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Militsa Danielova Danova

## Roma as a Unique Cultural Minority: the Impact of Communism and Democratisation on Roma in Eastern Europe

This thesis examines the socio-economic situation of Roma in three Eastern European countries: Bulgaria, Romania and Hungary. It observes that the governments of these three countries, to varying degrees, have failed to develop effective policies for improving the marginal situation of the Roma minority. My hypothesis is that one of the key factors explaining this failure is the fact that ‘the dominant group – ethnic minority’ relations in these countries have been based on a liberal as opposed to a multicultural model.

An examination of the academic literature on accommodating ethnic minority rights reveals two main models that deal with the rights of minority cultures. The first, the liberal model, focuses on human rights and advances the idea that the best way to improve the quality of life of ethnic minorities would be to treat their members in the same way as the members of the dominant ethnic group. The second, the multicultural model, demands special protection of the culture of minority groups and views this as an essential precondition for improving the minority group’s socio-economic condition.

The thesis argues that both the policies of the Eastern European governments, as well as the monitoring mechanisms adopted by the international community are based on the liberal approach which promotes the implementation of human rights standards. These policies have not been successful which in turn casts doubt on the suitability of the liberal model as a solution to the problematic situation of the Roma in the three Eastern European countries studied here.

The thesis examines two other factors that explain the poor socio-economic status of Roma in Eastern Europe: the unique situation of the Roma minority as one lacking an external homeland that could support its minority abroad and the unique geo-political situation of these Eastern European countries whose other minorities do have external homelands and are seen as posing a security threat to the host countries. Thus the Roma suffer the twofold disadvantage of having no external protection and of being the target of the negative attitudes aimed at the other ethnic minority groups due to the perceived security threat to the territorial integrity of these states.

The analysis demonstrates that the Roma minorities in Hungary fare better than in Bulgaria and Romania due to the lack of the above mentioned security issues vis-à-vis other ethnic minorities.

Roma as a Unique Cultural Minority: the Impact of Communism and Democratisation on  
Roma in Eastern Europe

Militsa Danielova Danova

In partial fulfillment of the requirements for the degree PhD in Political Science

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## **Introduction**

This thesis explores the situation of the Roma minority in Eastern and Central Europe. It delves into the history and social status of Roma in three Eastern and Central European countries: Bulgaria, Hungary, and Romania. The governments in Eastern Europe, and more specifically those of Bulgaria and Romania, have failed to develop a set of policies, adequate for dealing with the marginal and unequal position of the Roma. To help explain why states have been ultimately unsuccessful, the thesis examines theories of multiculturalism and nationality in light of the Roma's unique position, the functioning of the international system of human rights, and the geopolitical situation of states in Eastern Europe.

My hypothesis is that one of the key factors explaining the failure of Eastern European countries to deal adequately with their Roma minorities is the fact that 'the dominant group – ethnic minority' relations in these countries have been based on a liberal as opposed to a multicultural model.

An examination of the academic literature on accommodating ethnic minority rights reveals two key models that deal with the rights of minority cultures. The first, the liberal model, focuses on human rights and advances the idea that the best way to improve the quality of life of ethnic minorities would be to treat their members in the same way as the members of the dominant ethnic group. The second, namely the multicultural model, demands special protection of the culture of minority groups and views this as an essential precondition for improving the minority group's socio-economic condition. The thesis demonstrates that the international system of human rights, which sets minority rights standards for states to adopt, is almost entirely based on the liberal model. The national governments in Eastern Europe also show preference for the liberal model over the multicultural model, which is based on the protection of minority cultures. Two explanations emerge for the preference of states for the liberal model on a global level and in their domestic affairs. First, states still prioritise their territorial integrity and believe that stronger forms of multicultural rights, such as the right to autonomy, would not help them reach this goal. Therefore, the focus of the international monitoring organisations on human rights (in line with the liberal model) as opposed to cultural rights (in line with the multicultural model) fits well with the territorial and/or security concerns of Eastern European countries.

Secondly, the governments of Bulgaria and Romania are unwilling to adopt multicultural policies due to the overall negative attitude of the dominant groups toward their ethnic minorities. This problem has its roots in historic developments that are unique in these states. Bulgaria, for example, had been under the domination of the Ottoman Empire for nearly five centuries of its history<sup>1</sup>, and its current Turkish minority is a permanent reminder of the subjection of the Bulgarians by the Turks in the past. At present, the Turkish state is a neighbouring state of Bulgaria and an external national homeland of the Turkish minority. Claims for succession and autonomy are an always present threat to territorial integrity. In Hungary, this problem does not exist as the country has fairly integrated and small-scale minorities with no external national homelands. This facilitates the introduction of stronger forms of minority protection in the country, which are of benefit to Roma people.

Because of the unique position of the Roma as a transnational, non-territorial minority with no external national homeland, the Roma do not fit the nationality model developed by Rogers Brubaker, which situates minorities in the triad nationalising state – external national homeland – national minority.<sup>2</sup> The liberal model of citizenship rights is not suited to alleviate the unequal and marginal status of the Roma. Endorsed by theorists such as John Locke, Thomas Hobbes, Jean-Jacques Rousseau, Brian Barry, Chandran Kukathas, and David Miller, the liberal model opposes either the existence of ethnic minorities or the protection of minorities by the state. I point out the relevance of Will Kymlicka's multicultural model of cultural rights, proposing some changes as to accommodate the problems consistently experienced by the Roma people. In general, cultural rights can offer protection to the Roma by allowing them to keep their unique and separate characteristics. It is 'integration without forced assimilation.'<sup>3</sup>

The first chapter looks at the key features of nationality in Eastern Europe. An exploration of these features helps explain why the dominant groups in the region view their ethnic minorities as a threat to the territorial integrity and security of the state. The finding

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<sup>1</sup> Bulgaria had been under Ottoman domination between the 14<sup>th</sup> and 19<sup>th</sup> century.

<sup>2</sup> Brubaker, Rogers, *Nationalism Reframed: Nationhood and the National Question in the New Europe*, (Cambridge: Cambridge University Press, 1996), pp. 4.

<sup>3</sup> Henrard, Kristin, "The Interrelationship between Individual Human Rights, Minority Rights and the Right to Self-Determination and Its Importance for the Adequate Protection of Linguistic Minorities", *The Global Review of Ethnopolitics*, 1:1 (2001), [[http://www.ethnopolitics.org/ethnopolitics/archive/volume\\_1/issue\\_1/henrard.pdf](http://www.ethnopolitics.org/ethnopolitics/archive/volume_1/issue_1/henrard.pdf)] (accessed: 16 November, 2010).

that the dominant groups have a hostile attitude toward their minorities helps explain the preference of the Eastern European states for the liberal model as opposed to the multicultural model. The chapter examines these models in the context of the liberal – multicultural debate. The aim is to establish which of the two models allows development in the right direction – the direction of significant improvement of the socio-economic situation of the Roma.

The second chapter examines human rights standards adopted by the international community. These standards are based on the liberal approach and have ultimately failed to bring a significant improvement of the socio-economic situation of the Roma. The absence of sound minority guarantees is regrettable in view of the vulnerable position of the Roma. The chapter establishes that protection of the Roma has been virtually absent until the 20<sup>th</sup> century. Within the current human rights framework, most standards focus on human rights rather than cultural rights. This chapter establishes that states still prioritise territorial integrity and national cohesion over minority protection, especially in Eastern Europe. Moreover, Roma-related standards and measures are unpopular with the electorates of most nations.

The third chapter assesses the application of international monitoring instruments that monitor states' compliance with human rights standards. The bodies I investigate are the UN Office of the High Commissioner for Human Rights, the Office for Democratic Institutions and Human Rights, and the EU Monitoring Centre on Racism and Xenophobia. Three major problems emerge: partiality of states toward other states' violation of human rights, underlying lack of power to enforce policies, and unwillingness to focus efforts on the protection of Roma people. I conclude that such absence of impartiality may create fears among Eastern European states that multiculturalism is an instrument of the West against their territorial integrity. Secondly, the three monitoring bodies are not actually empowered to monitor states' compliance with human rights standards. They suffer from insufficient funding and staffing resources, which hints at the low motivation of states to become engaged in full-scale monitoring. The lack of power and resources suggests that decision-making is still in the hands of the governments. In addition, these bodies are not engaged in monitoring the states' implementation of Roma-related standards, and their work is being limited to small-scale projects for Roma integration.

To establish the past developments that modeled Roma identity, the fourth chapter gives a historic overview of the treatment of Roma by the Bulgarian, Hungarian, and Romanian dominant groups. The historic fate of the Roma is important because it has led to their unique and unequal position. The focus of this chapter is on historic marginalisation, demonstrating that this process is not recent, but has taken many centuries. Discriminated minorities are even more vulnerable to suffering because of historic injustices such as assimilation, enslavement, or discrimination. By examining past injustices against the Roma, the chapter affirms the need of acknowledging Roma identity and adopting group rights, targeted at the specific circumstances of the minority.

The fifth chapter examines the extent, to which the Bulgarian, Hungarian, and Romanian governments show preference for the liberal model, focused on citizenship, or the multicultural model, focused on the protection of minority cultures. I expand on Kymlicka's security argument to explain the preference of Bulgaria and Romania for the liberal over the multicultural model. In Bulgaria, the dominant group considers itself to be the victim of historic injustice at the hands of its Turkish minority. Thus, ethnic minorities are perceived as posing a security threat to the territorial integrity of the state.<sup>4</sup> In Romania, historical land redistributions have resulted in the annexation of Hungarian-populated territories, and the large Hungarian minority living there is seen as a threat to the security of the Romanian state. The Hungarian state does not have large and active ethnic minorities living on its territory, as is the case with Romania and Bulgaria. The ethnic minorities in Hungary are largely assimilated and dispersed and do not pose a security threat.

The chapter also offers an analysis of government policies and measures toward the integration of Roma in Bulgaria, Hungary, and Romania after the fall of Communism. The Bulgarian and Romanian authorities have adopted policies based on the liberal approach, which have not been successful in dealing with the problematic situation of the Roma. The developed strategies contain multiple measures, but the large scope of the programs has led to the inadequate and inconsistent implementation of the planned measures. Hungary has been more successful in improving the socio-economic situation of the Roma, due in part to better planning, coordination and monitoring, and greater resources. Another reason why the

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<sup>4</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, (Oxford: Oxford University Press, 2007), pp. 187-90.

Roma minority in Hungary fares better than in Bulgaria and Romania is the adoption of policies based on the multicultural model, such as non-territorial autonomy.

The conclusion summarises the results of the different chapters and evaluates the existing mechanisms and practices for the protection of ethnic minorities in view of the unique position and socio-economic circumstances of the Roma minority. I conclude that the Eastern European countries have failed to deal with the problematic situation of the Roma due to their choice of policies, based on the liberal model as opposed to the multicultural model. At the same time, the geopolitical situation of the Eastern European states and the unique situation of the Roma as a transnational, non-territorial minority without an external national homeland are important factors when outlining suitable policies to accommodate their culture.

## Chapter 1

### Theoretical Debates on Rights for Ethnic Minority Groups

#### 1.1. Introduction

Chapter one explores the nature of minority rights. It examines various models of minority protection and aims to review alternatives for the inclusion of Roma in their societies. Firstly, the chapter discusses the relationship between the nation and ethnic minorities in Eastern Europe. I explore the key features of nationality in Eastern European states and how these features help explain the treatment of ethnic minorities in the region. Secondly, the chapter explores the grounds on which ethnic minorities can claim special rights as such. I offer a discussion on whether the interests of the members of minority groups would be served better if their culture were to be assimilated into the dominant one as a result of which they will share fully the privileges of the dominant culture. Alternatively, I address the question of whether the interests of members of minority groups would be served better if their culture as a whole was granted special protection. The chapter consists of two sections. The first section examines nationality in the context of Eastern Europe and the relationship between dominant groups and ethnic minorities. The section reviews the positive aspects of nationalism in Western democracies and addresses the reasons why the benefits of patriotism are not applicable to Eastern European states.

Kenneth Jowitt examines the dynamic of relations between dominant groups and ethnic minorities. He notes that the perception of minorities seeking more power is a source of conflict.<sup>5</sup> Brubaker looks at why the Eastern European dominant groups have a hostile attitude toward their minorities. This attitude is a response to the efforts of external national homelands to protect the interests of co-nationals living in these states.<sup>6</sup> Kymlicka argues that dominant groups in Eastern Europe view their minorities as irredentist and loyal to a neighbouring state which is their kin-state.<sup>7</sup>

The second section of the chapter explores the liberal – multicultural debate on the fair treatment of ethnic minorities, articulating the arguments of the proponents and

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<sup>5</sup> Jowitt, Kenneth, *Social Change in Romania, 1860-1940: A Debate on Development in a European Nation* (Berkeley: Institute of International Studies, 1978), p. 13.

<sup>6</sup> Brubaker, Rogers, *Nationalism Reframed: Nationhood and the National Question in the New Europe*, p. 5.

<sup>7</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 186.

opponents to minority protection. The first part of the section on the liberal – multicultural debate examines the views of traditional liberals such as Locke, Rousseau, and Hobbes who claim that group rights are incompatible with national cohesion and state integrity. Miller reasons that minority protection results in unfair distribution of resources and widens the social gap between communities.<sup>8</sup> The second part of this section presents the argument of another group of liberals, Barry and Kukathas, who recognise the importance of ethnicity for minority groups. However, the possible misuse of ethnicity for political purposes and profiteering is a cause of concern for these liberals.<sup>9</sup> In sum, this group of scholars questions the overall utility and desirability of the protection of minority rights.

The second part of the section on the liberal – multicultural debate moves away from the potential threats to the liberal state and examines the negative impact of the dominant culture's social arrangements on the identities and quality of life of minority groups. The section discusses different conceptions of minority protection that would benefit ethnic communities. In addressing these issues, I first look at culture as a context of choice. Kymlicka makes the point that the choices people make are dependent on the cultural values they have internalized. If the dominant group treats the cultures of ethnic minorities as inferior, these cultures cannot serve as a context of choice.<sup>10</sup> Because culture has this important function, I look at the difficulties associated with giving up one's own culture. Ayelet Shachar notes that persons who renounce their cultural background must leave behind everything that is meaningful to them.<sup>11</sup> Jacob Levy complements this argument by pointing out that members of ethnic groups are raised to regard the dominant culture as alien, and this acts as a barrier to leaving one's ethnic community.<sup>12</sup>

Because it is difficult to renounce one's culture, which is important for its bearers, I examine the need to give political recognition and visibility to cultural differences. Anna Galeotti notes that admitting minorities into the public domain is a way to legitimise their

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<sup>8</sup> Miller, David, *Citizenship and National Identity*, (Cambridge: Polity Press, 2000), pp. 28-32.

<sup>9</sup> Barry, Brian, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, (Cambridge: Polity Press, 2000), pp. 314-5; Kukathas, Chandran, "Are There Any Cultural Rights?", *Political Theory* 20:1 (1992), p. 113-4.

<sup>10</sup> Kymlicka, Will, *Multicultural Citizenship A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1985), p. 81.

<sup>11</sup> Shachar, Ayelet, "On Citizenship and Multicultural Vulnerability. Positioning Rights in Multicultural World", *Political Theory*, 28:1 (2000), p.79.

<sup>12</sup> Levy, Jacob, *The Multiculturalism of Fear*, (Oxford: Oxford University Press, 2000), p.113.

presence in society, giving them a sense of entitlement to their ethnic identity.<sup>13</sup> I then explore the antipode of political recognition and visibility – the non-recognition of ethnic identity – and its adverse effects on one’s self-image. Charles Taylor has examined the problems of non-recognition and misrecognition and the resulting internalization of distorted ideas of oneself by minority members.<sup>14</sup>

I also examine redistribution as a necessary supplement to recognition. Nancy Fraser notes that dominant cultures need to reconsider the stereotypic representations of cultural identities and reform the economic and social structure. In his view, questioning preexisting group identities will help eliminate the grounds for discriminatory treatment, cultural biases, and Eurocentrism.<sup>15</sup> Subsequently, I review arguments in support of group-based rights, which build further on the ideas of public visibility and recognition. Bhikhu Parekh and Kymlicka, in particular, argue that group-based rights can remedy the unequal position of minorities. I employ Parekh’s idea that collective rights guarantee equal respect and opportunities for ethnic minorities. They help ethnic minorities participate in the private and public spheres of life and give them more power over resources.<sup>16</sup> Like Parekh, Kymlicka points to the importance of legal and political recognition of cultural differences, arguing that minorities require special protection against unfair economic and political decisions of the larger society. A number of practices such as state symbols, official languages and holidays, and gerrymandering constitute preference for certain identities and needs over others. Given the many ways, in which dominant cultures hamper the expression of minority identity, special protection is required to remedy the unequal standing of ethnic communities.<sup>17</sup> I also look at Laurence Thomas’s argument about the importance of dialogue for minority – dominant culture relations. In his view, empathizing with the suffering of ethnic minorities is a step towards establishing a more socially just society.<sup>18</sup>

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<sup>13</sup> Galeotti, Anna, *Toleration as Recognition*, (Cambridge: Cambridge University Press, 2002), p. 101.

<sup>14</sup> Taylor, Charles, “The Politics of Recognition”, in Gutmann, Amy, and Charles Taylor, eds., *Multiculturalism and the “Politics of Recognition” an Essay*, (Princeton: Chichester, Princeton University Press, 1992), p. 25.

<sup>15</sup> Fraser, Nancy, “A Rejoinder to Iris Young” in Willett, Cynthia, *Theorizing Multiculturalism: A Guide to the Current Debate*, (Cambridge: Mass, Oxford: Blackwell, 1998), pp. 39-40.

<sup>16</sup> Parekh, Bhikhu, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, (Cambridge: Harvard University Press 2000), p. 204; p. 216.

<sup>17</sup> Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995), pp. 108-9.

<sup>18</sup> Thomas, Laurence „Moral Deference” in Willet, Cynthia, *Theorizing Multicultural Citizenship: A Guide to the Current Debate*, (Cambridge: Mass, Oxford: Blackwell, 1998), p. 378.

Finally, I revisit the arguments in favor of minority protection and their relevance to the protection of the Roma. I focus on culture as a context of choice, the difficulty of exit, political visibility, recognition of cultural differences, redistribution as a supplement to recognition, legal and political inclusion of cultural differences, and moral learning as ways of accommodating ethnic minorities.

## **1.2. Eastern Europe: nationalising states and minority rights**

Jowitt examines the tense relationship between dominant groups and their ethnic minorities. For him, conflict develops when dominant groups feel threatened by minorities seeking more power. Brubaker looks more closely at the relationship between nationalising states, their ethnic minorities, and the external national homelands of these minorities. The Eastern European dominant groups have a hostile attitude toward their minorities because they make claims for more rights while their external national homelands seek to defend their interests. Brubaker's triad, nationalising state – external homeland – national minorities, helps us understand how ethnicity has become a major source of tension.

Kymlicka also examines the relationship between the Eastern European states, their national minorities, and the kin-states of these minorities, which controlled the currently dominant nations in the past. National minorities supported the efforts of the former subjugators to establish hegemony in the region and are thus viewed as disloyal and irredentist. Because minorities are viewed as a threat to national security, the dominant groups in Eastern Europe are firmly opposed to minority group rights.

Looking at the situation in Romania during the late 19<sup>th</sup> and early 20<sup>th</sup> century, Jowitt examines the dynamic of ethnic relations in the Eastern European context. In Jowitt's view, ethnic relations are a source of tension due to the dominant group's perception that minorities seek more power.

Jowitt sees the Romanian society as a status-based one, centred on familial or other close ties.<sup>19</sup> In contrast to such traditional forms of social organisation, class-divided societies base their social organisation and identification on the nuclear family and the individual.<sup>20</sup>

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<sup>19</sup> Jowitt, Kenneth, *Social Change in Romania, 1860-1940*, p. 8.

<sup>20</sup> *Ibid*, pp. 7-8.

While Jowitt makes this distinction, class divisions have not been a typical feature of the Eastern European context, as the states in the region used to be Communist states. However, Jowitt's discussion of the ethnic relations in Eastern Europe sheds light on the cases, in which ethnic conflict develops. Depending on how powerful the dominant group and minorities are, ethnic relations may be organised along three lines: compartmentalization, domination, and displacement. Compartmentalization occurs when minorities live in enclaves and do not threaten the institutions and interests of the dominant group. As a second option, the group with more power dominates over the less powerful group. With displacement – the third variant – groups that are comparatively equal co-exist and interact continuously. Conflict develops by way of imperialism, civil war, fascism, or internal displacement. Except for compartmentalization where enclaves are not viewed as threatening by the dominant group, the relationship between the dominant group and the minorities is a source of conflict.<sup>21</sup>

While Jowitt discusses the situation of late 19<sup>th</sup> – early 20<sup>th</sup> century Romania, the scenarios he describes have some relevance to the dynamic of relations in Central and Eastern Europe. Where minorities are small and weak, as in the case of Hungary, and do not threaten the institutions of the dominant group, ethnic tensions are unlikely to develop. Unlike Hungary, Bulgaria and Romania have large and active ethnic minorities, which have made claims to power-sharing, as chapter five will show. The more powerful groups, in this case the dominant groups in the two countries, allow no room for minority nationalisms, making every effort to dominate over them and limit the possibility of secession. In essence, Jowitt offers a diagnosis of the situation rather than a model for the protection of ethnic minorities, and of the Roma in particular. His argument helps explain why the dominant groups in Eastern Europe are unwilling to adopt special measures toward minority protection, which could benefit the Roma.

Like Jowitt, Brubaker examines the dynamic of the relations between Eastern European nationalities and their national minorities. He looks at the key features of nationality in Eastern Europe and coins the term 'nationalizing nationalisms.'<sup>22</sup> Nationalizing nationalisms are those that 'involve claims made in the name of the "core nation" or

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<sup>21</sup> Ibid, p. 13.

<sup>22</sup> Brubaker, Rogers, *Nationalism Reframed: Nationhood and the National Question in the New Europe*, p. 5.

nationality, defined in ethnocultural terms, and sharply distinguished as the legitimate “owner” of the state, which is conceived as the state *of* and *for* the core nation.’<sup>23</sup>

Brubaker examines the virtues of nationalism in Western Europe and why these virtues cannot be transferred in light of the Eastern European context. In Brubaker’s view, in longstanding, settled nation-states such as the United States, the category of nation can be the driving wheel to mobilizing solidarity among the nation’s members, including all citizens of the state. In this sense, invoking nationhood is an attempt to relativise or transcend internal divisions and differences. It is an effort to get individuals to formulate their interests and identities as members of one particular nation rather than as members of another collective entity.<sup>24</sup> To that purpose, nationalism and patriotism can be valuable in four different ways. First, they are important in motivating and sustaining civic engagement, helping to create active and committed citizens. Patriotism facilitates the development of feelings of mutual responsibility and solidarity that transcend the boundaries of ethnic identities. The identification with one’s country creates a sense of responsibility and provokes powerful emotions, concerning the actions of the national government. These can be anger, outrage, and shame, and they can motivate opposition to governmental policies. Second, nationalism and patriotism facilitate the development and sustenance of redistributive social policies. To be perceived as legitimate, these require mutual responsibility and cross-class solidarity generated by nationalism. Third, the rhetoric of nationhood contributes to the integration of immigrants. The American nation, for example, is imagined as relatively open and facilitating integration. Experience shows that second- and third-generation immigrants tend to assimilate, adopting an American identity. Fourth, in view of national security and foreign policy, patriotism fosters commitment to the security of the common homeland and the preservation of liberties, even the liberty to take a dissenting stand.<sup>25</sup>

While stable and longstanding democracies in the West enjoy the virtues of nationalism, its benefits have not materialised in the states of Eastern Europe. To a large extent, this can be attributed to the nature of nationalising states as well as the dynamic in play between nationalising states, their ethnic minorities, and the external homelands of these

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<sup>23</sup> Ibid, p. 5.

<sup>24</sup> Brubaker, Rogers, “In the Name of the Nation: Reflections on Nationalism and Patriotism”, *Citizenship Studies*, 8:2 (2004), pp. 116-7.

