rights Problems and Protections of the Roma E/CN.4 Sub.2/2000/28, 23 June 2000, Paragraph. 24.

²⁵ *Ibid.* II: Human Rights Problems of the Roma B Socio-economic Problems 2 Education 25.

- The Human Rights Problems and Protections of the Roma Sub-Commission on Human Rights Decision 2000/109

OSCE (CSCE)

- Roma (Gypsies) in the CSCE Region, Report of the High Commissioner on National Minorities 1993.
- Report of the OSCE High Commissioner on National Minorities to Session 3 (“Roma and Sinti”) of the Human Dimension Section of the OSCE review Conference, Vienna 22 September 1999.
- Report on the Situation of the Roma and Sinti in the OSCE area. The Hague, March 2000.

COUNCIL OF EUROPE

- Recommendation 563 (1969) on the Situation of Gypsies and Other Travelers in Europe (Consultative Assembly)
- Recommendation 1203 (1993) on Gypsies in Europe (Parliamentary Assembly)
- ECRI General Policy Recommendation N: 3 CRI (98) 29 rev
- Recommendation of the Committee of Ministers to Member States on the Education of Roma/Gypsy Children in Europe Recommendation No. R (2000) 4 (Adopted by the Committee of Ministers on 3 February 2000 at the 696th meeting of the Ministers’ Deputies)
- Recommendation Rec(2001)17 on Improving the Economic and Employment Situation of Roma/Gypsies and Travelers in Europe
- Recommendation 1557 (2002) The Legal Situation of Roma in Europe

EUROPEAN UNION

European Commission

- AGENDA 2000
- Regular Reports 1998
- Regular Reports 1999
- Regular Reports 2000
- Regular Reports 2001
- Regular Reports 2002
- Regular Reports 2003

- Comprehensive Monitoring Reports
(Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia)

The European Parliament

- Minutes of 13/07/1995 – Final Edition B4–0974/95 Resolution on Discrimination Against the Roma
- Resolution on Abuses Against Roma and Other Minorities in the New Kosovo, Minutes of 07/10/1999 – Final Edition Human rights: Situation of the Roma people in Kosovo B5–0147, 0151, 0166 and 0174/1999
- Resolution on the Situation of Women from Minority Groups in the European Union (P5_TA-PROV(2004)0153, A5–0102/2004)