<sup>25</sup> Ibid, pp. 121-3.

minorities. According to Brubaker, the nationalising states in Eastern Europe share six common elements. First, there is the idea of a core nationality, which is defined as an ethno-cultural entity, differentiated from the totality of citizens. Second, the core nation has legal ownership over the state apparatus. Third, the core nation is not at the peak of its development, and its specific interests are not adequately served.<sup>26</sup> Due to a heritage of discrimination against the dominant group, it is considered to be in an unfavorable demographic, economic, and cultural position. The claim of holding a weak position justifies a 'remedial' or 'compensatory' project, in which the power of the state is used to promote certain, inadequately served in the past, interests of the core nation.<sup>27</sup> Fourth, it is believed that action is needed in multiple directions and fields in order to contribute to the well-being and hegemony of the nation. Fifth, a compensatory action is required and sixth, mobilisation takes place on the basis of ideas and diverse contexts: legislation, associations, press, etc. as to establish politics and practice of the state. Finally, formal and informal policies and practices are adopted, based on the above concepts.<sup>28</sup>

There is a specific dynamic in play between such nationalising states, their ethnic minorities, and the external homelands of these minorities. Directly opposed to the nationalism of nationalising states are the external homelands, which seek to support the activities, rights, and institutions of their ethno-national kin minorities living in the nationalising states.<sup>29</sup> External national homelands assert their right and obligation to defend the interests of their ethnic co-nationals.<sup>30</sup> An example of this is the effort of the Hungarian state to advocate more rights on behalf of ethnic Hungarians in Romania. External homelands base such claims for protection on the view that their kin minorities are being threatened by the nationalising states. In this way, the nationalism of the external national homeland is in direct opposition and dynamic interplay with the nationalism of the nationalising state. Pressed between the two mutually antagonising nationalisms are the ethnic minorities, which have their nationalism as well. Ethnic minorities demand that the states they inhabit recognise their ethno-cultural nationality.<sup>31</sup> Because the three distinct nationalisms are

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<sup>26</sup> Brubaker, Rogers, *Nationalism Reframed: Nationhood and the National Question in the New Europe*, p. 83.

<sup>27</sup> Ibid, p. 5.

<sup>28</sup> Ibid, pp. 83-4.

<sup>29</sup> Ibid, pp. 83-4.

<sup>30</sup> Ibid, p. 5.

<sup>31</sup> Ibid, pp. 4-6.

antagonistic, ‘interlocking and interactive’, a triad of uneasy relations is in play between the nationalisms of nationalising states, ethnic minorities, and external homelands.<sup>32</sup>

Brubaker believes that there are three possible approaches to institutionalising the national status of minorities in a multinational state in the context of these nationalising processes. First, the state may choose not to recognise or institutionalise the self-perception of a sub-state ethnicity as a national community. The claim may be that although the ethnic group in question differs in language or religion, it belongs, in essence, to the dominant nation. As a second option, the state may recognise the subjective claim of the sub-national community, simultaneously aiming to encourage and institutionalise a broader definition of nationhood. In the third variant, the state accepts the minority’s self-designation as a national minority without trying to define it as belonging to the nation. Even in this case, however, the state is perceived as a nation-state, which belongs to the dominant group.<sup>33</sup> The first approach is closer to historic attempts at assimilation in Eastern Europe, while the second variant leaves minorities a degree of choice whether to assimilate or preserve elements of their ethnic identity. The third variant is more interesting to explore, in that it proposes specific rights to ethnic minorities. Examples from the interwar period illustrate attempts to implement this model. Ethnic communities such as the Hungarians in Romania were given certain limited cultural rights encoded in international treaties and domestic law.<sup>34</sup> In fact, as shown in chapter five, nationalising states with sizeable minorities such as Bulgaria and Romania have presently granted them some limited group-specific rights. At the same time, the tension between the three nationalisms – of the nationalising states, national minorities, and external national homelands - is a major obstacle to granting rights to ethnic minorities.

In addition to these three approaches to the national status of minorities, Brubaker develops three models of the state that can be differentiated in terms of minority treatment: ‘the model of the “civic state”’, ‘the model of the binational or multinational states’, and the ‘hybrid model of minority rights’ state.<sup>35</sup> Under the third model, the state belongs to all citizens, regardless of their ethnic origin. The model of the binational and multinational states conceives of the state as belonging to two or more core ethno-cultural nations. These two

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<sup>32</sup> Ibid, pp. 4-6.

<sup>33</sup> Ibid, p. 27.

<sup>34</sup> Ibid, p. 28.

<sup>35</sup> Ibid, p. 105

models are in sharp contrast: ethnic belonging has no relevance in the first case but is of major importance in the second. Under the civic model, the composite parts of the state apparatus are individual, while under the bi- and multinational, they are the ethno-national groups. The hybrid model of minority rights conceives of states as national and not nationalising, with ethnic minorities being granted equal rights as citizens as well as minority protection, particularly in the fields of education and communication in one's native language.<sup>36</sup> Unlike the second model, the ethnic minorities in the third model do not have equal national status. Brubaker holds the opinion that the civic and bi- and multinational models do not have a chance of being adopted in Eastern Europe. The civic model enjoys a considerable legitimacy globally, and civic principles have been incorporated in national law and evoked in different declarations, especially in those directed toward the international community. On the other hand, these principles have not been fully adopted. Naturally, it is difficult to imagine that civic principles will be embraced in a context where nationality is understood in ethno-national rather than political terms.<sup>37</sup> The bi- and multinational model will not easily prevail because the dominant groups would not share ethnic rights as is implied by this model. Brubaker considers that the prospects of the hybrid model of minority rights are better as it enjoys greater international legitimacy, with organisations such as the Organization for Security and Co-operation, the European Union, and the Council of Europe encouraging new member states to enforce minority rights standards. Consequently, all new states are formally committed to safeguarding the rights of minorities.<sup>38</sup> However, the same trend was seen during the interwar period, with all states being formally bound to observe the Minority Treaties of the League of Nations. They clearly required that states procured elementary education in the mother's tongue of minorities in regions with compact minority population. These treaties did not contribute much to counteract the dynamic of nationalisation. The formal guarantees of minority rights did not succeed in thwarting nationalisation. In view of these past developments, Brubaker is of the opinion that the future will show whether the regimes for international human rights protection can be more successful today. Most new states will be nationalising, as opposed to national, but the

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<sup>36</sup> Ibid, p. 105.

<sup>37</sup> Ibid, p. 105.

<sup>38</sup> Ibid, p. 105; Brubaker speaks of new states by referring to the states in post-Communist Eurasia, which encompasses the states in Eastern Europe. See: Ibid, pp. 79-80.

degree of nationalisation will vary from one state to another. At the same time, all nationalising programs will have to compete with other economic, political, and social programs for commitment and support. While the new states will most probably be nationalising, the question for Brubaker is in what ways and to what extent they will be such.<sup>39</sup> So, the hybrid model of minority rights cannot act as a guarantee that minority cultures will receive significant protection from the state, but this model permits development in the right direction – the direction of significant accommodation of cultural rights.

The third element of the triad nationalising state – external national homeland – national minorities here refers to large and active ethnic minorities with external homelands. Examples are the sizeable and politically active Hungarian minority in Romania and the Turkish minority in Bulgaria. The negative attitude of the Bulgarian and Romanian nations toward their respective Turkish and Hungarian minorities is the main reason why these Eastern European states have adopted the liberal model of human rights. The liberal approach is characterized by a focus on citizenship rights and aims to avoid special provisions for ethnic groups.

The Roma minority, which is the main subject of this thesis, does not fit in the triad nationalising state – external homeland – national minority. First, the Roma can be defined as a transnational and non-territorial minority that is not confined to certain regions or territories but dispersed across and within the boundaries of continents and states in a world-wide Diaspora.<sup>40</sup> Second, the Roma people do not have a kin-state or external national homeland that can ‘provide haven or extend protection to them.’<sup>41</sup> Third, the transnational community of Roma comprises of diverse sub-groups with different perceptions of ethnic identity, speaking Turkish, Arabic, Romanian, Hungarian, Bulgarian, Spanish, and other languages.<sup>42</sup>

The unique position and characteristics of the Roma minority place it in an uneasy position in the triad nationalising state – external national homeland – national minority. The nationalist model of Brubaker offers a diagnosis to the situation rather than a model for the

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<sup>39</sup> Ibid, pp. 105-6.

<sup>40</sup> Rovid, Marton, ‘One-Size-Fits-All-Roma’, HIIA Papers, (Budapest: Hungarian Institute of International Affairs, 2009), p. 13.

<sup>41</sup> Barany, Zoltan, *The East European Gypsies: Regime Change, Marginality and Ethnopolitics*, (Cambridge: Cambridge University Press, 2002), p. 2.

<sup>42</sup> Rovid, Marton, ‘One-Size-Fits-All-Roma’, HIIA Papers, p. 13.

protection of Roma rights. The triad helps us understand the attitude of Eastern European states toward their ethnic minorities. The dominant Eastern European nations have a hostile attitude toward minorities because large ethnic groups on their territories have external national homelands active in their protection. This hostile attitude is transferred to other minorities like the Roma who suffer to a greater extent than other minorities as they don't have a homeland.

Multicultural scholars like Kymlicka examine a similar dynamic of ethno-national relations in the region, offering a solution to accommodating the Roma culture. Kymlicka looks at the tense relationship between Eastern European states, their national minorities, and the external homelands of these minorities or what he calls kin-states.<sup>43</sup> This uneasy relationship is a result of the historic position of the now dominant groups that were previously in the composition of neighboring states. With the breakdown of three empires – the Russian Romanov, Habsburg, and Ottoman Empire – the national groups in Eastern Europe acquired independence. However, they still ‘view themselves as the historically weak parties ... which continue to think and act as if they are weak and victimized minorities, and which therefore continue to live in existential fear for their existence.’<sup>44</sup> The problem is exacerbated by the presence of minorities on their territories, which have the former dominant nations as kin-states. These minorities were historically powerful and collaborated with the former oppressor as to establish hegemony in the region. With the breakdown of empires, the balance of power was reversed, but such minorities are still viewed as irredentist and seeking to rejoin their external homelands. Because of the perceived threat of national minorities collaborating with the former oppressor, Eastern European dominant groups insist on having a strong state with disempowered minorities.<sup>45</sup> To illustrate the ethnic tensions specific to Eastern Europe, Kymlicka points that the Hungarian minority in Slovakia is relatively powerless compared to the dominant group. However, ethnic Hungarians were historically the members of the dominant group, which had a privileged status within the Habsburg Empire. The Hungarians actively supported the efforts of the Habsburg Empire to establish hegemony in the region. In contrast to ethnic Hungarians, Slovaks were treated as a

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<sup>43</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 185

<sup>44</sup> Ibid, p. 185.

<sup>45</sup> Ibid, pp. 184-5.

subordinate population which had to be assimilated through ‘Magyarization’.<sup>46</sup> This hierarchy was reversed after the Slovaks attained independence. They became the dominant group while the ethnic Hungarians were a minority threatened by Slovakia’s efforts at nation-building. However, the memory of historic subjugation remains and for ethnic Slovaks, Hungarians are still loyal to their kin-state and hence potentially irredentist. Moreover, Hungarians are seen as the historically dominant and privileged group which collaborated with the Habsburg Empire as to oppress the culture and language of ethnic Slovaks.<sup>47</sup>

In the context of this ‘securitization’ of ethnic relations<sup>48</sup>, claims to minority protection are not easily accepted by the dominant groups. As Kymlicka points, ‘anything that benefits the minority is seen as a threat to the majority ... [and] the treatment of minorities is above all a question of national security.’<sup>49</sup> Such securitization is harmful to democracy itself, threatening the existence of civil society. By overemphasizing the security risks involved in meeting minority demands, post-Communist states refuse ‘to make room for an open and democratic debate on the merits of Western best practices.’<sup>50</sup>

The securitization of ethnicity helps explain the treatment of national minority groups by the Eastern European dominant groups. At the same time, the unique situation of Roma poses additional challenges to devising such cultural rights that would accord them effective protection. This ethnic minority differs from the historical national minorities that have, to varying degrees, institutionalised their cultural practices. Having lost their autonomy due to various historic developments, national minorities have strived to preserve their ethnic identity and seek some form of autonomy. Kymlicka notes that the Roma people are a transnational minority that falls outside the group of national ethnic communities. There are two possible approaches to the protection of their rights and identity. First, the Roma can look for ways to qualify as a national minority. The second option is setting up targeted policies that aim to counterbalance the disadvantages Roma face in the absence of an external homeland and their marginalisation and isolation from the dominant culture. The first is a feasible objective in Eastern Europe. Some countries, like Romania, have recognised the

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<sup>46</sup> Ibid, p. 185.

<sup>47</sup> Ibid, pp. 185-6.

<sup>48</sup> Securitization is a phenomenon that occurs when dominant groups perceive ethnic minorities as a threat to the territorial integrity of the state. See: Ibid, p. 119.

<sup>49</sup> Ibid, p. 187.

<sup>50</sup> Ibid, p. 195.

Roma as a national minority. The question is whether recognition will translate into actual protection. Eastern European states accept the self-designation of ethnic minorities and at least officially, their approach is not nationalising. Examining the policies and approaches of a diverse array of institutions in Bulgaria, Hungary, and Romania, chapter five points out that the governments of these countries have worked toward establishing targeted norms for their Roma minorities. At the same time, other factors compete for the attention of national governments and render minority protection somehow ineffective. These are the insistence on having a strong state with disempowered minorities, the presence of active national minorities, and the proactive approach of external homelands (e.g. Hungary) toward the protection of such minorities. The high level of mistrust of the loyalty of national minorities with external homelands is one factor to be taken into consideration when applying the multicultural model of group-based rights. Second, in the absence of an external concerned homeland, the unique and unequal position of Roma, along with their marginalisation and isolation from the dominant groups, are important factors to reflect upon in the process of elaborating targeted policies for Roma protection.

To sum up, Jowitt examines traditional societies and their uneasy relationship with class-based ethnic groups. For him, the coexistence of two forms of social organisation results in ethnic tensions and subsequent displacement and domination. The discussion of ethnic relations in Eastern Europe helps explain the dynamic of ethnic conflict there.

Brubaker pays more close attention to nationalism in Eastern Europe. He examines the benefits of nationalism in Western Europe and reviews the reasons why these virtues cannot be brought home in the context of Eastern Europe. His triad nationalising state – external homeland – national minority sheds light on the question why states in the region oppose accommodating the rights of national minorities. Brubaker examines three approaches of states to institutionalizing nationhood and nationality: assimilation of national minorities, recognition of national minority status with a degree of assimilation, and accepting the self-definition of ethnic minorities as national ones. For Brubaker, the third approach is most appropriate as a guiding model for the states of Eastern Europe because it involves adopting specific rights for ethnic minorities. While this model serves the interests of minorities best, the nationalising projects of Eastern European nations are a major obstacle to adopting the third model. Brubaker also examines three models of the state: the model of

the civic state, 'the model of the binational or multinational states, and the hybrid model of minority rights state.'<sup>51</sup> The third model enjoys international legitimacy and represents the best practice of Western democracies. This model does not guarantee that ethnic minorities will enjoy state protection in Eastern Europe due to the nationalising programs of states. However, it allows progress in the right direction – minority protection by accommodating cultural rights.

Kymlicka also examines the dynamic of ethnic relations in Eastern Europe and offers a similar explanation about the tense relationship between states, their national minorities, and the kin-states of these ethnic minorities. The dominant groups in Eastern Europe were included in the makeup of former empires and had subordinate status. They attained formal independence from the subjugator but still view themselves as victimised minorities in need of a strong state. The presence of national minorities on their territories, which formerly collaborated with the oppressor, is considered a threat to national security. Because these minorities are believed to be irredentist, the dominant nations in Eastern Europe are opposed to granting them rights as a group. In the context of this uneasy relationship, strong forms of minority protection, such as autonomy, are not a feasible solution to accommodating any minority. Kymlicka notes that there are two possible approaches to accommodating the Roma identity. The first is to develop targeted norms that take into account the socio-economic situation and special concerns of Roma people. The second possibility is that Roma qualify for a national minority status and benefit from all the rights that come with this status.

### **1.3. The liberal – multicultural debate**

The liberal – multicultural debate which I review, in part, here took place in the second half of the 20<sup>th</sup> century, in the context of a process, during which Western liberal democracies articulated their ways about the fair treatment of ethnic minorities. This debate does not take on board the national and cultural specificities of Eastern European states. However, the debate is vital in articulating the arguments in favor of protecting minority rights. The outcome of these debates should be brought home in Eastern Europe and become

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<sup>51</sup> Ibid, p. 105

part of the political reasoning behind public policy making. Even if not developed in an Eastern European context, the outcomes of these debates bear significance, due to the fact that the problem with the fair treatment of minority cultures is of particular importance here.

### 1.3.1. Ethnic groups and the state: defense of the state

In this section, I examine the arguments of traditional liberals such as Hobbes, Locke, Rousseau, Mill, and Miller with their focus on state integrity and the dangers that arise from the existence of intermediaries between the general citizenry and the state. While the ideas of traditional liberals are not part of the 20<sup>th</sup> century liberal – multicultural debate, these ideas mark the birth of political reasoning on the position of minority groups within the state. According to traditional liberals, free institutions can work for the good of all persons only in states made of one nationality.

Hobbes and Locke spoke of a social contract among unrelated individuals who agreed upon the establishment of the state. For Hobbes, written and unwritten laws derive their force and authority from the representative as constituted by a national assembly or personified by the monarch.<sup>52</sup> No intermediaries should exercise authority, with the parliament being the only controller of sovereign law.<sup>53</sup> Locke also looks at men ‘as so united in one society as to quit everyone his executive power ... and resign in to the public.’<sup>54</sup> Civil and political society is possible only when individuals ‘enter into society to make one people, one body politic under one supreme government.’<sup>55</sup>

These traditional liberals did not imagine any intermediary groups between the individuals and the state. Rousseau argued that that ‘if...the general will is to be truly expressed, it is essential that there are no subsidiary groups within the State.’<sup>56</sup> In Rousseau’s

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<sup>52</sup> Hobbes, Thomas, *Leviathan*, (Forgotten Books, 2008), p. 185 [[http://books.google.com/books?id=-Q4nPYeps6MC&printsec=frontcover&dq=Leviathan&hl=en&ei=EeyeTa-DI4\\_Aswb2IKnrAQ&sa=X&oi=book\\_result&ct=result&resnum=1&ved=0CCgQ6AEwAA#v=onepage&q&f=false](http://books.google.com/books?id=-Q4nPYeps6MC&printsec=frontcover&dq=Leviathan&hl=en&ei=EeyeTa-DI4_Aswb2IKnrAQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCgQ6AEwAA#v=onepage&q&f=false)] (accessed: 12 August, 2010).

<sup>53</sup> Ibid, p. 185.

<sup>54</sup> Locke, John, “An Essay Concerning the True Original, Extent, and End of Civil Government” in Baker, Ernest, ed., *Principles of Social Contract: Essays by Locke, Hume, and Rousseau*, (New York: Oxford University Press, 1960), p. 51.

<sup>55</sup> Ibid, p. 51.

<sup>56</sup> Rousseau, Jean-Jacques, “The Social Contract” in Baker, Ernest, ed., *Principles of Social Contract: Essays by Locke, Hume, and Rousseau*, p. 194.

view, when individuals engage in deliberation, the general will results from a large number of small differences. If partial associations and speculative groups form to the disadvantage of all, the votes do not equal the number of men. The votes are as many as the groups, with the result being less general. If one of these entities grows so large as to swamp the others, the result is one single difference instead of the sum of small differences. Then, the general will does not have a role to play, and the opinion of the majority is no more valid than one of a single person.<sup>57</sup> Mill further elaborated the argument, claiming that '[f]ree institutions are next to impossible in a country made of different nationalities.'<sup>58</sup> A representative government cannot function if public opinion is not united. Persons with no fellow-feeling, especially if they speak and read in different languages, are not the proper social base for such government.<sup>59</sup> From this perspective, state boundaries should necessarily coincide with the nation.

In the first half of the 20<sup>th</sup> century, the situation of ethnic minorities became a more prominent issue. Therefore, David Miller who is very sympathetic to national cohesion gives much more consideration to ethnic minorities. He explores the relationship between national cohesion and fair distributive practices. While he agrees that ethnic identity is important for minority members, he also insists that national identity play a primary role in the provision of common goods for all citizens. In Miller's formulation, national identity is based upon 'a shared belief that its members belong together, and a shared desire to continue their life in common.'<sup>60</sup> National identity entails historical continuity: individuals identify with and appropriate past deeds as their own. The historic national community is also the community, in the context of which duties can be self-imposed. Ancestors have shed their blood to defend the nation, and contemporaries inherit the obligation to continue their work, directed in part toward the present and in part toward future generations. Another prominent feature of nationality is that it is an active and dynamic identity. Nations make decisions and achieve results together. Miller argues that when there are tendencies toward social dissolution, in the context of minority claims for special measures, people will look out for their own interests and the interests of their immediate social networks. Then, it becomes difficult to mobilise

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<sup>57</sup> Ibid, p. 194.

<sup>58</sup> Mill, John, *Representative Government*, (Cambridge: Cambridge University Press, 2010), p. 196.

<sup>59</sup> Ibid, p. 190.

<sup>60</sup> Miller, David, *Citizenship and National Identity*, pp. 28-32.

people in providing collective goods or agreeing on redistribution practices, from which they are unlikely to benefit. These problems are avoided only through the existence of large-scale solidarity, so that people have a social duty to act for the common good.<sup>61</sup>

In Miller's view, ethnic groups are able to become part of the national identity. They may want political representation by members who effectively address their interests in government. They may also demand public recognition by the national institutions.<sup>62</sup> However, policies directed at particular groups widen the social distance between communities, hence weakening the commitment to justice for other groups.<sup>63</sup>

Miller suggests that disadvantaged groups should channel their concerns through the process of deliberation. He explains that members of such groups must find a common ground with other members of civic society and try to win the sympathy of and motivate people to perceive them as those pivotal to bringing justice. Disadvantaged groups, Miller argues, should emphasize the fact that difference also means special needs or disadvantages. Such testimony could become an effective form of communication, provided that its case and content is not alien to the audience. Testimony that is too unfamiliar risks inducing hostility rather than concerns for justice.

Democracy provides the best opportunity for using political power to overcome social disadvantages. However, if the parties are unwilling to make terms with each other, democratic forums become 'talking shops' of each person's story. Then, testimony, the strongest weapon of disadvantaged minorities, is blunted.<sup>64</sup>

Miller has three major arguments. First, national attachments are more important than cultural belonging; second, national identity brings cohesion; and third, minority members have the right to testimony. The right to testimony, in the form he suggests, will serve as an effective remedy for the unequal position of minorities if their identity is recognised and respected. This line of thinking, as strongly embraced by multiculturalism, will be discussed in much detail in the second section of the chapter.

To recap the arguments of traditional liberals, Hobbes, Locke, Rousseau, and Mill object to the very existence of ethnic minorities, reasoning that state integrity is possible only

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<sup>61</sup> Ibid, pp. 28-32.

<sup>62</sup> Ibid, p. 127.

<sup>63</sup> Ibid, p. 156.

<sup>64</sup> Ibid, pp. 158-60.

through the existence of national identity. Miller argues that special measures would result in unfair distribution of resources, while overarching national identity establishes solidarity and facilitates fair distributive processes. At the same time, his idea that minorities should communicate their concerns with the dominant groups goes some way toward the multicultural position of accommodating ethnic minority cultures.

### **1.3.2. The critique of cultural minority rights**

A second group of liberal scholars argues that group rights would politicize ethnicity, with benefits unfairly accumulated by elites. Barry and Kukathas question the merit of minority protection on the ground that ‘belief in essential group differences swerves toward a belief in superiority.’<sup>65</sup> The devolution of power to ethnic communities ‘can adversely affect the peace and stability of the larger society.’<sup>66</sup> Group rights are, consequently, a threat to the functioning of the state as a cohesive unit. Moreover, all individuals have the right to leave a group that does not fit their needs. There is no place for group rights because collective entities are not always culturally defined. The only outcome of such policies would be the politicisation of culture for the purposes of the powerful elite.

Barry accepts the existence of ethnic groups and points that membership in such communities has obvious advantages. Within a group, the costs of behaviour coordination are reduced to a minimum. Each individual knows the group’s views of appropriateness and is thus aware of behavioural expectations.<sup>67</sup> Yet in Barry’s view, the state grants equal rights to all people, and a very important one is the freedom of association and dissociation. Individuals can be members of any group provided that membership is voluntary.<sup>68</sup>

Ethnic groups are free to preserve their organised form of existence if they do not infringe upon the rights and interests of individuals outside their group. The state imposes only two additional limitations to membership in any group: the members should be ‘adults of sound mind’, and the state needs to ensure that individuals are free to leave their ethnic

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<sup>65</sup> Gitlin, Todd, *The Twilight of Common Dreams: Why America Is Wracked by Culture Wars*, (New York: Henry Holt, 1995), pp. 164-5 in Barry, Brian, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, p. 261.

<sup>66</sup> Kukathas, Chandran, “Are There Any Cultural Rights?”, p. 130.

<sup>67</sup> Barry, Brian, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, p. 259.

<sup>68</sup> *Ibid*, p. 150.

communities.<sup>69</sup> As long as people have the freedom to dissociate, they can engage in relationships of submission and domination.<sup>70</sup> In this view, individuals who consider themselves derogated by the views and lifestyle of an ethnic community may opt to dissociate from it. They can move into another ethnic community or discard their minority identity. Whenever the exit option exists, Barry believes that individuals will remain within the group because they hold it in high esteem. This decision indicates that the benefits from membership are greater than the most attractive alternative option.<sup>71</sup> In sum, Barry recognises the importance of collective entities but assumes that membership is voluntary. Individuals can dissociate from groups with abusive terms of membership. The fact that members have chosen to stay in a certain group means that they consider it the most attractive form of association.

Second, Barry objects to group-specific cultural rights on the ground that not all disadvantages stem from the misrecognition of one's culture.<sup>72</sup> The author points that individuals may not suffer because of their cultural distinctiveness. They may be performing poorly with regard to socially valuable objectives such as good education or well-paid jobs.<sup>73</sup>

Even more important, Barry believes that minority protection would increase the power of people who would like to impose certain modes of conduct within the group.<sup>74</sup> The dominant elite will attempt to withdraw from minority members the rights that are normally provided by the state.<sup>75</sup> Further, Barry believes that in some cases, minority group rights will politicise ethnicity. An example of politicisation is to grant economic subsidies for particular cultures, which could give people a financial incentive to identify with certain communities. Then, entrepreneurs play on the incentive by seeking to stimulate the development of cultural consciousness. Their reasoning will be: the bigger the group size, the greater the chance to receive increased financial support.<sup>76</sup> In fact, such cases are not unknown. My study of Roma self-governments in Hungary, described in chapter five, reveals that political leaders have made use of the Roma identity for the purpose of profiteering.

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<sup>69</sup> Ibid, p. 148.

<sup>70</sup> Ibid, p. 148.

<sup>71</sup> Ibid, p. 149.

<sup>72</sup> Ibid, p. 308.

<sup>73</sup> Ibid, p. 305.

<sup>74</sup> Ibid, p. 129.

<sup>75</sup> Ibid, p. 326.

<sup>76</sup> Ibid, pp. 314-5.

Kukathas shares the view that group membership has an impact on the individuals' behaviour and identity and determines their loyalty.<sup>77</sup> Yet, he claims that groups are not culturally defined. They form and dissolve in response to changes in the political and institutional climate. Rather than existing prior to the institutions or apart from them, groups are the product of institutional influences. Kukathas illustrates this claim with the situation of the Malayas in Malaysia. They emerged as a community after the colonialists merged certain village clusters and regions. Given that groups undergo such changes in response to the institutions, one cannot conclude that communities have fixed interests. Rather, there is a plurality of interests which often compete or conflict with each other.<sup>78</sup> Such conflicts of interest stem from divisions between subgroups within the group or between elites and the masses. The second type of conflict is more important because members of the elite have 'distinctive interests that relate to the benefits of modernity: good jobs, urban amenities, access to school, travel, prestige.'<sup>79</sup> In some cases, elites will try to manipulate ethnicity in order to achieve their ends. The establishment of special rights for groups will reaffirm the existing structures of inequality.<sup>80</sup> This development will limit the opportunities of members of the group to reshape their cultural space. Given this outcome, one should perceive the community as a voluntary association that individuals establish and regard as a form of authority. They are free to 'form communities and live by the terms of those associations.'<sup>81</sup>

Members have the most fundamental and inalienable right: the right to leave their group if they dislike its terms of membership. Individuals are free to renounce a disagreeable membership and 'reconstitute the community under modified terms of association.'<sup>82</sup>

In summary, Barry and Kukathas acknowledge the importance of group membership but consider that inequalities within groups exist, and special rights will increase them. Barry reasons that in unequal power relationships, those who possess power will use minority protection to impose their own terms of social organisation and oppress the members in unequal position. For Kukathas, inequalities also stem from conflicts of interest. The most important conflict is between the elites and the masses and relates to the distribution of

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<sup>77</sup> Kukathas, Chandran "Are There Any Cultural Rights?", p. 110.

<sup>78</sup> Ibid, p. 111.

<sup>79</sup> Horowitz, Donald, *Ethnic Groups in Conflict*, (Berkeley: University of California Press, 1985), p. 101.

<sup>80</sup> Kukathas, Chandran, „Are There Any Cultural Rights?“, pp. 113-4.

<sup>81</sup> Ibid, p. 116.

<sup>82</sup> Ibid, p. 117.

goods, amenities, and prestige. Both, Barry and Kukathas, then, reason that group rights politicise ethnicity and give to elites the power to oppress minority members. In such a situation, the freedom to leave one's community and choose the most suitable option represents the most important right of minority members.

In sum, Barry and Kukathas argue that the liberal order accords to minorities individual rights in the same way as it does other citizens of the state. While ethnicity is important for its bearers, minority protection will, in their opinion, increase inequalities and decrease the power of minorities.

The culture of minorities is to be preserved through the acquiescence of its bearers to participate in its particular lifestyle. Minority members are free to stay in their ethnic group if they find their community view of the good life agreeable. If members of an ethnic community consider it oppressive, they can leave the group and live according to their views of the good life.

### **1.3.3. Arguments in favor of minority rights**

Proponents of group rights make an important and persuasive claim about the essential role of ethnic identity for the wellbeing of minorities. Recognition of minorities' specific characteristics and needs will help individuals feel like equal members of society. The proponents' perspective, i.e. the perspective of those who defend minority rights, examines the issues of culture as a context of choice, the difficulty of leaving one's ethnic community, the need of political visibility for cultural differences, and the negative effect of non-recognition of cultural identities. The ideas of recognition as a supplement to economic redistribution, legal and political inclusion of cultural differences, and moral learning or empathy for ethnic minorities point to ways of accommodating minority cultures. The concept of culture as a context of choice, as employed by Kymlicka, refers to the idea that individuals make choices depending on the cultural values they have been internalized. If the culture of an ethnic minority is ridiculed or discriminated against, it cannot serve as a context of choice. Shachar notes that culture plays an essential role in one's identity, and leaving one's ethnic group is difficult. In Levy's view, members of minority groups are socialised into thinking of the dominant culture as alien and strange. Galeotti points out that the culture

minority members are socialized into is important for them. Legitimising the presence of ethnic minorities in the public domain is a way of giving political visibility to cultural differences. For Taylor, not recognizing or misrecognizing cultures is detrimental to the self-image of minority members. Yet, Fraser notes that recognition alone is not sufficient to accommodate minority groups. It is important to question cultural identities and restructure the labor relations to put them in more equal standing. Parekh and Kymlicka build on the idea of recognition in discussing group rights and protection of minority cultures by the state. The proponents' perspective is supplemented by Thomas, who believes that empathy is the foundation of socially fairer societies. Social relations will change in a positive direction only if the dominant group learns to listen to its oppressed members and develop empathy for their suffering.

#### **1.3.3.1. Context of choice, difficulty of exit, political visibility, and recognition**

Multicultural scholars share the understanding that minority culture is important for its bearers. Kymlicka reasons that culture gives individuals a context of choice. Shachar, Levy, and Galeotti point out that leaving one's community is difficult because minority members have to unlearn the culture they have grown in. Galeotti notes that giving political visibility to minority identities will legitimise their presence in the public sphere, assuring minority members that they can participate in public life through their identity. For Taylor, the denial or non-recognition of minority identity by the dominant culture results in the formation of a false self-image.

The multicultural literature abounds with arguments supporting the view that minority members may prefer to stay within their communities and transform practices they find disagreeable. Kymlicka argues that cultures are vital in shaping the boundaries of the appropriate, the imaginable, and the reachable. Peoples' cultural background reveals the opportunities that are open to them. When dominant groups ridicule or discriminate against minority groups, they deny them the right to participate in society through their particular culture. If cultural venues are not available, group members lose their pool of available choices. If culture cannot serve as a context of choice, individuals lose their autonomy and cannot fulfill their civic duties. They are not free to examine their conception of the good life,

and assess their beliefs with regard to new experiences.<sup>83</sup>

Given that culture creates a context of choice, leaving one's community is particularly difficult. Shachar points out that the individual is the one to leave 'the very center of her life, family, and community.'<sup>84</sup> One might be unable to leave because of obstacles such as economic problems, lack of education and skills, and emotional distress.<sup>85</sup> Levy complements this idea by explaining that all cultures have exit barriers and 'to have culture whose exit is entirely costless ... is to have no culture at all.'<sup>86</sup> For most individuals, leaving one's community involves more than psychological discomfort; entering another group involves reading, writing, and listening in a language different from the one people are used to think in. All forms of communication requiring information and its expression are more difficult to carry out in a foreign language. In a similar way, adopting a culture with imagery, idioms, social understandings, and stories that are different from those one has internalized is costly. For members who leave an ethnic group, it is difficult and costly to adopt a different culture they do not know well.<sup>87</sup> Moreover, community members are brought up to consider the dominant culture as strange or alien, and this view creates a barrier to leaving the group. Leaving is often problematic as it entails 'giving up the familiar for the unfamiliar ... the comprehensible for the incomprehensible; [l]anguage, religion, history, social meanings, and cultural practices, must all be learned anew.'<sup>88</sup> And the more different the culture of a minority group is, the more difficult it is to adopt another culture. To the extent of which one is unable to learn the cultural practices and social meanings of the new culture, one will live an alienated life in the new environment.<sup>89</sup>

Liberals and Barry, in particular, have argued in favour of the right to leave one's community as a way to avoid enforcing illiberal practices on members by their group. Levy notes that every group membership is in fact illiberal. In his view, 'majority or minority, traditional or reformist, with or without expectations of active participation by members, every cultural or linguistic community necessarily makes exit far more difficult than routine

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<sup>83</sup> Kymlicka, Will, *Multicultural Citizenship A Liberal Theory of Minority Rights*, p. 81.

<sup>84</sup> Shachar, Ayelet, "On Citizenship and Multicultural Vulnerability. Positioning Rights in Multicultural World", *Political Theory*, 28:1 (2000), p.79.

<sup>85</sup> Ibid, p. 79.

<sup>86</sup> Levy, Jacob, *The Multiculturalism of Fear*, p.112

<sup>87</sup> Ibid, pp. 112-3

<sup>88</sup> Ibid, pp.112-3.

<sup>89</sup> Ibid, p. 113

choices are.’<sup>90</sup>

In addition, leaving one’s group might be difficult because of the social perception of the community members as outsiders. Galeotti reasons that the dominant culture has the power to define which characteristics, practices, and beliefs are normal and which are deviant.<sup>91</sup> Joining the larger society is made difficult by the prejudices it holds against members of the minority culture.<sup>92</sup> From this point of view, embracing the cultural values of the dominant culture is particularly difficult. The legal inclusion of minority members is also insufficient. It does not erase the cultural prejudices of the members of the dominant culture but admits individuals despite their identity.<sup>93</sup>

Galeotti points out that no person can feel comfortable or sustain their self-respect when they have been accepted despite being black, female, or homosexual. This acceptance will ‘amount to denial of significant components or elements of one’s (personal) identity.’<sup>94</sup> As a result, the person will feel pressured to conceal his true identity and disguise oneself as white, macho, or Anglo-Saxon in order to be accepted by society.<sup>95</sup> This acceptance will be fragile and humiliating for the individual and will prevent him from developing a ‘healthy, autonomous, and self-reliant personality.’<sup>96</sup>

In Galeotti’s view, ‘a political principle should be in place which allows for the peaceful coexistence of individuals and groups [holding] different views and practic[ing] different ways of life within the same society.’<sup>97</sup> Moreover, the dominant culture should not simply tolerate differences: members of the dominant group need to acknowledge that any culture, way of life, or being has value. Differences may not be valuable for society at large, but they are important for their bearers. These differences are not ‘intrinsically valuable, beautiful, or important for the human good, but ... there are many different codes of dress, lifestyles, religious rituals, and so on among the viable options in society at large.’<sup>98</sup> Thus, it is important that society give visibility to different conceptions of the good. Such visibility

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<sup>90</sup> Ibid, p. 114.

<sup>91</sup> Galeotti, Anna, *Toleration as Recognition*, p. 90.

<sup>92</sup> Ibid, p. 89.

<sup>93</sup> Ibid, p. 97.

<sup>94</sup> Ibid, p. 98.

<sup>95</sup> Ibid, p. 98.

<sup>96</sup> Ibid, pp. 98-9.

<sup>97</sup> Ibid, p. 20.

<sup>98</sup> Ibid, pp. 104-5.

legitimises the presence of different approaches to life in public and makes minority members feel that they are entitled to their identity. Appearance in the public sphere may also become a reason to stop being ashamed of their identity.<sup>99</sup>

Upon coming to this conclusion, Galeotti notes that the transformation of the definition of what normal is will incur costs for the society. The dominant group will need to accommodate the newly accepted identities. This change may make the dominant group feel that its social standing is worsening. However, the costs are necessary to ensure that society is inclusive of its minority members.<sup>100</sup>

Before examining the question of special minority protection, I would like to briefly discuss the issue of identity recognition, non-recognition, and misrecognition. Society will not justify special measures for the Roma if it does not understand that Roma people have different lifestyles and needs. It is because of this different identity that Roma people can claim special protection.

Notably, Taylor points out that the non-recognition of minority identity is harmful to group members. Taylor illustrates that identity is formed in a dialectical manner, i.e. people learn modes of expression by interacting with others, usually family and community members. One's values, behaviour, and existential preferences are formed by the interaction in this environment. On the other hand, identity is also shaped by the recognition of one's identity by members of different cultural groups. If the dominant culture misrecognises or denies individuals the sense of unique identity, the members of this group may suffer an identity distortion or lose self-respect. Non-recognition or misrecognition can limit one's existence to a reduced mode of being because individuals internalize such distorted images. Then, '[one's] own self-deprecation becomes ... one of the most potent instruments of [one's] own oppression.'<sup>101</sup> Taylor argues that '[n]onrecognition or misrecognition ... can be a form of oppression, imprisoning someone in a false, distorted, reduced mode of being. Beyond simple lack of respect, it can inflict a grievous wound, saddling people with crippling self-hatred. Due recognition is not just a courtesy but a vital human need.'<sup>102</sup>

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<sup>99</sup> Ibid, p. 101.

<sup>100</sup> Ibid, pp.107-8.

<sup>101</sup> Taylor, Charles, "The Politics of Recognition", in Gutmann, Amy, and Charles Taylor, eds., *Multiculturalism and the "Politics of Recognition" an Essay*, pp. 25-32.

<sup>102</sup> Ibid, p. 25.

In sum, culture serves as a context of choice for minority members and exit from one's community is not cost-free. Individuals have to give up the values, beliefs, and lifestyle of their communities. It has been acknowledged that differences are important to their bearers, that participation in public life and political visibility of difference are a necessary part of accommodating the presence of a minority culture. Non-recognition or misrecognition of cultural identities results in distorted and false perceptions of the self.

### **1.3.3.2. Redistribution as a necessary supplement to recognition**

Fraser considers that recognition alone is not enough to correct the social injustices against minority groups. Recognition has to be combined with redistribution to remedy their unequal economic position. Fraser reasons that cultural and economic injustices are intertwined: cultural biases are institutionalised in the state economy while economic hardship prevents members of minority groups from participating in cultural activities.<sup>103</sup> Before examining the link between economic hardship and cultural activities, Fraser gives an example of situations in which the solution is either redistribution or recognition. In Marxian society, the proletariat receives a disproportionate share of the burden for an insufficient reward. Culture has no direct role in class exploitation. Therefore, redistribution or restructuring of the political economy becomes the solution.<sup>104</sup> Fraser considers the circumstances of homosexuals who do not constitute an exploited class but suffer from prejudices against their sexuality. These are 'rooted in the cultural-valuational structure of society' and the solution is recognition.<sup>105</sup> Although clear-cut examples as these two exist, there are many collective entities which fall in the middle of the spectrum or what she calls 'bivalent collectivities.'<sup>106</sup> For these groups, injustices are 'co-original'.<sup>107</sup> Race is an example of such collectivity because people of colour suffer from economic injustices, i.e. these individuals tend to be limited to work in low-income and low-status jobs. At the same time, race is structured beyond socio-economic lines. Degrading stereotypical depictions,

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<sup>103</sup> Fraser, Nancy, "A Rejoinder to Iris Young" in Willett, Cynthia, *Theorizing Multiculturalism: A Guide to the Current Debate*, p. 23.

<sup>104</sup> *Ibid*, p. 25.

<sup>105</sup> *Ibid*, p. 26.

<sup>106</sup> *Ibid*, p. 27; for the exact use of the term, see *Ibid*, p. 40.

<sup>107</sup> *Ibid*, p. 27.

harassment, and violence against people of colour are widespread in everyday life. These forms of exclusion from the public represent the ‘injustices of non-recognition.’<sup>108</sup>

Here, Fraser examines different solutions to social injustices. Affirmative policies aim to correct unjust outcomes without disturbing the framework that underlies them. Affirmative cultural remedies revalue unfairly devalued group identities but leave their content and group differentiation intact. Analogically, affirmative economic remedies address misdistribution without restructuring the system of production. Transformative remedies, on the other hand, aim to correct injustice by restructuring the underlying framework. Cultural remedies will destabilise depreciated identities, and economic redresses will alter the division of labour and improve the conditions for all individuals.<sup>109</sup> Further, Fraser looks at affirmative redistribution and concludes that transformation of the economy is required to address its ‘racialization.’<sup>110</sup> Recognition, on the other hand, will ‘valorize the specificity of despised collectivities.’<sup>111</sup>

The solution which Fraser proposes combines transformative recognition with transformative redistribution. The first will reevaluate the existing group identities to counteract Eurocentrism which is typically associated with the values of the dominant culture. The second will transform the political and economic structure to produce change in the division of labour. Though the described situation relates to race, Fraser claims that her arguments stand for all bivalent collectivities which suffer socio-economic and cultural injustices. Thus, the transformative approach can become a remedy for many disadvantaged minority groups.<sup>112</sup>

To recap, Fraser emphasizes the importance of recognition and redistribution for bivalent collectivities that suffer from economic hardship and disrespectful treatment. Unless group identities are questioned and the political and social structure is transformed, oppressed groups will continue to face unequal treatment.

### **1.3.3.3. Legal and political inclusion of cultural difference**

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<sup>108</sup> Ibid, pp. 29-30.

<sup>109</sup> Ibid, pp. 31-3.

<sup>110</sup> Ibid, p.30

<sup>111</sup> Ibid, p. 31

<sup>112</sup> Ibid, pp. 39-40

Parekh and Kymlicka reason that the unequal position of minorities is linked to their limited access to the public realm. Parekh notes that real equality necessitates the introduction of group rights that help accommodate diverse identities, together with policies aimed at power decentralisation. Kymlicka makes an important observation: group-based rights will safeguard minorities from unfair political and economic choices of the dominant societies. Special measures for the protection of ethnic identity will help remedy the unequal position of minorities.

Parekh's arguments bring together Galeotti's view of public visibility of cultures and Fraser's link between culture and economy by discussing the link between culture, economics, and politics altogether. For Parekh, 'culture is a source of legitimacy and power, all political and economic battles are fought out at the cultural level as well, and all cultural struggles have an inescapable political and economic dimension.'<sup>113</sup> He goes on to explain that in every society, one group dominates over others and enjoys political and economic power. All individuals have the opportunity to pursue their vision of the good life. However, the dominant group can do so in the public and the private realm, while minorities are confined to the private space. Unfortunately, the public realm bears far greater dignity and prestige than the private sphere in every society. The institutionalised culture 'enjoys state patronage, power, access to valuable resources, and political respectability, and sets the tone of the rest of society.'<sup>114</sup> These points mentioned, Parekh concludes that a coherent political structure exists when diverse ways of being are acknowledged.<sup>115</sup> Such equality can be achieved only through collective rights.<sup>116</sup>

Parekh believes that laws have to accommodate cultural differences. The legal recognition of cultural differences would amount to successful political recognition of minority cultures; recognition is crucial to protecting minority rights. Parekh gives some examples of laws that are specifically directed at minority members. In 1972, the British Parliament adopted a law which required that all motorcyclists wear a crash helmet. Sikhs campaigned against this law because they would be unable to wear their traditional turbans while motorcycling. In 1976, the government reviewed the law and came to the conclusion

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<sup>113</sup> Parekh, Bhikhu, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, p. 152

<sup>114</sup> *Ibid*, p. 204.

<sup>115</sup> *Ibid*, p. 206.

<sup>116</sup> *Ibid*, p. 216.

that Sikh turbans met safety standards and could substitute crash helmets. As a further development of the law, the Employment Act of 1989 exempted Sikhs from wearing helmets at construction sites. Turbans were considered to give adequate, if not the same protection as helmets.<sup>117</sup>

Another compromise was made for a Sikh woman who wished to wear her baggy trousers and long shirt on a nursing course. She was refused admission because of her traditional clothes. The Industrial Tribunal supported her stance, namely that the dress was a cultural requirement, but the Employment Appeal Tribunal took the opposite view. The General Nursing Council, the body which determines the rules for nursing uniforms, intervened under governmental pressure and eased the rules for uniforms. As a result, the woman was offered a place on the condition that she wore grey trousers and a white shirt. Such adaptations do not completely transform the organisational culture but respond to changing circumstances and facilitate the integration of minority members in society.<sup>118</sup>

In addition to legal and political accommodation of cultural differences, Parekh considers that a level of decentralisation of power is necessary to ensure justice. From this perspective, minorities will benefit substantially if local and regional bodies became more engaged in accommodating their cultural particularities. Adjustments will be 'more readily identified, limited in scale, not too costly and ... free from the glare of publicity.'<sup>119</sup> There will also be room for more experimentation with different practices, and the correction of mistakes will be easier on a limited scale. Regions can exchange experience and learn from each other's practices. Parekh concludes that the presence of a decentralised network is a crucial precondition for the growth of civic culture.<sup>120</sup>

Like Parekh, Kymlicka explains the tremendous significance of political recognition of cultural differences and argues in favour of special protection for minority groups. In accord with Taylor's view of recognition, he claims that individual self-respect depends on

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<sup>117</sup>It has to be mentioned that if a Sikh were injured on a construction site because of someone's negligence, he could claim damage only for the harm he would have suffered had he worn a helmet. The law specifies a minimum requirement for protection. Any additional harm which is beyond the minimum requirement is borne by the individuals who choose, for cultural reasons, to meet only the minimum level of protection. This is an example of a law which accommodates cultural differences without imposing burdens on the rest of society; *Ibid*, pp. 243-4.

<sup>118</sup> *Ibid*, pp. 245-6.

<sup>119</sup> *Ibid*, p. 212.

<sup>120</sup> *Ibid*, p. 212.

the esteem, in which one's national group is held. If the group is denigrated, the individual sense of worth is threatened.<sup>121</sup> Kymlicka points to the many ways in which the dominant culture hampers the expression of minority identity: governmental decisions on drawing internal boundaries for voting purposes, official languages, public holidays, and state symbols. Each practice involves the choice of particular identities and the corresponding needs of certain groups over others. In such a situation, only special protection can remedy the unequal standing of minorities.<sup>122</sup> Kymlicka notes that these rights are meant to protect the group from unfair external decisions, i.e. political and economic decisions of the larger society. He considers that these rights must be established as to prevent suppression of dissent of the members of the group.<sup>123</sup> Kymlicka's key argument in support of the possibility of internal liberalisation is that people are capable of reassessing their moral values and traditional lifestyles. Individuals should not only have the legal right to do so, they must be provided with social conditions, enhancing their evaluative capacity (for instance, liberal education).<sup>124</sup>

Kymlicka proposes a different type of political accommodation for various groups like immigrants, indigenous minorities, and national minorities. Immigrants do not typically intend to set up a parallel society but aim to preserve their specific cultural identity.<sup>125</sup> Polyethnic policies or exemption rights should be accorded to immigrants so that they can express their cultural specifics.<sup>126</sup>

National minorities or nations represent a category of people that forms historical communities and is to some extent institutionally complete. They have lost their autonomous status to an expansionist state. At the same time, they preserve their linguistic and cultural characteristics and desire to establish some degree of autonomy.<sup>127</sup> There are several approaches to political accommodation for national minorities. One possibility is to provide for the establishment of minority self-government structures. In fact, Hungary has not only

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<sup>121</sup> Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, p. 7.

<sup>122</sup> *Ibid.*, pp. 108-9.

<sup>123</sup> *Ibid.*, p. 35-6.

<sup>124</sup> *Ibid.*, p. 92.

<sup>125</sup> *Ibid.*, p. 15.

<sup>126</sup> *Ibid.*, p. 31; For instance, public holidays need to be adjusted so as to take into account the religious requirements of minority members. Dress codes also favour the dominant group, and exemptions for minority groups are necessary; *Ibid.*, pp. 114-5.

<sup>127</sup> Kymlicka, Will, *Multicultural Citizenship: a Liberal Theory of Minority Rights*, p. 11.

accorded a national status to the Roma but has also granted the right to non-territorial self-governments. Kymlicka notes that when territorial and cultural boundaries fit loosely, redrawing of the former helps establish political units in which the ethnic minority constitutes a dominant group. The government will then devolve decision-making powers to the homogeneous units, so that minorities are not outvoted on decisions that affect their culture.<sup>128</sup> Further, the minority language must become the official language of opportunity within these territorial units. Another group-specific measure for national minorities is the right to special representation. This right is important because legislatures are increasingly seen as ‘dominated by middle class, able-bodied, white men.’<sup>129</sup> One approach to this problem is to make political parties more inclusive by reducing the barriers which prevent minority members from becoming party candidates.

Another approach to political representation involves granting a number of seats in government to minority members.<sup>130</sup> Ann Phillips justifies this approach by the fact that white men cannot understand the needs of disadvantaged people. In her view, ‘democracies are significantly skewed towards the representation of white men, who make up the overwhelming majority of our politicians and who determine what gets on the political agenda.’<sup>131</sup> Kymlicka agrees that no person can entirely put oneself in other people’s shoes. Nevertheless, he warns that the total rejection of the capacity to empathise can serve as an excuse to under-represent disadvantaged groups. The argument of Phillips undermines the general concept of representation because each group contains sub-groups with their distinct experiences. Kymlicka suggests that societies should rather fight against ‘the barriers of experiences’.<sup>132</sup> In this way, they will create political culture that enables people to understand one another better. Such transformation would become possible if there were changes in the education system, the media depiction of minority groups, and the political process. For Kymlicka, the growth of such deliberative democracy is the ‘challenge of empathy.’<sup>133</sup>

Kymlicka also proposes a system of minority representation based on the Maori

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<sup>128</sup> Kymlicka, Will, *Multicultural Citizenship: a Liberal Theory of Minority Rights*, pp. 27-8.

<sup>129</sup> *Ibid.*, p. 32.

<sup>130</sup> *Ibid.*, p. 32.

<sup>131</sup> Phillips, Anne, “Democracy and Difference: Some Problems for Feminist Theory”, *The Political Quarterly*, 63:1 (1992), p. 80.

<sup>132</sup> Kymlicka, Will, *Multicultural Citizenship: a Liberal Theory of Minority Rights*, p. 140-1.

<sup>133</sup> *Ibid.*, p. 140-1.

example. In the Maori model, there is a separate electoral list for the Maori and a number of the legislators are elected by Maori only. The candidates are not necessarily Maori themselves but once elected, they are accountable to the Maori population.<sup>134</sup> Finally according to Kymlicka, representation is not solely reducible to the composition of the legislature. There should be other mechanisms for the representation of group interests such as the right to challenge unfavourable legislation and interest-group advocacy.<sup>135</sup>

To sum up, Parekh and Kymlicka share the idea that state institutions, representative of the dominant culture limit the opportunities of minorities to express their identities and live according to their vision of the good life. Parekh reasons that real equality is possible only when diverse views and ways of life are acknowledged. In his view, justice requires accommodation of diverse cultural identities and a degree of power decentralisation. Kymlicka proposes group rights that would guarantee protection against unfair political and economic decisions of the dominant group. The development of a culture of tolerance and empathy will contribute to the equal inclusion of minorities in their societies.

#### **1.3.3.4. “Moral learning” as a step toward achieving social equality**

The multicultural literature offers a variation of the recognition discourse, of amending the injustices suffered by minority cultures. Thomas, for example, examines marginalised and stigmatised minorities and argues that they have experienced what he calls ‘downward social constitution.’<sup>136</sup> The way to amend this would be if the dominant cultures developed empathy. The dominant group would help eliminate the feelings of oppression if it empathised with the moral suffering of stigmatised minority groups.

Thomas’ idea of moral deference contributes to the discussion of minority groups. He focuses on the importance of a dialogue between the dominant society and the minority group. Here, it is essential that the dominant group listens and does its best to understand the circumstances of the minority. Thomas considers that this practice is of crucial importance because minority groups ‘are constituted so as not to see themselves as full and equal

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<sup>134</sup> Ibid, pp. 147-8.

<sup>135</sup> Ibid, p. 150.

<sup>136</sup> Thomas, Laurence “Moral Deference” in Willet, Cynthia, *Theorizing Multicultural Citizenship: A Guide to the Current Debate*, p. 366.

members of society' and as such, they represent what he calls 'diminished social categories.'<sup>137</sup> The process of downward social constitution can come from many different sources: advertisements, casting of actors in films, assumptions about the interests of a person, and the concepts and ways of life which bring satisfaction. Even individuals who deceive themselves into believing that they care, or who actually do care, could be participating in the downward constitution of minority members.

All these factors create a deep sense of vulnerability in oppressed and stigmatised minorities. They feel even more vulnerable because they always need to prove to themselves or to others the falseness of the misconstrued ideas about them. Vulnerability also arises from the knowledge that hardly anything these people do will change their image in the eyes of others. Third, there is the vulnerability to exhaustion because minority members feel that they should always speak up as no one will do it for them. Their vulnerability stems, in part, from memories of downward social constitution. These memories can surface for a variety of reasons, for example, witnessing another person's experience of downward social constitution or having such an experience.

Marginalised and stigmatised minorities experience the full spectre of painful emotions. Since there are many ways in which minority members feel vulnerable, the dominant group must grasp the different ways in which stigmatised minorities are harmed.<sup>138</sup> Such understanding is possible only if one witnesses the moral suffering of another person. It is important that the members of the dominant group win the confidence of oppressed minority groups. It does not mean that the members of the dominant group should internalise the suffering of minority members, but they should get a sense of the circumstances that trigger such fears.<sup>139</sup> This type of moral learning requires courage. As Thomas observes, in Nazi Germany, those who dared to become moral witnesses of the Jews were killed. Today, those who become moral witnesses of gays and lesbians are also labelled homosexual.<sup>140</sup> As difficult a step as it is, the dominant culture needs to engage in moral learning and make an effort to demonstrate understanding, thus achieving social inclusion.<sup>141</sup>

In sum, Thomas reasons that due to past stigmatisation, minority members share a

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<sup>137</sup> Ibid, p. 365.

<sup>138</sup> Ibid, p. 375.

<sup>139</sup> Ibid, p. 377.

<sup>140</sup> Ibid, p. 376.

<sup>141</sup> Ibid, p. 378.

feeling of vulnerability as well as unequal social standing. The dominant culture needs to engage in moral learning and get a grasp of the moral suffering of stigmatised and oppressed minorities. Social inclusion is attainable when the dominant society empathises with the suffering of minorities, thus eliminating the feelings of oppression and stigmatisation.

#### **1.3.3.5. The Roma and arguments in favour of group rights**

The advocates of minority protection offer valuable arguments in support of accommodating Roma's cultural identity and concerns. A number of ideas have been identified within the multicultural literature, which is of significance in terms of protection of the Roma: culture as a context of choice, difficulty of exit, political visibility, and recognition of cultural differences. The questions of recognition as a supplement to redistribution, legal and political inclusion of cultural differences, and fairer treatment of minorities through moral learning are addressed as steps toward better minority protection and shed light on the right direction of accommodating the Roma culture.

Kymlicka examines culture as a context of choice that allows individuals to participate in the larger society through their particular culture. From this point of view, it is important that dominant groups in Eastern Europe acknowledge the right of Roma to cultural membership as a meaningful and intelligible context of choice. Culture is central to one's life, and leaving one's cultural community, as argued by Shachar, amounts to leaving everything that is held dear. What is more, without the support of their group, members of economically disadvantaged minorities, such as the Roma minority, may face even greater hardship. As noted by Levy, leaving one's group is more difficult because minority members are socialised into viewing the dominant culture as alien. Joining the dominant culture, Roma have to learn new cultural practices and social meanings. While leaving one's ethnic group is difficult, cultural prejudice against an ethnic identity can result in loss of self-respect for its bearers. Galeotti notes that political recognition of cultural differences is important in legitimising the presence of ethnic identities in the public domain. Thus, acknowledging the right of Roma to participate in public life through their identities would be a step toward their full social integration. The antipode of recognition – the non-recognition of minority identity, as argued by Taylor – is harmful to those, whose identity is not recognised or is

misrecognised. False perceptions of the self become easier to develop, especially with members of strongly discriminated ethnic minorities such as the Roma. In fact, the Roma face a double challenge: discrimination by the dominant group and low socio-economic status. Fraser argues that for such ethnic groups, recognition alone cannot bring about a significant improvement of their socioeconomic status. Ethnic identities should be questioned and the socio-political structure transformed as to establish a fairer society.

Parekh links public visibility to the recognition of cultural differences and a fairer distribution of economic resources. He considers that group rights would help acknowledge ethnic identities and protect their bearers from unfair economic and political decisions of the dominant society. In this view, the legal recognition of cultural differences is a step toward giving Roma greater political and economic power. Similar to Parekh, Kymlicka recognises the importance of recognising cultural differences and speaks of political accommodation of minority identities. Examining the situation of the Roma, Kymlicka notes that this minority does not have an external homeland or kin-state and therefore does not raise secessionist security concerns like the national minorities.<sup>142</sup> However, because of the pressing situation of the Roma, it is important that states develop targeted norms that are specifically designed to protect their rights.<sup>143</sup> While Roma are a transnational rather than national minority, Kymlicka points out that in the absence of targeted norms, the only possibility Roma are left with is to find a way of qualifying as a national minority.<sup>144</sup>

The multicultural literature offers a valuable argument in support of minority protection for the Roma: culture is an important context of choice and leaving one's culture is difficult. Because of the tremendous significance of culture for its bearers, dominant groups have to give political visibility to minorities and recognise cultural differences. For ethnic groups with lower socio-economic standing such as the Roma, it is important to combine recognition with the redistribution of economic resources. The legal and political inclusion of cultural differences in the public domain can be achieved through advocacy of group rights.

As a supplementary approach to political recognition, Thomas explains that if dominant groups developed empathy for the injustices suffered by ethnic minorities, this

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<sup>142</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 219.

<sup>143</sup> *Ibid*, p. 222.

<sup>144</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 225.

would contribute to greater social equality. Thus, a way toward socially fairer societies is if dominant groups acknowledged the painful emotions experienced by stigmatised minorities such as the Roma.

#### **1.4. Conclusion**

Jowitt has examined the relationship between dominant groups and ethnic minorities in Eastern Europe, shedding light on the cases, in which ethnic conflict develops. Brubaker focuses more closely on nationalism and the nationalising states in Eastern Europe. He argues that nationalism has a positive role to play in Western Europe. Brubaker examines the virtues of patriotism in this part of the world and the reasons why they cannot be brought to Eastern Europe. The triad nationalising state – external homeland – national minority helps us understand why the dominant nations in Eastern Europe have a hostile attitude toward their national minorities and are opposed to minority protection. Brubaker's analysis of the uneasy relationship between states, their minorities, and external national homelands offers a diagnosis of the problem. At the same time, Roma are a transnational, non-territorial minority without an external homeland that doesn't easily fit in the triad examined by Brubaker.

Kymlicka offers a similar explanation to the dynamic of the relationship between states, national minorities, and their kin-states. He reasons that the dominant groups in Eastern Europe view themselves as victimised minorities because of their historic position of subjugated populations in the constitution of empires. Because the former oppressors are kin-states of their national minorities at present, Eastern European dominant groups view these minorities as irredentist. The unique position of Roma as a transnational minority, coupled with its low socio-economic status, poses additional challenges to developing a model of minority protection that would fit the context of Eastern Europe. Kymlicka examines two possible approaches to amending the situation of the Roma minority. Targeted norms should be developed to account for the unique position of Roma in the Eastern European states. In the absence of targeted norms, the only alternative Roma are left with is to find ways to qualify as national minorities.

The liberal – multicultural debate in the second half of the 20<sup>th</sup> century articulated arguments about the fair treatment of ethnic minorities. While this debate took place in the

context of Western Europe and did not take into account the specifics of Eastern Europe, it articulated arguments about the fair treatment of minority cultures.

Traditional liberals have argued that minority protection threatens social cohesion. Hobbes, Locke, Rousseau, and Mill object to the very existence of minority groups. Their arguments hold that the existence of minorities endangers territorial integrity and the functioning of democratic institutions. In this view, rather than constituting a separate minority, Roma are citizens of their respective states. A second group of liberals, represented by Barry, Kukathas, and Miller agrees that ethnic identity is essential to its bearers. However, these liberals claim that minority protection leads to power inequalities. From this perspective, if the Roma find the terms of membership in their communities disagreeable, they can leave their groups or use testimony to communicate their concerns to the dominant culture.

Developments in the multicultural theory offer arguments in support of group rights, which could serve the interests of Roma people. In particular, ethnic and national belonging is of equal importance for the wellbeing of minorities. Political visibility and recognition of minority identity and group-based measures will facilitate the full participation of ethnic groups in the institutions of their societies.

Multicultural research shows that identity is important for its bearers. In a world of interrelatedness, states and citizens need to acknowledge the right to differ. No person can possibly live isolated from society; yet, no two people have the same background, upbringing, lifestyle, interests, beliefs, problems, and needs. Background unifies one with their family on the closest level. Groups socialise their members and teach them particular social meanings and views of the world. Minority ethnic groups represent a miniature model of the societal organisation, in which one feels comfortable and secure.

Kymlicka notes that minority cultures are not only vital in shaping the values and beliefs of their members, but also that culture is, in fact, a context of choice. The culture individuals are socialised into predetermines the choices they make. When the culture of the Roma is discriminated against, as it actually is, it cannot serve as a context of choice. Shachar looks into the pivotal role culture plays in one's identity and notes that leaving one's community is difficult. Levy argues that leaving one's ethnic group is not easy because to members of minority groups, the dominant culture is strange and alien.

From Galeotti's point of view, giving political visibility and recognition to cultural differences is a necessary precondition for the inclusion of Roma as equal members of society. Not recognising or misrecognising cultures, as Taylor argues, results in the development of false images of the self in members of ethnic minorities. Fraser argues that the questioning of ethnic identities should be combined with the restructuring of labor relations as to ensure equal status of all individuals. Parekh and Kymlicka consider that political visibility is the first step toward the protection of minorities, whose culture is under pressure. Special measures will serve to protect the Roma's vision of the good life and enable them to act as full members in the private and public domains. Finally, Thomas proposes that changes in social attitudes are possible only if the dominant culture learns to listen to its oppressed members. Understanding the suffering of minorities and empathy for their grievances will open the path to a socially fairer society.

## **Chapter 2**

### **Relevant International Instruments for Minority Protection: Is Roma Destiny Marginal to the Global Human Rights Agenda? (1648–2008)**

#### **2.1. Introduction**

This chapter offers an investigation of international standards that are relevant to the protection of Roma. The vulnerable position of this transnational minority requires sound legislative guarantees that help preserve and develop their identity. Therefore, the chapter explores the extent, to which the Roma are adequately covered by the current international standards for minority protection. In addition, the chapter examines recent developments toward targeted standards and their contribution to the protection of the Roma minority.

The chapter consists of three sections. The first section of the chapter presents a historical discussion, which examines the emergence of protection for minorities between the 16<sup>th</sup> and 18<sup>th</sup> century. This analysis illustrates the historical absence of minority protection in view of the enduring marginalisation and debasement of the Roma. The purpose of the first section, therefore, is to emphasise that the absence of minority guarantees is detrimental to the situation of the Roma population.

The section proceeds with the advent of nationalism and the Vienna Congress of 1815-1815. The early 19<sup>th</sup> century produced treaties, designed to promote stable relations between participant states. However, the dominant groups in Bulgaria, Hungary, and Romania were focused on building their own nations during this period. The Roma populations were left without protection due to the lack of enforcement mechanisms.

The subsequent discussion covers the Berlin Congress of 1878 and the imposition of external dictates for minority protection. The period of the second half of the 19<sup>th</sup> century is notable because previous religious guarantees for minorities began to be replaced by national formulations of minority rights. However, these developments brought no real protection for the Roma minorities in Bulgaria, Hungary, and Romania.

The historical section ends with an overview of the League of Nations and its minority treaty system. The minority arrangements under the League covered a limited number of states, and minority protection was designed only to complement the post-war land redistribution. With the 1920 Treaty of Trianon, for example, a sizeable part of Hungary, including the region of Transylvania, was annexed to Romania.<sup>145</sup> The transfer of Hungarian-populated territories to Romania continues to play an essential role today, determining the extent, to which minority protection is accepted by the dominant groups in the two countries.

The second section reviews current international instruments that are relevant to the Roma minority as well as Roma-specific standards, paying particular attention to the extent, to which these instruments fall within the liberal or multicultural approach to the rights of ethnic minorities. The section examines documents under the United Nations. Relevant instruments included in the section are the Genocide Convention (1948), the UN International Covenant on Civil and Political Rights (1966), the UNESCO Declaration on Race and Racial Prejudice (1978), and the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). All of the instruments have texts that are relevant to the protection of Roma from discrimination and their right to full development.

Following the discussion of the UN instruments, the second section reviews documents of the Organization for Security and Co-operation in Europe. Those are the Final Act of Helsinki (1975), the Concluding Documents of Madrid (1983) and Vienna (1986), the Copenhagen Document (1990), and the Geneva Report (1991). Although some instruments have limiting clauses, they put an end to the assimilation of minorities or the melting-pot theory within the OSCE.<sup>146</sup> Moreover, the Copenhagen Document is the first instrument to recognise the right of minorities to autonomy.

The section also reviews instruments for minority protection under the Council of Europe. I offer a more detailed review of the European Convention on Human Rights (1950) and the Framework Convention for the Protection of National Minorities (1994). These

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<sup>145</sup> Lorant, Czigany, "A History of Hungarian Literature: From the Earliest Times to the Mid – 1970's" [<http://mek.oszk.hu/02000/02042/html>] (accessed March, 12, 2007).

<sup>146</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, (Hague: Kluwer Law International, 1996), p. 272-4.

instruments are particularly important for the Roma because of their legally binding nature. The two conventions safeguard important rights such as the right to non-discrimination, freedom of speech and assembly, freedom to manifest one's religious belief, etc.

Finally, the third section discusses Roma-specific standards. The resolutions and recommendations described in this section call for non-discrimination, the right to cultural identity, and special protection for the Roma minority.

## **2.2. Historical overview of minority protection**

### **2.2.1. Minority protection: from the Holy Roman Empire to the Congress of Berlin**

#### **2.2.1.1. The Holy Roman Empire: Post-Reformation developments**

The history of minority protection begins with the Peace of Westphalia (1648) and the disintegration of the monolithic religious system under the Holy Roman Empire. The signed treaties created autonomous states, in which 'religion and ideology were to be considered within the domestic jurisdiction of each territorial state and to be eliminated as aspects of international relations.'<sup>147</sup> In this new system, jurisdiction over religion and ideology required the establishment of more centralised systems of government, which were capable of regulating their own affairs and the duties of their citizens. In this context, the question of jurisdiction over minorities became relevant. However, as Lerner points out, the emphasis was more on religious tolerance than on actual civil rights.<sup>148</sup> The Peace of Westphalia secured religious tolerance of the Catholic, Calvinist, and Lutheran communities of the Holy Roman Empire. Member states were bound to respect the 'private worship, liberty of consciousness, and the right of emigration to all religious minorities and dissidents within their domains.'<sup>149</sup>

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<sup>147</sup> Right, Quincy, "International Law and Ideologies", *American Journal of International Law*, 48:4 (1954), p 619.

<sup>148</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, (Dordrecht: Kluwer Academic Publishers, 1991), p. 7.

<sup>149</sup> „Treaty of Westphalia”, *Encyclopedia Britannica Deluxe Edition 2004 CD-ROM*; The Treaty of Oliva (1660) is another agreement that protected Roman Catholics in Pomerania and Livonia, lands ceded by Poland to Sweden. Article 2 (3) stipulated that the 'cities of Royal Prussia, which, as a consequence of this war, have become property of (Sweden), will maintain all the rights which they have enjoyed .... in the ecclesiastical or the lay domain'. See: Thornberry, Patrick, *International Law and the Rights of Minorities*, (Oxford: Clarendon Press, 1991), p. 25.

However, Preece mentions that these concessions were extended only to the populations, which inhabited territories that were subject to land redistribution. Princes could still determine the religious affiliation of the territories under their rule.<sup>150</sup> Religious freedom for people in the new territories was hardly granted by virtue of humanity. It was accorded in the interest of stability and peace. Moreover, in the case of conflict between the treaty's provisions and the interests of the sovereign, the latter would prevail.<sup>151</sup> Overall, this early stage saw no real system of minority protection. The guarantees were partial, lacking in enforcement mechanisms, and limited to the protection of religious minorities.

Prior to the Vienna Congress of 1814-1815, minority guarantees were granted only in view of religious affiliation. In the absence of minority protection, ethnic groups such as the Roma suffered from discrimination and exclusion, arbitrary treatment, forced expulsion, and extermination. Chapter four demonstrates that the Roma minorities were historically subjected to degrading treatment throughout Central and Eastern Europe. The Romanian principalities enslaved their Roma populations for several centuries. Slaves formed the lowest level of the social stratum and lacked legal status. The brutal treatment of slaves was not sanctioned by the authorities. They were subjected to starvation, solitary confinement, and physical punishment and killed.<sup>152</sup> Hungary, as a part of the Habsburg Empire, adopted two approaches toward the Roma minority – extermination and forceful assimilation. The assimilatory approach of monarchs, as represented by the policies of Empress Maria Theresa, included prohibition of marriages between Roma, a ban on nomadic lifestyles, outlawing the possession of horses, etc.<sup>153</sup> In the absence of international standards for minority protection, some ethnic minorities were treated as aliens, falling outside the realm of entitlements that other subjects enjoyed.

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<sup>150</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*. (Oxford: Clarendon Press, 1998), p. 57.

<sup>151</sup> *Ibid*, p.58.

<sup>152</sup> Grigoraş, Nicolae, *Istoria Dreptului Românesc*, vol. I, (Bucharest, 1980), pp. 486-9, in Achim, Viorel, *The Roma in Romanian History*, (Budapest: CEU Press, 1998), p. 35.

<sup>153</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 75 quoting: Fraser, Angus, *The Gypsies*, (Oxford: Blackwell, 1995), p. 159; Guy, Will, "Ways of Looking at Roms", (Hatfield: University of Hertfordshire Press, 2002), p. 207; Horváthová, Emilia, *Cigáni na Slovensku*, (Bratislava: Vytadel'stvo Slovenskej Akademie Vied, 1964), p. 118-25.

### 2.2.1.2. The Congress of Vienna (1814-1815)

Jennifer Preece notes that a new period of minority protection started with the advent of nationalism and the Congress of Vienna.<sup>154</sup> The treaties signed in Vienna distinguish, for the first time, between national ethnic minorities and ideological religious groups. Article 1 of the General Treaty arranges the partition of Poland among Prussia, Russia, and Austria. The right of Poles to maintain their national institutions are guaranteed by the treaty. Article 1 stipulates that the Polish subjects of Austria, Prussia, and Russia shall be entitled to representation and formal national institutions.<sup>155</sup>

This article is among the first texts that recognise the right of minorities to representation and national institutions. It is notable that in principle, this stipulation had a binding character, and other parties to the Treaty of Vienna had the right to see it carried into effect.<sup>156</sup> However, Preece explains that the right to representation was not accompanied by any enforcement mechanisms. As such, it remained a general statement of intent rather than a tool that could be employed to preserve national self-expression.<sup>157</sup> Another landmark of the Final Act was the inclusion of provisions against the slave trade. However it wasn't until 1890 that the abolition of slavery was backed by enforcement mechanisms as part of the Brussels Act.<sup>158</sup>

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<sup>154</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*, p. 59.

<sup>155</sup> Hurst, Michael, ed., *Key Treaties of the Great Powers 1914- 1914*, (Newton Abbot: Davis and Charles, 1972), p. 45 in Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 30.

<sup>156</sup> Baldwin, et al, "Hansard's Parliamentary Debates: Forming a Constitution of the "Parliamentary History of England, from the Earliest Period to the Year 1803", Third Series; Commencing with the Accession of William IV, Volume, XIII, (London, 1832), p.1119  
[[http://books.google.bg/books?id=RtEMAQAIAAJ&printsec=frontcover&dq=The+Parliamentary+debates+\(Authorized.+edition\)&ei=wByBS4jed.5W2zASan6SCCw&cd=1#v=onepage&q=&f=false](http://books.google.bg/books?id=RtEMAQAIAAJ&printsec=frontcover&dq=The+Parliamentary+debates+(Authorized.+edition)&ei=wByBS4jed.5W2zASan6SCCw&cd=1#v=onepage&q=&f=false)] (accessed: January 12, 2010).

<sup>157</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*, p. 60.

<sup>158</sup> Stamatopoulou, Elsa, "Indigenous People and the United Nations: Human Rights as a Developing Dynamic", *Human Rights Quarterly*, 16: 1 (1994), p. 61.

The Vienna Act provides evidence of nascent civil rights. Article LXXVII of the General Treaty stated that the inhabitants of Bern and Basil, transferred to the corresponding cantons, were entitled to equal political and civil rights.<sup>159</sup>

As discussed in chapter four, the rights of Roma and other ethnic minorities were not on the national agendas of Bulgaria, Hungary, and Romania during this period. The three states were preoccupied with their own nation-building. However, the foundations of minority protection were generally laid in Europe, even though no enforcement mechanisms accompanied the guarantees. Regarding the abolition of slavery in Romania, chapter four will establish that the efforts of Romanian intellectuals, rather than international provisions, led to the liberation of the Roma slaves.

### **2.2.2. The Congress of Berlin (1878): external dictates of minority protection**

Preece stresses the fact that before the Congress of Berlin, states were not required to adopt minority provisions. They would accord guarantees as a gesture of goodwill.<sup>160</sup> Disputes were resolved through diplomacy and were regarded as the way to avoid conflict and to facilitate cooperation in Europe.<sup>161</sup> After the Congress of Berlin, guarantees for minority protection were externally dictated to the new states.<sup>162</sup> The Treaty of Berlin contained comprehensive provisions for the national minorities in Romania. Minorities were granted religious freedom, the right to non-discrimination, the right to hold public office, and the right to membership in the industries.<sup>163</sup> Article IV of the Treaty is particularly important in providing for the interests of all national groups in Bulgaria. It states that the rights of the Turkish, Romanian, Geek, and other minorities will be given due consideration when drafting the ‘Organic Law of the Principality’ and the electoral regulations.<sup>164</sup> As important as the stipulations seem, withdrawal of recognition did not follow the failure to adopt minority provisions.<sup>165</sup> In other words, no enforcement mechanisms were in place to secure

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<sup>159</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*, p. 61.

<sup>160</sup> Ibid, p. 62.

<sup>161</sup> „The Vienna Congress”, The History Channel UK.

[<http://www.thehistorychannel.co.uk/site/search/search.php?word=Vienna-C>] (accessed April 5, 2007).

<sup>162</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*, p. 62.

<sup>163</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*, p. 65.

<sup>164</sup> Parry, Clive, ed., *The Consolidated Treaty Series*, (New York: Oceana Publications Inc., 1969), pp 182-4.

<sup>165</sup> Preece, Jennifer, *National Minorities and the European Nation-State System*, p. 65.

compliance with the treaties. Preece concludes that the Treaty of Berlin is important as it replaced the religious guarantees with a national formulation of minority rights.<sup>166</sup> Yet, this period did not produce a real change in the status of Roma. As described in the next section, standards and rights were only established with the advent of the 20<sup>th</sup> century.

### **2.2.3. The League of Nations (1919-1946): a system of minority treaty guarantees**

Athanasia Akermark notes that the League of Nations marks a new period for minority protection. Established at the end of World War I, the League was not aimed at humanitarian intervention.<sup>167</sup> Measures toward minorities under the League were designed to respond to land redistributions and the redrawing of borders.<sup>168</sup> President Wilson, who was charged with drafting the Covenant of the League, initially envisaged the inclusion of minority protection in the document. His second draft of January 10, 1919 contained a Supplementary Agreement VI which provided that:

The League of Nations shall require all new States to bind themselves as a condition precedent to their recognition as independent autonomous States, to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact that is accorded to the racial and national majority of the people.<sup>169</sup>

President Wilson envisioned the establishment of an international organisation, vested with the authority to oversee states' compliance with their commitments to minority protection. Wilson conceived of the League of Nations as a monitoring mechanism, guaranteeing the adoption of measures for the equal treatment of minorities. This idea is a major departure from the agreements reached at the Congress of Berlin and the Congress of Vienna. These agreements mandated minority protection but envisaged no enforcement mechanisms to secure compliance with the treaties' provisions.

Rather than vesting the League of Nations with authority to monitor states' compliance, the Great Powers chose to prepare treaties that dealt with the status of affected minorities. These treaties were complemented by bi- and multilateral agreements and

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<sup>166</sup> Ibid, pp. 66.

<sup>167</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 102.

<sup>168</sup> Ibid, p. 115.

<sup>169</sup> Miller, David, *The Drafting of the Covenant*, vol. 2, (New York, 1928), p. 91 in Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 103.

unilateral declarations. The special minority treaties became a part of the Paris Peace Conference. They were concluded between the Associated and Allied Powers and Poland, Czechoslovakia, Romania, Greece, etc. Treaties with special chapters on minorities were also signed with Bulgaria, Turkey, Austria, and Hungary.<sup>170</sup>

Akermark points out that the implementation of the treaties was controlled by the Council and the Permanent Court of International Justice. In addition, the Council member states had the right to submit minority petitions to the Committee of Three (consisting of the President of the Council and two other representatives). In 1920, this right was extended to non-participant minorities and states. However, the Council was not obliged to take up petitions. The body could undertake any action it deemed appropriate where treaty violations occurred. The Permanent Court could examine disputes arising from treaties' obligations.<sup>171</sup> Therefore, it served to mediate between governments and encourage conciliation.

Overall, developments in the field of minority protection were the result of land redistributions and border transformations during this period. As discussed in chapter four, territorial disputes and their post-war settlement continue to shape the current state of minority protection in Central and Eastern Europe. The transfer of the Hungarian-populated region of Transylvania to Romania remains a major consideration in view of developing minority-related policies in Romania. Ethnic Romanians hold deep mistrust of the loyalty of the large and politically active Hungarian minority in Transylvania. Concerns about lack of loyalty discourage the adoption of multicultural policies for minority protection. On the other hand, Hungary aims to safeguard the rights of its kin minority in Romania. All these developments have their historic roots, with their effects augmented by the post-war land redistributions.

In general, the post-war period that followed World War I was characterised by developments in the direction of minority protection, but they impacted a limited number of states. At the same time, a broad range of issues was covered, including non-discrimination, equal civil rights, and special measures for the protection of religion, language, and culture. States were required to subsidise educational and charity institutions for their ethnic minorities. Finally, obligations were imposed not only on the countries defeated in the war.

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<sup>170</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 105.

<sup>171</sup> *Ibid*, p. 108.

Romania, Greece, and Serbia were on the Entente side but they, too, were required to sign minority treaties.<sup>172</sup>

## **2.3. Current international instruments for the protection of Roma**

### **2.3.1. Overview**

All minority rights instruments described in this section bear upon the rights of the Roma minority. Supervisory organs, such as the Advisory Committee to the Framework Convention for the Protection of National Minorities, have underscored the fact that the Roma qualify as a minority. Therefore, all minority rights included in different human rights standards are applicable to them. Kristin Henrard notes that according to the Advisory Committee, special measures are required to ensure the adequate protection of the Roma.<sup>173</sup>

This section aims to evaluate the extent, to which the various human rights declarations and conventions are relevant to the Roma. The analysis turns special attention to the nature of these declarations and conventions – whether they include citizenship rights or cultural rights, intended to accommodate the culture of ethnic minorities.

The current international instruments grant actual rights to minorities, which are both negative (or “freedom from”) and positive (or “freedom to”). Rights such as freedom from discrimination or freedom from non-interference in the cultural or religious activities of minorities should not be interpreted as mandating that states support minorities’ initiatives. On the other hand, the right to education in one’s native language and the right to maintain cultural centres imply that states should provide financial assistance to their minorities. These rights are embraced by the principles of liberal multiculturalism.

### **2.3.2. The United Nations: from group protection to an individualistic approach to the protection of minorities**

#### **2.3.2.1. Protection of physical integrity: the Genocide Convention**

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<sup>172</sup> Ibid, p. 115.

<sup>173</sup> Henrard, Kristin, “Building Blocks for an Emerging Regime for the Protection of a Controversial Case of Cultural Diversity: The Roma”, *International Journal on Minority and Group Rights*, 10:3 (2003), pp. 196-9.

According to Nathan Lerner, the ‘machinery’ of minority protection under the League of Nations ceased to exist along with the League.<sup>174</sup> The treaty obligations, except for the Aalands agreement, became null and void at the end of World War II. The establishment of the United Nations transformed the character of minority protection. The emphasis was shifted from minority protection to individual rights. Whenever the rights of people were restricted on the ground of religion, race, ethnic and national origin, or culture, they were protected by the principle of non-discrimination.<sup>175</sup> Tove Malloy explains that this development was due, in part, to the Nazi’s misuse of minority protection. The atrocities against the Jews and Roma during WWII made the community of nations wary of the idea of group rights. However, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide recognises group protection.<sup>176</sup> In the framework of this convention the Roma, as an ethnic group, were and are entitled to protection from deeds that aim to damage their physical integrity.

The word ‘genocide’ was first introduced in the Charter of the International Military Tribunal at Nuremberg. Though not specifically referred to as genocide, the term ‘crime against humanity’ encompasses genocide.<sup>177</sup> Article 6(c) refers to murder, enslavement, and other inhumane acts against civilians, regardless of whether the latter are in compliance with domestic legislation.<sup>178</sup>

The word ‘genocide’ was used in relation to German criminals in indictment No 8. The text referred to genocide as ‘extermination of racial and national groups ... particularly Jews, Poles, Gypsies, and others.’<sup>179</sup> The legal condemnation of genocide culminated in the United Nations Genocide Convention. Its article II stipulates that ‘any of the following acts committed with the intent to destroy in whole or in part particular groups’ constitute genocide:

- a) Killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction

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<sup>174</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 14.

<sup>175</sup> *Ibid*, p. 14.

<sup>176</sup> Malloy, Tove, *National Minority Rights in Europe*, (Oxford: Oxford University Press, 2005), pp. 30-1.

<sup>177</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 63.

<sup>178</sup> *Ibid*, p. 63.

<sup>179</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14 1945-October 1, 1946*. vol. 1, pp. 406-6 in Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 63.

in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group.<sup>180</sup>

Finally, the crime of genocide should have been ‘committed with the intent to destroy’ a particular group.<sup>181</sup> In the absence of intent, acts of atrocity do not constitute genocide.<sup>182</sup> On the other hand, acts that do not result in genocide but have it as an objective constitute genocide. If government officials or individuals commit or intend to commit the crime of genocide against the Roma as a group, they shall be subject to international law. Further, Patrick Thornberry notes that there is a strict condition of mens rea to define a crime as genocide. Acts committed ‘with intent to prevent the preservation’ or ‘with intent to prevent the development’ of groups do not constitute genocide.<sup>183</sup> The Genocide Convention, therefore, does not accord protection in the sense of the right of groups to ‘develop and flourish.’<sup>184</sup> The Convention, defined in such terms, protects the right of Roma to exist as a group.

### **2.3.2.2. Protection of minority identity**

#### **2.3.2.2.1. UN Covenant on Civil and Political Rights**

The right to identity is safeguarded by the Covenant on Civil and Political Rights, another prominent instrument of the United Nations. Article 27 reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>185</sup>

The wording of the article, ‘persons belonging to ... minorities’ entitles Roma to individual rights. However, it can be argued that this right has both collective and individual components because of the ‘community’ requirement. Patrick Thornberry claims that the ‘enjoyment of culture, practice of religion, and use of language presuppose a community of individuals endowed by similar rights.’<sup>186</sup>

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<sup>180</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 70.

<sup>181</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 74.

<sup>182</sup> Ibid, p. 74.

<sup>183</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 74.

<sup>184</sup> Ibid, p. 74.

<sup>185</sup> UN Covenant on Civil and Political Rights [<http://www.hrweb.org/legal/cpr.html>] (accessed: December 20, 2007).

<sup>186</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 173.

The article explicitly protects the Roma minority from forced assimilation. It points to the positive obligation of states to abstain from assimilatory acts. Jacob Robinson considers that the negative wording of the article represents a ‘classic example of restrictive toleration of minorities.’<sup>187</sup> On this reading, the article does not mandate that states provide assistance to their minorities.<sup>188</sup> The proponents of positive obligations rely on the International Covenant on the Economic, Social, and Cultural Rights (article 15) for a broader reading of Article 27. The second paragraph of this article requires that states ensure everyone’s participation in cultural life. Hence, they claim that a similar obligation can be read in Article 27.<sup>189</sup> Capotorti’s interpretation of Article 27 is also supportive of the positive obligation of states. He notes that states need to adopt administrative and legislative measures as to achieve the objectives set in the article. The language and culture of minority groups cannot be preserved without special adaptations within the education system. Adequate cultural institutions have to be established or the ‘right accorded to members of minorities would quite obviously be purely theoretical.’<sup>190</sup> The actual enjoyment of rights necessitates ‘active and sustained intervention by States.’<sup>191</sup>

According to Thornberry, Capotorti’s conclusions seem to present the correct interpretation of the scope of this article.<sup>192</sup> Two conclusions can be drawn from this interpretation. Firstly, states should not interfere in the efforts of minorities to preserve their culture, language or religion. Secondly, states need to take measures in assisting their minorities to preserve their values. The Human Rights Committee General Comment also states that ‘positive measures by States may ... be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group.’<sup>193</sup> Accordingly,

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<sup>187</sup> Robinson, Jacob, “International Protection of Minorities: A Global View” in Dinstein, Yoram, *Israel Yearbook on Human Rights*, vol. 1, (Tel Aviv: Tel Aviv University, 1971), p. 89.

<sup>188</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 179.

<sup>189</sup> Capotorti, Francesco, “Les Developpements Possibles de la Protection Internationale des Minorites”, *Cahiers de Droit* (1986), p. 243 in Henrard, Kristin, *Devising an Adequate System of Minority Protection*, p. 169.

<sup>190</sup> Capotorti, Francesco, “Les Developpements Possibles de la Protection Internationale des Minorites”, p. 37 in Henrard, Kristin, *Devising an Adequate System of Minority Protection*, p. 171.

<sup>191</sup> *Ibid*, p. 171.

<sup>192</sup> Thornberry, Patrick, *International Law and the Rights of Minorities*, p. 179.

<sup>193</sup> United Nations Human Right Website

[[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed.004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed.004df111?Opendocument)] (accessed: December 18, 2007).

the scope of the article covers the protection of the Roma minority from assimilation and the requirement that states take measures to preserve its identity.

### **2.3.2.2.2. The UNESCO Declaration on Race and Racial Prejudice**

The right to identity is also protected by the 1978 UNESCO Declaration on Race and Racial Prejudice. According to Lerner, the Declaration is the first international instrument, which proclaims the right of both individuals and groups to differ (Article 1).<sup>194</sup> As such, the Declaration represents a shift from toleration to the celebration of differences<sup>195</sup> as envisioned by the multicultural scholarship. According to the Declaration, groups have the right to ‘consider themselves different and to be regarded as such.’<sup>196</sup> Further, as Lerner suggests, the article makes clear that the right to differ cannot be used as a pretext for racial prejudice or apartheid. Paragraph 1 of Article 2 condemns theories of superiority and inferiority of ethnic and racial groups, noting that such theories have no scientific foundation. Paragraph 2 lists the manifestations of racism.<sup>197</sup> They are ‘racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable.’<sup>198</sup> This declaration becomes particularly relevant in light of the pseudoscientific ideologies that justified Roma’s marginalisation in the past. During World War II, Romanian scientists claimed that the Roma minority fell into the category of ‘ballast minorities’ and posed a ‘bioethnic danger’.<sup>199</sup>

As to other issues advanced by the UNESCO Declaration, Lerner notes that article 3 contains a concept that was recently incorporated in the field of human rights protection: the right of individuals and groups to full development. This right implies concern for minority groups and their cultures. The right to culture is reaffirmed in paragraph 1 of article 5, which

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<sup>194</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 157.

<sup>195</sup> Notably, Parekh discusses the need to recognise different conceptions of the good life. See: Parekh, Bhikhu, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, p. 206; See also: Galeotti, Anna, *Toleration as Recognition*, p. 101.

<sup>196</sup> Office of the High Commissioner for Human Rights Webpage, Declaration on Race and Racial Prejudice [http://www.unhchr.ch/html/menu3/b/d\\_prejud.htm](http://www.unhchr.ch/html/menu3/b/d_prejud.htm) (accessed: December 18, 2007).

<sup>197</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 157.

<sup>198</sup> Office of the High Commissioner for Human Rights Webpage, Declaration on Race and Racial Prejudice [http://www.unhchr.ch/html/menu3/b/d\\_prejud.htm](http://www.unhchr.ch/html/menu3/b/d_prejud.htm) (accessed December 18, 2007).

<sup>199</sup> Achim, Viorel, *The Roma in Romanian History*, p. 164.

states that minority members have the right to determine the extent, to which they desire to preserve and develop their culture.<sup>200</sup>

Articles 6, 8, and 9 bear upon the protection and full development of minorities. Article 6 reaffirms that states have to ensure, through legislation, that racism is prohibited in the spheres of communication, culture, and education.<sup>201</sup> In addition, states have the positive obligation to ‘encourage the dissemination of knowledge and the findings of appropriate research ... on the causes and prevention of racial violence and racist attitudes.’<sup>202</sup> Article 8 spells out the obligations of individuals vis-à-vis society and the international community. These duties are the promotion of harmony and the fight against racism and racial prejudice.

Finally, Lerner observes that Article 9 contains concepts, which have not been incorporated in previous human rights instruments.<sup>203</sup> The first paragraph proclaims that ‘racial discrimination practiced by a State constitutes a violation of international law giving rise to its international responsibility.’<sup>204</sup> The second paragraph deals with affirmative action for economically and socially disadvantaged groups in the spheres of health, housing, employment, and the protection of the culture and values of minority groups.<sup>205</sup>

The contributions of the Declaration regarding the right of minorities to culture should not be underestimated. In line with the values of multiculturalism, the Declaration recognises the identity of members of minorities and the right to be different. It promotes the full development of minorities and calls for affirmative action in order to achieve this goal.<sup>206</sup> In this way, UNESCO has set the standard to facilitate Roma’s inclusion in their societies.

Most articles of the Declaration touch upon the major issues of minority protection. Chapter five will suggest that the extent, to which Central and Eastern European dominant groups view their minorities as loyal to the nation determines the states’ commitment to accommodating ethnic minority rights. In the absence of enforcement mechanisms, states that mistrust the loyalty of their minorities (such as Bulgaria and Romania) opt for the

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<sup>200</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 158.

<sup>201</sup> Ibid, p. 158.

<sup>202</sup> Office of the High Commissioner for Human Rights Webpage, Declaration on Race and Racial Prejudice [[http://www.unhchr.ch/html/menu3/b/d\\_prejud.htm](http://www.unhchr.ch/html/menu3/b/d_prejud.htm)] (accessed: December 18, 2007).

<sup>203</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 159.

<sup>204</sup> Office of the High Commissioner for Human Rights Webpage, Declaration on Race and Racial Prejudice.

<sup>205</sup> This point seems controversial as sending people to their country of origin does not necessarily represent protection of their rights. Further, it reminds of the temporary status of those people.

<sup>206</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 159.

minimal reading of minorities' effective participation in public life: non-discrimination, the right to vote, run for office, and engage in advocacy.

### **2.3.2.3. The right to culture and minority protection: the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**

Henrad explains that the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities aimed to clarify the provisions of Article 27.<sup>207</sup> In this regard, Thornberry observes that the Preamble of the Declaration claims that the document is 'inspired by', not 'based on', Article 27. This implies that the Declaration should not be interpreted as being limited to the provisions of article 27.<sup>208</sup>

As evident in Article 1.1, the Declaration transcends the scope of Article 27. The Roma minority is protected in line with the provision that the existence of 'national or ethnic, religious and linguistic minorities' shall be safeguarded, and states shall 'encourage the conditions for the promotion of that identity.'<sup>209</sup> The protection of identity is mandatory as evident in the use of the verb 'shall'. An important fact is that this requirement is present in the very first article of the Declaration.<sup>210</sup>

Article 2 has stronger wording than Article 27 because the positive statement 'have the right' replaces the negative one 'shall not be denied the right.'<sup>211</sup> Under this article, minorities may exercise their right to culture 'in private and in public, freely and without interference or any form of discrimination',<sup>212</sup> an assurance fully consistent with the theoretical discourse of chapter one, which emphasised the right of dominant groups to pursue opportunities in the public and private sector. Minorities, on the other hand, are

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<sup>207</sup> Henrad, Kristin, *Devising an Adequate System of Minority Protection*, p. 187.

<sup>208</sup> Thornberry, Patrick, "The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities: Background, Analysis, and Observations, Occasional Paper", (London: Minorities Rights Group, 1993).

<sup>209</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities [<http://www2.ohchr.org/english/law/minorities.htm>] (accessed: 3 July, 2010); The issue of identity will be discussed in a separate section shortly

<sup>210</sup> Thornberry Patrick, "The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities: Background, Analysis, and Observations".

<sup>211</sup> Thornberry, Patrick, "The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities: Background, Analysis, and Observations, Occasional Paper", p. 41.

<sup>212</sup> *Ibid*, p. 41.

typically confined to the private space. Every society accords greater dignity and prestige to the public sector. The culture of the dominant group is institutionalised and ‘enjoys state patronage, power, access to valuable resources and political respectability, and sets the tone of the rest of society.’<sup>213</sup> Accordingly, all individuals have to enjoy equal respect and opportunity. Their inclusion necessitates access to the private and the public sphere and equal power over resources.<sup>214</sup> Having recalled this argument, the right to enjoy one’s culture, as contained in the article, is an important contribution to the protection of Roma.

Further, Article 2.2 entitles the minorities to participation and specifies the relevant fields – ‘cultural, religious, social, economic and public life.’<sup>215</sup> The article also grants the right to ‘participate effectively in local decisions.’<sup>216</sup> The specific formula for participation is not outlined in the Declaration, suggesting that the form of participation has to be effective with respect to the particular circumstances of the group.<sup>217</sup>

Article 3 underscores that the scope of protection is not limited to the rights incorporated in the Declaration.<sup>218</sup> In light of this affirmation, the effective protection of the Roma minority includes the enjoyment of all human rights. In addition, Roma are entitled to minority protection under this article. Thornberry notes that the members of minorities may exercise their rights ‘individually as well as in community with other members of their group.’<sup>219</sup> Article 4 articulates the need for measures on the part of states to facilitate the exercise of these rights. Article 4.2 specifies that states have to promote the development and expression of culture, traditions, customs, etc.<sup>220</sup> Finally, states should avoid practices, which are contrary to international standards and in violation of national legislation.<sup>221</sup>

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<sup>213</sup> Parekh, Bhikhu, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, p. 222.

<sup>214</sup> Ibid.

<sup>215</sup> Thornberry, Patrick, “The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities: Background, Analysis, and Observations, Occasional Paper”, p. 41.

<sup>216</sup> Ibid, p. 41.

<sup>217</sup> Ibid, p. 43.

<sup>218</sup> Office of the United Nations High Commissioner for Human Rights Webpage, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, [<http://www2.ohchr.org/english/law/minorities.htm>] (Accessed: 6 July, 2010).

<sup>219</sup> Thornberry, Patrick, “The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities: Background, Analysis, and Observations, Occasional Paper”, pp. 45-8.

<sup>220</sup> Ibid, pp. 45-8.

<sup>221</sup> Office of the High Commissioner for Human Rights Webpage, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities [[http://www.unhchr.ch/html/menu3/b/d\\_minori.htm](http://www.unhchr.ch/html/menu3/b/d_minori.htm)] (accessed: April 20, 2007); The issue of whether particular practices violate national law or international standards is quite controversial as the latter can cover

As suggested in chapter five, national laws and international legislation are not alternatives: states should not prohibit practices that do not violate international standards.<sup>222</sup> Articles 5, 6, and 7 ensure that the rights of minorities are taken into consideration in the process of national planning. Article 8 reminds that the Declaration is part of the human rights standards and cannot serve as an excuse for the failure to act upon existing state obligations.<sup>223</sup>

Some articles of the Declaration are in line with the multicultural model, which demands special protection of the culture of minority groups. Other articles accord only individual rights. To illustrate this, the Declaration specifies that the beneficiaries of rights are members of minority groups. Gundumur Alfredsson notes that the document falls behind other international instruments, such as the UNESCO Declaration on Race and Racial Prejudice, which clearly establish group rights. Moreover, the Declaration is full of statements such as ‘where appropriate’, ‘where required’, ‘where possible’, and ‘in a manner not incompatible with national legislation’, leaving the impression of non-objective and selective standards.<sup>224</sup> The Declaration also lacks implementation and monitoring procedures. This fact suggests that minorities are not able to approach specialized bodies such as the UN Working Group on Indigenous Populations. Still, the Declaration is the first international instrument aimed specifically at minority protection. It calls for additional efforts in the protection of minority groups and their rights.<sup>225</sup>

### **2.3.2. The Organization for Security and Co-operation in Europe (OSCE) and relevant documents on minority protection**

#### **2.3.2.1. Individual rights for minorities: the Final Act of Helsinki**

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about any practice. Further, restrictive clauses as ‘where appropriate’ suggest that the drafting process is rather difficult.

<sup>222</sup> Thornberry, Patrick, “The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities: Background, Analysis, and Observations, Occasional Paper”.

<sup>223</sup> Ibid, p. 50.

<sup>224</sup> Alfredsson, Gundumur, “Minority Rights: A Summary of Existing Practice” in Phillips, Allan, and Alan Rosas, eds., *The UN Minority Rights Declaration*, (Abo: Abo Akademis tryckeri, 1993), pp. 77-9.

<sup>225</sup> Ibid, pp. 77-9.

The Final Act of 1975 is only partially relevant in view of special protection of the culture of Roma. Akermark notes that Principle VII contains a minority element.<sup>226</sup> Member states ‘will respect the right of persons belonging to such minorities, [affording] them the full opportunity for the actual enjoyment of human rights and fundamental freedoms.’<sup>227</sup>

The phrases ‘full opportunity’ and ‘actual enjoyment’ entail positive obligation to safeguard the rights of minority groups. However, there are escape clauses such as ‘[t]he Participating states on whose territories national minorities exist’, a phrase that can be interpreted as giving states the right to determine whether to recognise or ignore the existence of minorities on their territories and leaving open the opportunity for states to claim they have no minorities on their territories.<sup>228</sup> In fact, chapter four suggests that prior to the 1980s, Central and Eastern European states were unwilling to recognise the Roma as a national minority. Escape clauses of this kind leave the impression that states can unilaterally exclude and choose not to grant rights to certain groups.

The section on ‘Co-operation and Exchanges in the Field of Culture’ calls on member states to recognise and facilitate the contribution of minorities to their cultures. However, this provision contains a similar limiting clause, ‘when such minorities and cultures exist within their territory.’<sup>229</sup> In addition, the wording of the section is weaker than that of Principle VII. States merely ‘intend ... to facilitate’ rather than ‘protect’ or ‘accord ... full opportunities’ to members of minorities.<sup>230</sup> As a whole, the provisions are vaguely worded in terms of the rights, which should be guaranteed by participating states.<sup>231</sup> This places the Final Act within the restrictive reading of rights; special minority rights are unnecessary as long as the individual rights of members of minority groups are guaranteed and discrimination is prohibited.<sup>232</sup>

### 2.3.2.2. Further developments

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<sup>226</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 269.

<sup>227</sup> HR-Net: Human Resources Network, Helsinki Final Act [<http://www.hri.org/docs/Helsinki75.html#H4.7>] (accessed: April 18, 2007).

<sup>228</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 266; Reasons for the vague wording stem from the very context in which discussions were held, namely the Cold War; for more details see: Ibid, pp. 247-8.

<sup>229</sup> Ibid, p. 266.

<sup>230</sup> Ibid, p. 266.

<sup>231</sup> Ibid, p. 266.

<sup>232</sup> Ibid, p. 266.

The 1983 Concluding Document of Madrid reconfirms the principles, incorporated in a previous document, the Helsinki Final Act. The paragraph on minorities points out that '[states] stress ... the importance of constant progress in ensuring the respect for and actual enjoyment of the rights of persons belonging to national minorities ... as provided for in the Final Act.'<sup>233</sup> The wording 'constant progress' carries a positive connotation.<sup>234</sup> The Madrid Document contains plenty of restrictive clauses, but the above reaffirmation should be considered a positive development.<sup>235</sup>

The following 1989 Concluding Document of Vienna represents a serious contribution to minority protection. The protection of minorities falls under the section 'Questions relating to the security in Europe.'<sup>236</sup> This section calls for states to 'create conditions for the promotion of the ethnic, cultural, linguistic and religious identity ... [and respect for] the free exercise of rights by persons belonging to such minorities.'<sup>237</sup>

The affirmation of ethnic identity appears here for the first time in an OSCE standard. This statement marks a major shift from the more limited protection under the Final Act, guaranteeing equality but excluding the protection of identity. It is important to stress that minority protection, thus integrated in the document, puts an end to the efforts to promote the theory of assimilation of minorities (the 'melting-pot' theory) within the OSCE.<sup>238</sup>

The Vienna Document was followed by a series of meetings and a number of proposals sent to the Copenhagen Meeting of 1990. The topics of discussion relevant to minorities included the collective element of minority protection, positive discrimination, the self-definition of minorities, the instruction and use of minority languages by public authorities, and autonomous administrations. Of these, self-definition was incorporated in the Copenhagen Document, paragraph 32: '[t]o belong to a national minority is a matter of a

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<sup>233</sup> Concluding Document [<http://www.fas.org/nuke/control/osce/text/MADRI83E.htm>] (accessed: April 19, 2007).

<sup>234</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, (Hague: Kluwer Law International, 1996), p. 271

<sup>235</sup> Ibid, p. 271.

<sup>236</sup> Ibid, p. 272.

<sup>237</sup> Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference [<http://www.fas.org/nuke/control/osce/text/VIENN89E.htm>] (accessed: 6 July, 2010)

<sup>238</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 272-4.

person's individual choice.<sup>239</sup> This act made clear that states could not, by means of statistics or registration, assign ethnic status for the purpose of political decisions,<sup>240</sup> a prohibition that would have prevented the Communist government in Bulgaria from attempting to transform the ethnic identity of Muslim Roma (see chapter four). This and other relevant examples demonstrate the importance of the right to self-definition to the Roma.

Affirmative action was included in paragraph 31. The latter called for special measures to guarantee the equal treatment of minorities. Finally, the Document asserted that one way to protect the identity of minorities was to create 'appropriate local or autonomous administrations.'<sup>241</sup> Though the use of 'appropriate' represents an escape clause, the Copenhagen Document is the first international instrument stressing the importance of autonomy to minorities.<sup>242</sup>

Akermark considers that the Geneva Report of 1991 merits particular attention. Although this document was the result of difficult negotiations, the report is important in recognising that minority issues are of 'legitimate international concern and ... do not constitute exclusively an internal affair of the respective State.'<sup>243</sup> In this way, the Report stresses that states cannot invoke the principle of non-interference in their affairs so as to avoid criticism regarding minority protection.<sup>244</sup>

### **2.3.3. Minority protection under the Council of Europe**

#### **2.3.3.1. Non-discrimination and the right to identity: The European Convention on Human Rights**

The provisions of the European Convention on Human Rights protect the Roma in two ways. They prohibit discrimination and promote the right to identity. According to article 14, 'the rights and freedoms set forth in this Convention 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

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<sup>239</sup> Ibid, p. 276.

<sup>240</sup> Ibid, p. 276.

<sup>241</sup> Ibid, p. 276.

<sup>242</sup> Ibid, p. 276.

<sup>243</sup> Section II of the Geneva Report in Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 279.

<sup>244</sup> Akermark, Athanasia, *Justifications of Minority Protection in International Law*, p. 279.

other status.’<sup>245</sup> Moreover, Henrard mentions that the wording ‘or other status’ can cover almost any personal characteristic.<sup>246</sup>

Christian Hillgruber and Mark Jestaedt note that the identity of minorities is protected under article 8, proclaiming that, ‘everyone has the right to respect for his private and family life, his home, and correspondence.’<sup>247</sup> Although this right has an individual character, it is an important one. The traditional ways of life of minorities are protected under the article. Protection from forced expulsion and relocation fall within the scope of this article. If an entire family is forcibly resettled or family members are separated, their ability to lead a family life is clearly impaired.<sup>248</sup>

Another relevant right is the freedom of expression, safeguarded by Article 10. This right is important in giving minorities the freedom to express their political views and make political demands.<sup>249</sup> This right shall be respected, ‘without interference by public authority and regardless of frontiers.’<sup>250</sup> The theoretical framework in chapter one has underscored the importance of greater inclusion of Roma in the political realm. However, Hillgruber and Jestaedt note that states are not obliged to secure financial assistance for minorities to effectively exercise this right under this article.<sup>251</sup>

Freedom of assembly, safeguarded by article 11, closely relates to freedom of expression. Freedom of assembly is justified on public grounds.<sup>252</sup> In addition, it incorporates the freedom to form associations. The freedom to form associations is not limited to cultural purposes. Members of minority groups can form and join political parties and organisations representing their specific interests. States are obliged to devise legal forms of existence for such associations; otherwise, exercising this right loses purpose.<sup>253</sup>

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<sup>245</sup> European Convention on Human Rights 1950 [<http://www.echr.info/>] (accessed: April 20, 2007).

<sup>246</sup> Henrard, Kristin, *Devising an Adequate Protection of Human Rights*, p. 73.

<sup>247</sup> Hillgruber, Christian, and Mark Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities*, (Koln: Verlag Wissenschaft und Politik Claus-Peter von Nottbeck, 1994), pp. 41-2.

<sup>248</sup> *Ibid*, pp. 41-2.

<sup>249</sup> *Ibid*, p. 48.

<sup>250</sup> European Convention on Human Rights 1950.

<sup>251</sup> Cf. 4 Travaux Préparatoires 24, (and previously) 15 f in Hillgruber, Christian, and Mark Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities*, pp. 47-8.

<sup>252</sup> *Resemblance jurassien and Unite v. Switzerland*, Decision of 10 October, 1978, App. No. 8191/78, 17 Eur. Comm/n H.R. Dec. & Rep. 93, at 105 in Hillgruber, Christian, and Mark Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities*, p. 49.

<sup>253</sup> Cf. 50 BVerfGE 290, at 355 on Art. 9 of the GG: “The Legislator therefore has to make available a sufficient array of legal forms that are appropriate, and the choice of which is reasonable, for the different types of

Henrard notes that the Convention does not contain articles, which grant rights to minority groups, as such.<sup>254</sup> Articles 10 and 11, described above, give citizenship rights to minorities. In addition, article 14 prohibits discriminatory acts on the grounds of ethnicity, but the right to non-discrimination is an individual right.<sup>255</sup> However, the non-autonomous nature of the article renders the prohibition of discrimination rather limited. Article 14 can be enforced only if another provision of the ECHR is violated.<sup>256</sup> The article cannot be invoked for discriminatory practices, unless they are within the scope of another article. As a whole, the convention is designed to accord individual rights rather than group rights.<sup>257</sup> Drafting additional protocols to the ECHR is vital for ethnic minorities that need protection. This development is especially important given that the Convention distinguishes itself from other human rights instruments through its judicial form of legal protection.<sup>258</sup>

### **2.3.3.2. Legally binding minority protection: Framework Convention for the Protection of National Minorities**

The FCNM is one of the key instruments for the protection of the Roma minority. Reiner Hofmann considers the 1998 document to be the most comprehensive human rights instrument. The Convention is a legally binding standard that addresses the rights of minority groups. It contains a Preamble and 32 articles, divided in sections. Section 1 describes the general principles that see minority protection as inseparable from other human rights. Section 2 contains the principles that states should implement in their policies, domestic legislation, and bilateral and multilateral treaties.<sup>259</sup>

Discussing the preamble, Malloy notes that the text does not contain rights or obligations. Rather, it seeks to explain the reasons for drawing up the convention and the

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association.” in Hillgruber, Christian and Mark Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities*, p. 50.

<sup>254</sup> Henrard, Kristin, *Devising an Adequate Protection of Human Rights*, p. 142.

<sup>255</sup> *Ibid*, p. 70.

<sup>256</sup> *Ibid*, p. 143.

<sup>257</sup> *Ibid*, p. 63.

<sup>258</sup> Hillgruber, Christian, and Mark Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities*, pp. 11-2.

<sup>259</sup> Hofmann, Reiner, “The Framework Convention for the Protection of National Minorities: An Introduction” in Weller, Marc, ed., *Rights of National Minorities in Europe: a Commentary on the European Framework Convention for the Protection of National Minorities (Oxford Commentaries on International Law*, (Oxford: Oxford University Press, 2005), pp. 3-4.

importance of minority protection. The sixth paragraph of the Preamble states that the upheavals in the history of Europe showed how crucial minority protection was to the stability, peace, and democratic security on the continent. Thus, the Preamble clearly states why this Convention was crafted. The reason is the concern that minorities are threatened by ‘territorial ambitions, aggressive nationalism, intolerance, and totalitarian ideologies.’<sup>260</sup> This affirmation is particularly relevant for the Roma, who have been subjected to prolonged discrimination, intolerance, degrading treatment, and even aggression. Pseudoscientific theories of racial inferiority have served to marginalise and physically eliminate the Roma population.

The Preamble links democratic and pluralistic societies to the ability of minorities to develop and preserve their identity. In essence, it asserts that the identity of minorities would be best accommodated in pluralistic societies, which bring together diverse identities and ensure that ‘respect and tolerance as well as dialogue help shape the social and political agenda.’<sup>261</sup> This theme recalls Thomas’s idea of dialogue and empathy for minority groups.<sup>262</sup> Moreover, according to Malloy, the Preamble requires states to guarantee the sustainability of ethnic identities.<sup>263</sup> In view of this requirement, states must take positive action to ensure that the Roma are visible in the public domain.

Finally, the Preamble stresses the importance of territorial integrity. This approach is in line with the state-centrist focus of previous legislation. Even so, the text calls for proactive measures on the part of states. They have the positive obligation to protect their minorities. The climate of toleration will create conditions for social cohesion.<sup>264</sup> The theoretical discourse in chapter one has explored and rejected the liberal idea that the common national identity is the only factor for achieving state cohesion. Here, the text builds on the multicultural understanding that respect for difference and toleration are major preconditions for social cohesion. Moreover, the state has to play a proactive role in creating a socially just society built on the principle of toleration, especially in view of disadvantaged minorities, such as the Roma.

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<sup>260</sup> Malloy, Tove “Title and Preamble”, in Weller, Marc, *Rights of National Minorities*, p. 63.

<sup>261</sup> Ibid, p. 64-6.

<sup>262</sup> Thomas, Laurence „Moral Defense” in Willet, Cynthia, *Theorizing Multicultural Citizenship: A Guide to the Current Debate*, p. 378.

<sup>263</sup> Ibid, 64-6.

<sup>264</sup> Ibid, p. 73.

Alfredsson notes that the second section of the FCNM contains an article that underscores the right of equal treatment and equal protection by the law. Further, the section prohibits discriminatory acts on the basis of minority status, thus seeking to guarantee equal rights. When the prohibition of discrimination is insufficient, ‘special or adequate measures’ have to be adopted to ensure equality.<sup>265</sup> In effect, this text can serve as the cornerstone of the protection of Roma as a group.

In the view of Geoff Gilbert, Article 5 affirms that states are required to create an environment, in which minorities will flourish. They have to ensure that members of minority groups have opportunities to develop their culture. Moreover, states have to ensure that minorities take part in the process of determining the conditions that foster their growth. In line with Article 15, minorities have to participate in the decision-making process, at least on a consultative level.<sup>266</sup> Thus, ethnic minorities such as the Roma would be entitled to institutional representation with offices and government structures, whereby their leaders are actively involved in the decision-making process.

Article 7 defends the rights to ‘freedom of association’ and ‘freedom of peaceful assembly.’<sup>267</sup> Zdenka Machnyikova explains that this right allows members to join and associate for the purpose of protecting their common characteristics or interests. In this way, the right to associate represents a precondition of the existence of minorities. The associations of minorities can come in diverse forms – non-profit organizations, associations and foundations, political parties, trade unions, and other associations, which can function under domestic legislations.<sup>268</sup> The right to freedom of assembly allows individuals to organise and participate in meetings and demonstrations, given that they can also abstain from such.<sup>269</sup>

The rights to assembly and association are essential in promoting democratic forms of political and social organisation. Mass movements are dangerous because they mobilise persons who are already alienated by the system. They ‘do not believe in the legitimacy of

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<sup>265</sup> Alfredsson, Gudmundur, “Article 4” in Weller, Marc, ed., *Rights of National Minorities*, p. 145.

<sup>266</sup> Gilbert, Geoff, “Article 5” in Weller, Marc, ed., *Rights of National Minorities*, p. 157-9.

<sup>267</sup> Framework Convention for the Protection of National Minorities and Explanatory Report [[http://www.coe.int/t/dghl/monitoring/minorities/1\\_atglance/PDF\\_H\(1995\)010\\_FCNM\\_ExplanReport\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_atglance/PDF_H(1995)010_FCNM_ExplanReport_en.pdf)] (accessed: 16 July, 2010).

<sup>268</sup> Machnyikova, Zdenka, “Article 7” in Weller, Marc, ed., *Rights of National Minorities*, pp. 204-6.

<sup>269</sup> *Ibid*, 212-3.

the established order, and ... are therefore ready to engage in efforts to destroy it.<sup>270</sup> The right to democratic forms of association, guaranteed by the FCNM, is important as it reduces the risk of such dangerous mass movements emerging.

Further, the right to assembly is important in promoting and protecting the identity of minority groups. This right is important for the Roma as it aims to ensure greater visibility of their contributions.

Article 8 protects the right to manifest one's religious beliefs.<sup>271</sup> This right is essential for Roma of different religions and would have prevented the Communist authorities in Bulgaria from attempting to assimilate the Muslim Roma in the country. The Muslim subpopulation of the Roma was highly marginalised throughout the 20<sup>th</sup> century.<sup>272</sup>

John Packer and Sally Halt argue that the right to express one's religious beliefs would be meaningless without the corresponding right to free expression and information. To this end, Article 9(1) stipulates that members of minority groups shall not be subjected to discriminatory treatment in the media.<sup>273</sup> This right is particularly relevant in view of the negative media portrayal of the Roma minorities in Bulgaria, Hungary, and Romania (see chapter five). Packer and Holt note that the article also contains a positive obligation for states to ensure that members of minority groups are allowed to create and use media outlets to the utmost extent. The article acknowledges certain technical limitations, such as the number of available broadcasting frequencies. Such limitations can affect the ability of the state to exercise its obligation to the fullest.<sup>274</sup>

The paucity of knowledge about the Roma culture may be conducive to discrimination by the dominant groups. In this sense, Article 12 (1) is important in affirming that '[p]arties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language, and religion of their national minorities and the majority.'<sup>275</sup> Thornberry offers a valuable interpretation of the article in view of

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<sup>270</sup> Kornhouser, William, *The Politics of Mass Society*, (Glencoe: Free Press, 1959), p.212 in Bennett, Collin, *The Privacy Advocates: Resisting the Spread of Surveillance*, (Cambridge: MIT Press, 2008), p. 201.

<sup>271</sup> Framework Convention for the Protection of National Minorities and Explanatory Report.

<sup>272</sup> Kohler, Iliana, and Samuel Preston, "Mortality Patterns of Muslim Minorities in Bulgaria", p.1 [[http://www.irpps.cnr.it/web\\_conf/download/Kohler%20Preston.pdf](http://www.irpps.cnr.it/web_conf/download/Kohler%20Preston.pdf)] (accessed: May 28, 2009).

<sup>273</sup> Packer, John, and Sally Halt, "Article 9", in Weller, Marc, ed., *Rights of National Minorities*, p. 266

<sup>274</sup> *Ibid*, p. 266.

<sup>275</sup> Council of Europe Website, The Framework Convention for the Protection of National Minorities [<http://conventions.coe.int/treaty/en/Treaties/Html/157.htm>] (accessed: May 20, 2007).

ensuring better visibility and knowledge of the Roma culture. In his view, the article contains both multicultural and intercultural elements. The multicultural element reflects the coexistence of cultures within the same society and the formulation of culturally sensitive policies. These will take into account cultural differences and allow individuals to learn about diverse cultures. The intercultural element, on the other hand, stands for the reciprocity of learning among different groups.<sup>276</sup> Article 12 (2) contains reference to interculturalism: the ‘parties shall ... facilitate contacts among students and teachers of different communities.’<sup>277</sup>

Finally, Article 12 (3) points that minorities should have access to education ‘at all levels’, illustrating that it is important for groups to increase their capacity for survival through education.<sup>278</sup> This article is essential for the Roma population. In 1969, the Parliamentary assembly affirmed that the Roma’s lack of education had ‘far-reaching repercussions, over and above the purely material or financial factors.’<sup>279</sup> Moreover, it impacted the social climate adversely and ‘threaten[ed] their acceptance as citizens with equal rights.’<sup>280</sup>

Lastly, according to Article 15, states have to establish ‘the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs.’<sup>281</sup> This article safeguards the right of the Roma minority to participate in policy making. In Weller’s view, the Explanatory Report to the FCNM proposes several ways of ensuring equitable representation. One option is to grant national minorities direct representation in decision-making structures, such as the Lower Chamber of Parliament. Alternatively, mechanisms with delaying or blocking powers might be established.<sup>282</sup> Another option is to found representative bodies that can be consulted ‘when contemplating legislation or administrative measures likely to affect [members of national minorities]’.<sup>283</sup> These can function at the national or regional level and offer advice regarding governmental strategies and measures for dealing with issues of minority concern, drafts of

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<sup>276</sup> Thornberry, Patrick, “Article 12” in Weller, Marc, ed., *Rights of National Minorities*, p. 373.

<sup>277</sup> Council of Europe Website, Framework Convention for the Protection of National Minorities.

<sup>278</sup> Thornberry, Patrick, “Article 12” in Weller, Marc, ed., *Rights of National Minorities*, p. 373.

<sup>279</sup> Parliamentary Assembly, Recommendation 563(1969) [1], 30 September 1969

[[http://www.coe.int/t/dg3/romatravellers/documentation/recommendations/parec563\(1969\)\\_en.asp](http://www.coe.int/t/dg3/romatravellers/documentation/recommendations/parec563(1969)_en.asp)] (accessed: May 20, 2008).

<sup>280</sup> Ibid.

<sup>281</sup> Council of Europe Website, Framework Convention for the Protection of National Minorities.

<sup>282</sup> Weller, Marc, “Article 15” in Weller, Marc, ed., *Rights of National Minorities*, p. 446.

<sup>283</sup> FCNM Explanatory Report, para. 80 in Weller Marc, “Article 15”, *Rights of National Minorities*, p. 446.

legislative measures, and decrees. Other functions include monitoring the situation of national minorities and preparing reports, coordination between public agencies on policies that concern minorities, consultations across regions and units of local governance, and so on.<sup>284</sup> The establishment of such consultative bodies is in itself insufficient because the government must ensure their effective functioning through regular contact with governmental departments and parliamentary committees, early consultation on legislative and other measures, and the allocation of adequate resources to these bodies. In addition to these measures, special bodies addressing the concerns of specific minorities could be established.<sup>285</sup>

The Convention clearly defends rights that are important to the Roma, such as the freedom of assembly, the freedom to manifest one's religion, etc. However, while states are under a binding obligation, it is their right to determine how to attain these aims. Nonetheless, the FCNM is the key legally-binding standard for minority protection.

#### **2.4. Minority protection for the Roma**

I have identified international instruments that are relevant to the protection of the Roma minority. Some of them recognise past injustices, aimed at marginalising and even annihilating the Roma population. Other instruments protect the Roma's right to identity and development, emphasising the unequal status of the Roma minority and the need for special protection. Here, I will review the special attention given by the Advisory Committee to the Framework Convention to the situation of the Roma. The Committee stresses that 'the adequate protection of Roma requires special measures in addition to the more general minority rights standards.'<sup>286</sup> Several Roma-specific standards have been established in the last decade. However, all of them belong to the field of soft law as illustrated by their labels – 'recommendation', 'guiding principles', and so on.<sup>287</sup>

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<sup>284</sup> Weller, Marc, "Article 15" in Weller, Marc, *Rights of National Minorities*, pp. 447-8.

<sup>285</sup> Ibid, p.450.

<sup>286</sup> Henrard, Kristin, "Building Blocks for and Emerging Regime for the Protection of a Controversial Case of Cultural Diversity: The Roma", p. 196

<sup>287</sup> Ibid, p. 198.

The following section will offer an overview of Roma-related standards that were established within the framework of international and regional organisations discussed in the chapter – the Council of Europe, the United Nations, and the OSCE.

In 1992, the Human Rights Committee to the United Nations adopted resolution 1992/65 ‘On the Protection of Roma (Gypsies)’. The Commission recognised the need to protect the Roma minority in view of the International Convention on the Elimination of All Forms of Racial Discrimination and the Universal Declaration on Human Rights. Resolution 1992/65 invited states to take steps toward eliminating discrimination against the Roma.

The Copenhagen Document of the OSCE (discussed above) is relevant to the Roma, protecting their right to identity. Even more, the document specifically mentions that the participating states recognise the problems the Roma face. Istvan Pogany observes that the Copenhagen Document does not elaborate on the specific problems of the Roma. However, the OSCE states feel that these problems ‘were the result of a form of racial or ethnic hatred that was, in some respects at least, comparable to anti-Semitism.’<sup>288</sup>

Several recommendations by the Council of Europe address specific concerns of the Roma population. Resolution 75(13) urges governments to fight against the discrimination of nomads and protect their cultural heritage and identity. The Council points out that residence issues, education, health, and social welfare represent specific areas of concern.<sup>289</sup> Recommendation R 83 (1) of 1983 establishes principles for nomadic populations with regard to non-discrimination, family reunion, links with states, residence and movement, and extended protection.<sup>290</sup> Patrick Thornberry and Maria Estebanez note that both documents reflect the spirit of the period. The Roma were considered nomads, while the language of the recommendations is state-friendly. Nevertheless, the documents are important in recognising

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<sup>288</sup> Pogany, Istvan, “Accommodating an Emergent National Identity: the Roma of Central and Eastern Europe”, Tierney, Stephen, ed., *Accommodating National Identity: New Approaches in International and Domestic Law*, p. 183.

<sup>289</sup> Council of Europe Webpage, Containing Recommendations on the Social Situation of Nomads in Europe [http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Fwww.coe.int%2Ft%2Fd3%2Fmatravellers%2Farchive%2Fdocumentation%2Frecommendations%2FresCM%25281975%252913\_en.pdf&ei=k1CXTaJBypGzBvLk7LUI&usg=AFQjCNH42-et1oKfA\_Xyajs8A15pvnIIOA&sig2=fdRNLII9yY92oinlVPKjdQ] (Accessed: 18, July, 2010).

<sup>290</sup> Council of Europe Webpage, On Stateless Nomads and Nomads of Undetermined Nationality [https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1657600&SecMode=1&DocId=678460&Usage=2] (Accessed: 18 July, 2010).

problems that have been overlooked for a long time. They also set the first standards for guaranteeing the rights of the Roma minority.<sup>291</sup>

The continuous violations of Roma rights and the emerging Roma activism indicate that additional efforts are called for. Roma-related issues were among the top priorities of the Council of Europe, which included minority protection and the fight against racism, intolerance, and social exclusion. The new recommendations use Roma-friendly language and set a sterner tone regarding the obligations of states. Recommendation 1203 (1993) uses strong wording to stress the commitment of states to the protection of Roma.<sup>292</sup> The recommendation acknowledges that the general resolutions and recommendations on minorities are important for the Roma population. However, the recommendation highlights that ‘as one of the very few non-territorial minorities in Europe Gypsies need special protection.’<sup>293</sup> The document makes a special reference to the cultural identity of Roma. The recommendation affirms that ‘Gypsies greatly contribute to the cultural diversity of Europe. In different parts of Europe they contribute in different ways, be it by language and music or by their trades and crafts.’<sup>294</sup>

Some critics note that the deepening engagement of international institutions showcases the inability of home governments to handle the multiplicity of challenges posed by the problems of the Roma. Martin Kovats characterizes the national programs for Roma inclusion as forms of crisis management. The development of such policies is justified by the scarce resources for Roma-related initiatives. In his view, the European institutions should play a key role in establishing confidence that the concerns of Roma will be addressed to the benefit of society in general. He considers funding to be one of the preconditions to the development of effective protection on the international level.<sup>295</sup>

The issue of funding for international organisations will receive due attention throughout the next chapter. At this point, it suffices to note that the Council of Europe and

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<sup>291</sup> Thornberry, Patrick, and Maria Estebanez, *Minority Rights in Europe*, (Strasbourg: Council of Europe, 2002), p. 174.

<sup>292</sup> *Ibid.*, p. 175.

<sup>293</sup> Council of Europe, Recommendation 1203 (1993) on Gypsies in Europe, 1993 [<http://assembly.coe.int/Mainf.asp?link=/Documents/Adopted.Text/ta93/EREC1203.htm>] (Accessed: 4 June, 2009).

<sup>294</sup> *Ibid.*

<sup>295</sup> Kovats, Martin, “The Emergence of European Roma Policy” in Guy, Will, ed., *Between Past and Future: the Roma of Central and Eastern Europe*, (Hatfield: University of Hertfordshire Press, 2002), pp. 107-8.

the OSCE have failed to budget the funding, necessary to achieve any particular objective. The vague financial planning hints at the fear of national governments of courting politically unpopular issues. This could undermine their support base at home. However, it is clear that delays in developing targeted intervention increase the social and economic costs paid by both national governments and international institutions.<sup>296</sup> The European states have to deal with the sensitivity of their domestic electorates to the problems of Roma and make joint efforts to ensure their protection.

## **2.5. Identity and minority protection**

The question of what constitutes ethnic identity and which its constructive elements are is a difficult one. Benjamin Ringer and Elinor Lewis give a general definition of the ethnic group as a community of individuals who share common sentiments, experiences, and history.<sup>297</sup> Rather than discussing the constructive elements of ethnic identity, I will focus on the distinction between ‘us’ and ‘them.’ The reason is that with respect to human rights law, it should be established who counts as a member of an ethnic minority and how permeable the ethnic boundaries are. Minorities can make claims to a special status only when the boundaries are very clearly articulated.

For the purpose of the present discussion, I will use Gary Taylor and Steve Spencer’s assumption that identity is a ‘negotiated space between ourselves and others.’<sup>298</sup> Spencer explains that on a group level individuals acquire self-perception by interacting with others and identifying what does not constitute the self. One assumption is that individuals monitor their surroundings and establish reference points on what is normal within their common environment and what appropriate behaviour is. However, individuals need to interact regularly with the out-group so that they can see the differences and validate the social boundary of the community.<sup>299</sup> If these conditions are in place, ethnic boundaries are relatively impermeable. John Borrows considers that another approach to the permeability of

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<sup>296</sup> Ibid, p. 108.

<sup>297</sup> Ringer, Benjamin, and Elinor Lewis, *Race-Ethnicity and Society*, (London: Routledge, 1989), p. 3.

<sup>298</sup> Taylor, Gary, and Steve Spencer, “Introduction” in Taylor, Gary, and Steve Spencer, eds., *Social Identities: Multidisciplinary Approaches*, (New York: Routledge, 2004), p. 4.

<sup>299</sup> Spencer, Steve, *Race and Ethnicity: Culture, Identity and Representation*, (London: Routledge, 2006), pp. 8-10.

boundaries can be deduced from the Aboriginal two-row belt, the so called Gus Wen Tah. Some people claim that the two rows of this belt represent the different river paths for the British and the Aboriginal people in Canada. Others point out that the belt has more than two rows. It contains three rows of white beads, which carry a counterbalancing weight and symbolise the salience of sharing and interdependence. These rows are also called the bed of agreement, which incorporates peace, friendship, and respect. These views refer to the belt as the symbol of the different ships of the British and the Aborigines in the same river. Thus, the belt stands for mutuality and interconnectedness between aboriginal and non-aboriginal people.<sup>300</sup>

There are different perspectives of the issue of the permeability of boundaries. Let us presume that boundaries are fairly permeable and a non-member can freely join the in-group. This person would like to enjoy the same rights as the rest of the community, but it is questionable whether the wider society would view him or her as an insider. Another problem relates to the criteria for determining whether this person is an insider. Let me examine a landmark case, in which the community has accepted the out-member. In addition, this person views himself as an insider. It is still questionable whether his status would be recognised by the larger society. The case is Baker Lake vs. the Minister of Indian Affairs, described by Jacob Levy. Justice Mahoney ruled that Aborigines, who were claimants of a common-law title, had to pass a test as to receive the title. They had to prove that they and their ancestors had been members of an organised society, which had occupied the specific territory.<sup>301</sup> This example clearly illustrates that a person who has recently joined a group might not be able to exercise the same rights as the other members. The question of belonging to an ethnic group is, in part, a matter of self-identification and depends on the extent, to which the group accepts the newcomer. These two factors are important as the new member pledges allegiance to the group and the community grants him support. Laws can vary, however, as to whether a person can claim the identity of his or her choice. This chapter also shows that minority claims, including those to identity, should not violate international standards or domestic law. This vague wording illustrates the fear of states that claims to

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<sup>300</sup> Borrows, John, “‘Landed’ Citizenship: Narratives of Aboriginal Political Participation” in Kymlicka, Will and Wayne Norman, eds., *Citizenship in Diverse Societies*. (Oxford: Oxford University Press, 2000), pp. 334-5.

<sup>301</sup> Levy, Jacob, “Three Models of Incorporating Indigenous Law” in Kymlicka, Will and Wayne Norman, eds., *Citizenship in Diverse Societies*, (Oxford: Oxford University Press, 2000), pp. 308-9.

identity may threaten their territorial integrity. Thus, most human rights documents accord individual rights to minorities at present.

## **2.6. Conclusion and outlooks**

Minority protection has passed through several distinct periods. Minority guarantees were first accorded in the form of religious freedoms. They sought to ensure peace and stability throughout the Holy Roman Empire. The treaties were not signed due to a genuine concern for humanity. The interest of the sovereign was always privileged. For these reasons, minority protection hardly existed at this early stage. Marginalised minorities, such as the Roma, did not benefit from the early form of religious guarantees. Between 1814 and 1919, minority protection entered a period of redrawing territorial borders and nationalism. The states had to weigh the contradicting objectives of self-determination and peace and stability. The League of Nations was established to respond to the growing wave of nationalism. The League's minority treaty system made room for some limited minority protection but did not grant rights in the modern sense of the word. Protection for the Roma was absent during this period. In addition, the post-war redrawing of borders and population shifts continue to impact the extent of minority protection in Hungary and Romania.

The current instruments for minority protection entitle Roma to the right to non-discrimination, the right to profess one's religion, the right to political participation, and more. Some documents, such as the United Nations Genocide Convention (1948), contain positive rights. The Copenhagen Document (1990) even goes so far as to propose autonomy as a solution.

Most often, however, the drafters are cautious to include such provisions. Firstly, states are not always willing or do not have the means to provide financial assistance to their minorities. Secondly, states avoid adopting standards related to the treatment of the Roma minority. Governments are worried about supporting a politically sensitive and unpopular issue.

So far, most international instruments focus on individual human rights as opposed to special protection of the culture of ethnic minorities. The major reason appears to be the concern for the territorial integrity of states. Chapter five suggests that Eastern European

states mistrust the loyalty of their ethnic minorities. The states in the region are more likely to claim that individual rights are the best way to improve the socio-economic situation of their minorities. Demands for special protection are perceived as the first step to granting autonomy to ethnic minorities, resulting in the disruption of territorial integrity.

However, the Roma people often lack financial resources, sufficient information, and other means to take full advantage of their citizenship rights as individuals. Special protection can serve to remedy this inequality.<sup>302</sup> Lerner suggests granting legal status to minority groups as one possible solution. The first step in this direction would be giving groups the right to representation before human rights monitoring bodies. A second solution would be the right to autonomy.<sup>303</sup> Group autonomy is understood as the right to choose minority governments and to participate in the decision-making process on matters concerning members of minorities.<sup>304</sup> A third option is to include minorities in decision-making on the local and national levels. These are just some of the possible solutions, but they point to ways of ensuring the adequate protection of the Roma minority.

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<sup>302</sup> Draft Convention on Minorities, Article 13:2e and f in Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 36.

<sup>303</sup> Lerner, Natan, *Group Rights and Discrimination in International Law*, p. 36.

<sup>304</sup> Henrard, Kristin, *Devising an Adequate System of Minority Protection*, p. 299.

## **Chapter 3**

### **International Bodies That Monitor Standard Implementation: Rhetoric vs. Action (1947 – 2008)**

#### **3.1. Introduction**

This chapter offers an analysis of international bodies, which monitor states' treatment of ethnic minorities and the impact of their work on the situation of the Roma minority. As there is a number of monitoring mechanisms, their sheer volume will not allow the consideration of all. Therefore, I will focus on three structures: the UN Office of the High Commissioner for Human Rights, the OSCE Office for Democratic Institutions and Human Rights, and the EU Monitoring Centre on Racism and Xenophobia. The reason behind my choice is that these bodies represent organisations, which have differing scopes and foci and therefore, different capacities and levels of effectiveness in dealing with minorities. Yet, possibly due to the fairly recent establishment of the monitoring structures, their work and contributions to the protection of Roma have received scant academic attention. The unique and unusual situation of the Roma minority – a transnational minority in a poor socio-economic position – may, in part, explain the absence of a solid body of scholarly literature on the impact and contributions of these monitoring structures to the protection of the Roma minority.

I will examine several issues that are of relevance to this thesis. First, I will discuss the capacity of global and regional regimes to deal effectively with minority protection. The global approach of the UN is evident in the broad scope of issues covered by the OHCHR. The Commissioner monitors the commitment of states to human rights in every part of the world. The success of OHCHR's monitoring efforts depends on its ability to mobilise 'global' resources. This ability, on the other hand, is contingent on the national interests and willingness of participating states to contribute to the body's functioning. It is reasonable to argue that a distant problem may hardly represent a domestic concern. The Organization for Co-operation and Security in Europe and the European Union are both regional formations, and there are some arguments in favour of their potential to monitor minority protection. Alex Ballamy considers that regional organisations are more likely to work on joint solutions

because of ‘economic interdependence, political alliances, mutual historical ties, and the closeness and informality of their relations.’<sup>305</sup> The fact that intertwined interests have divided OSCE states into Western and Eastern blocks, as discussed in the chapter, is illustrative of the formation of political alliances. A close examination of the monitoring structure of the OSCE, the ODIHR, demonstrates that this body is better positioned to deal with minority issues than the Office of the High Commissioner. However, interconnected interests may also result in the absence of impartiality. This chapter will suggest that at times, regional organisations discourage the advance of multiculturalism.

As a regional formation, the European Union should theoretically have the advantages outlined above. Interestingly, analysis will reveal that the EUMC was given a very limited role as an information gathering mechanism with no executive and prosecuting functions. This fact suggests that monitoring has received limited support among the European governments.

Secondly, I examine the capacity of the three bodies to attenuate the fears of the Eastern European states that minorities endanger their social cohesion. Moreover, if these bodies have effectively dealt with the problems of minorities in other states, this would suppose that they are committed to addressing the problem in Eastern Europe. For instance, the High Commissioner José Ayala-Lasso has managed to convince some third-world states that his post will take into consideration their understanding of minority protection.<sup>306</sup>

In chapter five, I further discuss how national fears of threats to territorial integrity hinder the advance of multiculturalism in Eastern Europe. Yet, the inertness of international organisations in this direction is indicative of the sensitivity and unpopularity of Roma issues among participating governments. As Zoltan Barany suggested, ‘the Roma are the region’s most unpopular social group widely regarded as a major burden on slender public resources, therefore, assisting them is seldom considered “smart politics.”’<sup>307</sup> I will further connect this issue to the capacity of global and regional regimes to promote the values of multiculturalism. In this respect, I will examine which type of regime is best suited to reduce the extent, to which Eastern European states prioritise their national cohesion.

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<sup>305</sup> Bellamy, Alex et al, *Understanding Peacekeeping*, (Cambridge: Polity Press, 2010) p. 214.

<sup>306</sup> Weiss, Thomas et al, eds., *The United Nations and Changing World of Politics*, (Boulder, CO: Westview Press, 1997), p. 168.

<sup>307</sup> Barany, Zoltan, *The East European Gypsies: Regime Change, Marginality, and Ethnopolitics*, (Cambridge: Cambridge University Press, 2002), p. 284.

Thirdly, I will examine the background of the establishment of each monitoring body. This analysis will show the extent, to which participating states are committed to minority protection. For instance, the establishment of the EUMC required financial resources, but the EC had no mechanism to allocate funding for this purpose for a long time.<sup>308</sup> This fact suggests that until recently, monitoring of minority rights has been low on the list of EU priorities.

I will further analyse the goals and work of the three bodies. An examination of their focus and scope of activities will help position their current and potential efforts to improve the socio-economic situation of the Roma minority. I will subsequently analyse the structure and the financial resources of the three monitoring bodies. Clearly, effective coordination, motivated and experienced personnel, and adequate funding are some of the prerequisites for the successful work of these bodies. Finally, I will discuss particular measures directed at the protection of the Roma population. The extent, to which the monitoring structures have comprehensive strategies for improving the socio-economic status of the Roma will demonstrate how committed they are to ensuring that the Roma receive fair treatment in society.

The three mechanisms are fairly recent developments. This is, on one hand, the second reason to examine precisely their work. Presumably, they were built on the knowledge and experience of some older establishments and thus represent a refinement in the field of monitoring. On the other hand, their short record of functioning leaves some information gaps and a level of uncertainty as to their effectiveness. Monitoring, as a whole, represents a fairly new development. It has to deal with current problems and become flexible enough to respond to concerns that may arise in the future.

## **3.2. Office of the United Nations High Commissioner on Human Rights**

### **3.2.1. Background developments of the establishment of the OHCHR**

The idea of establishing the post of the High Commissioner dates from the draft of the Universal Declaration of Human Rights in 1947. What followed was a protracted and

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<sup>308</sup> Treaty of Amsterdam Amending the Treaty on the European Union, the Treaties Establishing European Communities and Related Acts, 2006.  
[ <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>] (accessed: November 06, 2006).

tortuous five-decade route before the post was finally established. Mr. Rene Cassin, the French representative to the United Nations, was the first to propose the position of an Attorney General, who would be responsible for human rights' protection. Uruguay proposed to the General Assembly in 1950 that the post of an Attorney General or High Commissioner be established. The post would derive its authority from an International Covenant on Human Rights. This proposal was examined but eventually rejected. The idea re-emerged in 1965, when Costa Rica submitted a draft resolution on the "Election of High Commissioner for Human Rights."<sup>309</sup> Notably, the post was proposed and approved within the Charter of the United Nations for the first time.<sup>310</sup>

The success seemed encouraging, but the General Assembly did not examine the recommendations to establish the post. In 1973, the Assembly discussed the issue again to merely reaffirm that further steps toward the protection of human rights were necessary.<sup>311</sup> The long history to the establishment of this position indicates the general unwillingness of the participating states to establish a global monitoring body, perhaps influenced, at least in part, by the historical tendency of Eastern European states to view the loyalty of their ethnic minorities with mistrust. Therefore, the prospect of external interference in the states' territorial integrity would have seemed unappealing. Moreover, the idea of a High Commissioner sounded revolutionary within the context of the Cold War division. As John Humphrey observes, the Soviet Union objected to the creation of international machinery for the enforcement of human rights and viewed it as 'a sinister plan to undermine the sovereignty of states.'<sup>312</sup> Indeed, while discussing the Costa Rican proposal in 1966, the Ukrainian expert Nedbailo stated that the post would be 'contrary to the principles of the sovereignty of states and of non-intervention in their internal affairs.'<sup>313</sup> During the discussions, the Soviet expert Nasinovsky stated that '[i]t was ... utopian to suppose that a

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<sup>309</sup> Mukherjee, Bhaswati, "United Nations High Commissioner for Human Rights" in Alfredsson, Gudmundur et al, eds., *International Human Rights Monitoring Mechanisms*, (the Hague: Martinus Nijhoff Publishers, 2001), p. 393.

<sup>310</sup> ECOSOC adopted the Commission's draft resolution and recommended the text to the General Assembly (ECOSOC resolution 1237 (XLII), 6 June 1967 in Mukherjee, Bhaswati, "United Nations High Commissioner for Human Rights" in Alfredsson, Gudmundur, et al, eds., *International Human Rights Monitoring Mechanisms*, p. 393.

<sup>311</sup> Mukherjee, Bhaswati, "United Nations High Commissioner for Human Rights" in Alfredsson, Gudmundur et al, eds., *International Human Rights Monitoring Mechanisms*, pp. 392-3.

<sup>312</sup> Humphry, John, *Human Rights & the United Nations: a Great Adventure*, (New York: Transnational Publishers Inc, 1984), pp. 298-9.

<sup>313</sup> *Ibid*, pp. 298-9.

single individual could act as an arbitrator, adviser or even judge in the resolution of questions relating to human rights which would arise under various legal, philosophical or religious systems.<sup>314</sup> This point brings up the first issue of interest in this chapter: regimes' effectiveness. As my original assumption stands, global regimes might experience difficulty in unifying states around a common agenda, especially in the context of the East-West division.

Post-Cold War, the World Conference on Human Rights of 1993 reintroduced the issue of establishing the position. After an intense several weeks of negotiations the post of the High Commissioner was created by Resolution 48/141 of 1993.<sup>315</sup> In terms of states' commitments, this resolution was important for the Roma and other disadvantaged minorities in three ways. Firstly, it emphasised that states had to respect the Universal Declaration for Human Rights and to fully implement the Declaration on the Right to Development, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other human rights standards. Secondly, the resolution reaffirmed the OSCE Vienna Declaration and the Programme of Action. Thirdly, the resolution stressed the significance of a continued improvement of the UN human rights system and the need to enhance the overall efficiency, coordination, and effectiveness.<sup>316</sup> To this end, the UN created the Office of the UN High Commissioner for Human Rights in 1993, almost half a century after it was initially proposed. It was set to safeguard the human rights of all persons, empowering them to enjoy their rights, and ensuring that human rights are fully implemented.<sup>317</sup>

### **3.2.2. Goals and achievements of the OHCHR**

The Office has a far-reaching global agenda. The global scope of the focus presupposes that the protection of Roma falls within the scope of the OHCHR's

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<sup>314</sup> Ibid, pp. 298-9.

<sup>315</sup> Mukherjee, Bhaswati, "United Nations High Commissioner for Human Rights" in Alfredson, Gudmundur et al, eds. *International Human Rights Monitoring Mechanisms*, pp. 392-3.

<sup>316</sup> A/RES/48/141 [<http://www.un.org/documents/ga/res/48/a48r141.htm>] (accessed: August 20, 2006).

<sup>317</sup> Office of the United Nations High Commissioner for Human Rights, Mission Statement [<http://www.ohchr.org/EN/AboutUs/Pages/MissionStatement.aspx>] (accessed: August 20, 2006).

responsibilities. However the monitoring of Roma protection is not a key priority of the High Commissioner.

In principle, the OHCHR works for the realisation of political, cultural, civil, and economic rights for all. The Office concentrates its efforts on the most acute human rights' violations, especially on those that put human life at risk. In this relation, the OHCHR pays particular attention to those individuals and groups which are exposed to risk on multiple fronts.<sup>318</sup> In view of these goals, a recent EU survey by the Fundamental Rights Agency reveals that the Roma minority falls within this category. It is exposed to discrimination and racially motivated crimes on multiple fronts. Persons of Roma origin have reported the highest level of discrimination in comparison to other minority groups. According to the survey, one in four Roma respondents was a victim of personal crimes, such as threats and serious harassment. One in five Roma fell victim to a racially motivated crime, such as assault. One in three Roma on average were stopped by the police because of their ethnic origin. Finally, one in four Roma reported that they were stopped by border control when entering their home country because they were Roma.<sup>319</sup> Clearly, the Roma, as a group, are exposed to the highest levels of risk in Europe. Still, the extent to which the OHCHR has evaluated these risks and worked to effectively protect the Roma population is insufficient.

In general, the High Commissioner, under the guidance of the Secretary General, has a broad mandate in promoting and protecting all social, economic, civil, and political rights.<sup>320</sup> In this sense, a major responsibility of the High Commissioner is human rights advocacy. Advocacy, as such, translates into supporting those who deal with human rights issues, including United Nations' bodies, non-governmental organisations, and other partners. Advocacy also entails a commitment to facilitate the communication between governments and the UN mechanisms. The dialogue between the United Nations and the states takes diverse forms. While visiting a country, the High Commissioner can address human rights issues encountered in the given country. These might be structural problems, such as gender discrimination, existence of unacceptable penalties, limited access to

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<sup>318</sup> Ibid.

<sup>319</sup> Fundamental Rights Agency, "European Union Minorities and Discrimination Survey. Data in Focus Report: the Roma", pp. 2-3, 2009 [[http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS\\_ROMA\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_ROMA_EN.pdf)] (accessed: June 07, 2009).

<sup>320</sup> Office of the United Nations High Commissioner for Human Rights, The High Commissioner [<http://www.ohchr.org/english/about/hc/index.htm>] (accessed: August 20, 2006).

education, and so forth. If the situation requires an urgent response, the High Commissioner may appoint a personal envoy to examine it.<sup>321</sup>

Thomas Weiss et al comment that the activities of the consecutive High Commissioners have some merits.<sup>322</sup> For instance, the first High Commissioner, Jose Ayala-Lasso, had extensive experience as a Permanent Representative of Ecuador to the United Nations in New York and Minister of Foreign Affairs of Ecuador.<sup>323</sup> His long experience within the bureaucracy of the United Nations might explain why Ayala-Lasso preferred, as Weiss formulated it, quiet diplomacy to public advocacy in a proactive style. This approach had some advantages: diplomacy alleviated the fears of some developing countries that the post would serve the Western view of human rights exclusively.<sup>324</sup>

The inability of organisations to attenuate the fears of states that minority protection threatens their territorial integrity and social cohesion remains a lingering challenge. The ability to achieve this goal promotes the values of liberal multiculturalism, particularly in post-Communist states where the fear of multiculturalism becoming a threat to territorial integrity persists. If the High Commissioner focused his efforts on placating the fears of weakened social cohesion, his diplomacy could facilitate the introduction of multicultural policies in Eastern Europe. However, analysis of the High Commissioner's diplomacy in this part of the world has received scant academic attention.

The post of the High Commissioner is a recent introduction, due to which one cannot draw over-critical conclusions about its merits. The presence of the UN in areas, where human rights are violated is a step toward the actual implementation of human rights standards. However, as articulated in his work agenda, the High Commissioner concentrates his efforts in places of acute violations of human rights. The question of what represents acute violation and the severity of violations are to be assessed. The Roma, as a group, are exposed to the highest risk of discrimination and physical assaults across Europe. Yet, a subsequent section will show that the efforts of the UN in Central and Eastern Europe are

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<sup>321</sup> Kedzia, Zdzislav, "United Nations Mechanisms to Promote and Protect Human Rights" in Symonides, Janusz, eds., *Human Rights: International Protection, Monitoring, Enforcement*, (Aldershot: Ashgate Publishing Limited, 2003), pp. 28-9.

<sup>322</sup> Weiss, Thomas et al, eds., *The United Nations and Changing World of Politics*, (Boulder, CO: Westview Press, 1997), p. 168.

<sup>323</sup> Jose Ayala-Lasso: United Nations High Commissioner for Human Rights [[http://www.unhchr.ch/html/hchr/hchr\\_cv.htm](http://www.unhchr.ch/html/hchr/hchr_cv.htm)] (accessed: January 30, 2007).

<sup>324</sup> Weiss, Thomas et al, eds., *The United Nations and Changing World of Politics*, p. 168.

fragmented at best. This selectivity of problem areas might undermine the legitimacy of the post.

In this line of thinking, the High Commissioner engages in areas that are perceived as highly problematic, but who, as a global representative of the UN, would focus on all the other violations of human rights? There is certainly a limit to what a single person can achieve. Finally, the selectivity of problem areas is indicative of a gap between the global human rights' rhetoric and the possible and actual achievements. This gap is illustrative of the manner, in which a global organisation functions. As Edward Luck precisely formulates the idea:

[b]ig and small states alike begin to fret that their relative positions in the UN, built through years of practice and maneuver, could be affected by unpredictable renovations. As long as their corners of the body are well defended, they may continue to mouth rhetoric about sweeping change and historic opportunities.<sup>325</sup>

Global coverage is therefore difficult, when countries differ in motivation or are outright unwilling to resolve problems. However, motivation and willingness are contingent on whether states perceive a link between global concerns and their own well-being. The protection of minority groups is not a universal concern of all member states and more often than not, UN actions, unless taking place in their region, will not remain at the top of the agendas of the individual states.

### **3.2.3. Staffing and employment of the OHCHR**

Staffing and employment determine, at least in part, the extent to which organisations are committed and able to assign resources for the development of measures. The effectiveness of every organisational structure depends on proper management practices, coordination, experience and commitment of staff, as well as a sense of common purpose. For these reasons, the functioning of the Office is examined in view of its employment structure.

According to official information, the Office works through four branches: Treaties and Commission, Research and Right to Development, Special Procedures, and Capacity

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<sup>325</sup> Luck, Edward, "Global Insights: How Not to Reform the United Nations", *Global Governance*, vol. 11 (2005) [[https://duo.dur.ac.uk/webapps/portal/frameset.jsp?tab\\_id=\\_32\\_1](https://duo.dur.ac.uk/webapps/portal/frameset.jsp?tab_id=_32_1)] (accessed: January 31, 2007).

Building and Field Operations Branches. The primary functions of the Treaties and Commission Branch are supporting the work of the various treaty bodies, preparing and submitting informative documents, and others. The functions of the Research and Right to Development Branch include assisting the High Commissioner in enhancing the system and providing analysis of the states' progress reports, among others.<sup>326</sup> Basically, both branches have purely bureaucratic functions. The Special Procedures Branch and the Capacity Building and Field Operations are the operational branches. They have the potential to prompt states' responses to human rights issues. The Special Procedure Branch investigates human rights violations via rapporteurs, special representatives, experts, and working groups. The Capacity Building and Field Operations Branches assist states to strengthen the capacity of their national institutions.<sup>327</sup>

These bodies are serviced by 576 officials around the world as of January 1, 2005. 304 of them work at the OHCHR's Headquarters in Geneva, 10 are employed in an office in New York, and the other 262 are employed in offices around the world.<sup>328</sup> It is immediately evident that less than 600 individuals could hardly cover concerns on a global scale.

Hurst Hannum has questioned the personnel's effectiveness, pointing out in particular that communication between the different branches in Geneva and the field offices is inadequate. He suggests that one of the reasons for this "disconnection" is the insufficient experience that field officers have in Geneva and vice versa.<sup>329</sup> Field officers tend to come from outside the system of the United Nations, often from NGOs, and do not have experience within the political and institutional framework of the organisation. Geneva-based officials, on the other hand, not only have little experience on the ground but are unwilling to volunteer for long field missions, especially in regions of conflict.<sup>330</sup>

While insufficient experience can be a source of concern, Hannum points out that the UN hardly had a field component before the 1990s. At the time, neither expertise nor experience was considered relevant to the recruitment of Geneva officers. The establishment

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<sup>326</sup> Office of the United Nations High Commissioner for Human Rights, Organizational Structure [<http://www.ohchr.org/english/about/structure.htm>] (accessed: August 21, 2006).

<sup>327</sup> Office of the United Nations High Commissioner for Human Rights, Organizational Structure.

<sup>328</sup> Office of the United Nations High Commissioner for Human Rights, Staff [<http://www.ohchr.org/english/about/staff.htm>] (accessed: August 21, 2006).

<sup>329</sup> Hannum, Hurst, "Human Rights in Conflict Resolution: the Role of the Office of the High Commissioner for Human Rights in UN Peacemaking and Peacebuilding", *Human Rights Quarterly*, 28:1 (2006), p. 17.

<sup>330</sup> *Ibid*, p. 18.

of the Office of the High Commissioner started reversing the trend, and it appears that the overall competence of the officials has improved over the past decade.<sup>331</sup>

#### **3.2.4. Budget of the OHCHR**

In addition to adequate human resources, the provision of sufficient material and financial resources is vital for the effectiveness of any organisation. A quick glance at the overall funding of the United Nations reveals a staggering inadequacy in this area. The budget envisages about 50 cents per person with regard to human rights issues. In comparison, the annual global military budget of the UN amounts to 100 dollars per individual.<sup>332</sup>

During the 2004-2005 biennium, the regular funding from the budget totalled \$67.6 million. This represents just a 0.07 percent increase over the previous biennium. Similarly, voluntary contributions reached \$68.2 million, compared to \$52.3 million in 2004.<sup>333</sup> The increase in regular funding seems very negligible. Moreover, the Office receives just two percent of the UN budget.<sup>334</sup> This situation leaves it dependent on the willingness of states to contribute, i.e. on whether they perceive a certain concern as a priority on their agenda.<sup>335</sup>

The governments approved an increase of the budget for 2006-2007. The funds available for activities of the OHCHR have doubled and will be distributed over a five-year period.<sup>336</sup> Notwithstanding that fact, this increase seems more of a symbolic gesture to human rights, especially compared to the resources of some international non-governmental organisations. Amnesty International USA, which represents one branch of the Amnesty

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<sup>331</sup> Ibid, p. 19.

<sup>332</sup> Bowles, Newton, *The Diplomacy of Hope: The United Nations Since the Cold War*, (London: I.B. Tauris Publishers, 2004), p.135.

<sup>333</sup> The activities of the Office are funded by the regular budget of the United Nations and by voluntary contributions. The remaining financial support comes from governments, non-governmental organisations, foundations, and private donors. See: Annual Report 2005, pp. 11-4.

[<http://www.ohchr.org/english/about/docs/annualreport2005.pdf>] (accessed: August 23, 2006).

<sup>334</sup> Lagon, Mark, "The UN Commission on Human Rights: Protector or Accomplice?" U.S. Department of State Website [<http://www.state.gov/p/io/rls/rm/44983.htm>] (accessed: August 23, 2006).

<sup>335</sup> This problem leaves many projects in the theoretical realm. Because of budgetary constraints in 2003, the board of the OHCHR could not recommend grants for training or seminars for professionals who assist victims of torture. See: Annual Report 2003: Implementation of Activities and Use of Funds, pp. 26

[<http://www.ohchr.org/english/about/docs/annualrep03.pdf>] (accessed: August 23, 2006).

<sup>336</sup> High Commissioner's Strategic Management Plan 2006 – 2007, p. 5

[<http://www.ohchr.org/english/about/docs/strategic.pdf>] (accessed: September 3, 2006).

International, had operating revenue of almost \$48 million in 2005.<sup>337</sup> Once again, the issue of resource availability poses a question in terms of the willingness of states to engage in human rights monitoring on a global scale.

### **3.2.5. The OHCHR's initiatives in Central and Eastern Europe**

The OHCHR does not have a comprehensive monitoring strategy for the Roma population in the region. The Office's activities are limited to country visits of the Independent Expert for Minority Issues, together with general support and financial assistance for Roma-related projects.

The High Commissioner has discussed a forthcoming country visit of the Independent Expert for Minority Issues, Gay McDougall, with the Bulgarian government. Both parties have agreed in principle, but the dates of the visit are still under consideration. In terms of grassroots activities, the High Commissioner recently lended support to a community-based training initiative in the town of Polski Trambesh. Notably, the project is the first-ever minority initiative to receive the support and financial assistance of the High Commissioner. The funding of \$4,700 comes from the Indigenous and Minority Unit of the Research and Right to Development branch, one of the operational structures of the OHCHR, and sufficiently covers the activities of the community training project. The initiative will culminate in the establishment of a Municipal Council on Ethnic and Demographic Issues that has a budget covered by the municipality. This pilot project is a model of effective and positive implementation of human rights instruments at the local level. However, the initiative has been small-scale.<sup>338</sup>

In view of initiatives in Hungary, the UN High Commissioner respected the government's request for a visit from the Independent Expert on Minority Issues, Gay McDougall. The expert appreciated the efforts of the government to solve the problems of minorities. McDougall paid special attention to Hungary's efforts to accommodate the Roma community. However, the expert expressed concern that the government had moved the focus from the problems of the Roma minority to a broad policy that addressed

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<sup>337</sup> Amnesty International of the U.S.A., Inc.: Financial Statements Year Ended September 30, 2005, p. 3 [[http://www.amnestyusa.org/about/pdf/financial\\_statements\\_2005.pdf](http://www.amnestyusa.org/about/pdf/financial_statements_2005.pdf)] (accessed: January 31, 2007).

<sup>338</sup> Personal correspondence with Angel Getsov; On file with author.

‘disadvantaged groups.’<sup>339</sup> McDougall highlighted the need to fully address the educational and employment status of Roma and to combat the widespread discrimination against them. Mrs. McDougall will present her findings and recommendations on the situation of minority groups in Hungary to the Human Rights Council.<sup>340</sup> Given that the expert’s tasks include identifying venues for cooperation between the OHCHR and governments, this report will suggest some possible future developments. Finally, the Independent Expert relies on the Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities to determine the scope of her mandate. The Hungarian government has to comply with the Declaration and subsequent recommendations of the expert as to ensure the equal treatment of all citizens.<sup>341</sup>

In Romania, the OHCHR launched a project called Assisting Communities Together. The program distributes grants among local organisations that promote human rights. The OHCHR selected projects targeting the discrimination of Roma in the education system, women’s participation in public life, human rights awareness, assistance and counselling services to juvenile delinquents, investigative journalism, and thematic theatre and playwriting for the youth. The funding for the projects varied between 4,700 USD and 5,000 USD.<sup>342</sup> The implementation and monitoring of these projects were to be conducted by an OHCHR/UNDP Country Office under the OHCHR. As a general remark, the High Commissioner noted that the Offices in many participating countries submitted inadequate and inaccurate information in their monitoring reports.<sup>343</sup> Given that ACT is being implemented for the first time in Romania, it is difficult to evaluate the level of the project’s implementation and monitoring.

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<sup>339</sup> UNOG, “Reports on Discrimination, Minorities and Indigenous Issues” [[http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/847D3BE62DD23285C12571E900492DF1?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/847D3BE62DD23285C12571E900492DF1?OpenDocument)] (accessed: November 6, 2007).

<sup>340</sup> Ibid.

<sup>341</sup> “Specific Groups and Individuals: Minorities. Report of the Independent Expert on Minority Issues, Gay McDougal”, 2006, pp. 11-12

[<http://daccessdds.un.org/doc/UNDOC/GEN/G06/101/26/PDF/G0610126.pdf?OpenElement>] (accessed: October 4, 2007).

<sup>342</sup> “Announcement to Applicants under project ACT (Assisting Communities Together)”, p. 1-2 [<http://www.undp.ro/pdf/Results%20announcement.pdf>] (accessed: September 29, 2007).

<sup>343</sup> Other countries that participated in the project are Georgia, Mongolia, Moldova, Sudan, etc.; Office of the United Nations High Commissioner for Human Rights, “Act Project - Fourth Phase (2003 – 2005)” [<http://www.ohchr.org/english/issues/education/training/phase4.htm>] (accessed: September 29, 2007).

The measures, including non-discrimination against Roma in the education system, support for the participation of women in public life, human rights awareness, and others represent the first steps of the Office toward human rights advocacy for the Roma population. In addition, the recommendations of the Independent Expert on Minority Issues aim to ensure states' compliance with their commitments to human rights. Regrettably, the Roma-related activities of the Office are limited to supporting small-scale projects. This fact suggests that the global agenda of the United Nations lacks capacity to actively engage states in the protection of the Roma minority. On one hand, Eastern European states prioritise national cohesion and territorial integrity over the protection of their minorities. They may be unwilling to cooperate with the UN in terms of the development of large-scale projects for minority protection. In addition, the socio-economic situation of the Roma is not a universal concern for all member states. It is doubtful that minority protection will receive the active support of states unless the efforts of the United Nations are focused on a region in their proximity. UN action in distant regions is unlikely to become a priority on the agenda of member states.

### **3.3. Office for Democratic Institutions and Human Rights (ODIHR)**

#### **3.3.1. Background developments**

The Office for Democratic Institutions and Human Rights is the main structure dealing with human rights within the OSCE. A substantial body of documentation affirms that the organisation is committed to human rights protection, serving as a basis for the establishment of the Office. At the Copenhagen Meeting of 1990, states affirmed 'that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government.'<sup>344</sup> The Document of the Copenhagen Meeting stated that 'the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.'<sup>345</sup> These principles were reaffirmed by the 1990 Charter of Paris for a New Europe, which proclaimed that 'human rights and fundamental freedoms are the birthright of all

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<sup>344</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE [http://www.minelres.lv/osce/cope90e.htm] (accessed: October 24, 2006).

<sup>345</sup> Ibid.

human beings.<sup>346</sup> The wording of the Moscow Document of 1991 is even stronger. States ‘categorically and irrevocably’ declare that commitment to human rights is a matter of ‘direct and legitimate concern to all participating States and do[es] not belong exclusively to the internal affairs of the State concerned.’<sup>347</sup> At first, several institutions were responsible for the monitoring of these commitments, the main one being the Office of Free Elections. After the 1992 Helsinki Document, the Office for Free Elections evolved into the Office of Democratic Institutions and Human Rights.

In contrast to the prolonged discussions before the establishment of the Office of the High Commissioner, debates did not delay the establishment of the ODIHR. Participating states were able to agree on establishing this structure with relative ease at the regional level. The ODIHR works ‘to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy ... as well as promote tolerance throughout society.’<sup>348</sup>

### **3.3.2. Goals and work methods of the ODIHR**

A key responsibility of the ODIHR is to assist the monitoring and reporting of states’ compliance with their human rights commitments.<sup>349</sup> Commitments which relate to the protection of Roma include tolerance and non-discrimination, human rights, national minorities, and international humanitarian law.<sup>350</sup> The compliance of states with their commitments is monitored by the OSCE through various mechanisms, the most frequently used of which has been the Vienna Mechanism. Any state or a group of states within the OSCE can invoke this tool on an ad hoc basis. This section suggests that the excessive use of the mechanism against Eastern European states might have a negative impact on the advent of liberal multiculturalism there. In this sense, the absence of impartiality, characteristic of

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<sup>346</sup> Charter of Paris for a New Europe: Paris 1990 [<http://www.hri.org/docs/Paris90.html#Sec1.1.1>] 3 September 2006 (accessed: October 24, 2006).

<sup>347</sup> OSCE Homepage, Annual Report 2005 [[http://www.osce.org/publications/odihr/2006/04/18821\\_607\\_en.pdf](http://www.osce.org/publications/odihr/2006/04/18821_607_en.pdf)] (accessed: September 3, 2006).

<sup>348</sup> What is the ODIHR? [[http://www.osce.org/publications/odihr/2004/11/13555\\_54\\_en.pdf](http://www.osce.org/publications/odihr/2004/11/13555_54_en.pdf)] (accessed: September 3, 2006).

<sup>349</sup> OSCE Homepage, Human Rights [<http://www.osce.org/odihr/13460.html>] (accessed: September 14, 2006).

<sup>350</sup> OSCE Homepage, OSCE Human Dimension Commitments: Thematic Compilation [[http://www.osce.org/odihr/item\\_11\\_16237.html](http://www.osce.org/odihr/item_11_16237.html)] (accessed: September 16, 2006).

regional organisations, is less conducive to placating the concerns of Eastern European states that minority protection will affect their social cohesion. Then, a subsequent section will describe the invocation of the mechanism by Turkey as a response to the treatment of the Muslim population of Bulgaria. The application of the Vienna Mechanism had an indirect positive impact on the Muslim Roma in the country.

In general, the Vienna mechanism consists of four phases in which states: 1) exchange and respond to other states' requests for information; 2) hold bilateral meetings upon request by other states; (3) bring situations of concern to the OSCE through diplomatic channels, and, (4) inform other states about responses to requests, exchanges of information, etc. This mechanism is a step forward in the field of supervision. The non-voluntary character of the obligations is indeed progressive. Upon requests for information, states are obliged to provide a response. They also have to comply with requests for bilateral meetings.<sup>351</sup>

Arguably, the use of this mechanism illustrates the involvement of member states in the OSCE. It gives them an opportunity to discuss the implementation of human rights standards.<sup>352</sup> Here, regional involvement proves more effective than the work of global bodies such as the United Nations. An illustration of this statement is the frequent use of the mechanism. For instance, the first phase was initiated more than one hundred times (e.g., against Bulgaria and Romania).<sup>353</sup>

This mechanism has been used mostly against Eastern States. A look at Arie Bloed's listing reveals that proceedings were raised against Western states only 9 times. Moreover, the mechanism has been invoked exclusively between the Eastern and Western groups of participating states and not within them.<sup>354</sup> These facts clearly suggest that interconnected political and economic interests breed an absence of impartiality. Thus, the global organisations may lack the motivational power of the regional, but the regional ones may suffer from excessive motivation. One issue of relevance comes up again – the predominant

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<sup>351</sup> Bloed, Arie, and Pieter van Dijk, eds., *The Human Dimension of the Helsinki Process: the Vienna Follow-up Meeting and Its Aftermath*, (Dordrecht: Martinus Nijhoff Publishers, 1991), pp. 77-8.

<sup>352</sup> Ibid, p. 127.

<sup>353</sup> The other phases have been initiated less often. The second phase was proposed eleven times (Turkey, Czechoslovakia, and USSR, among others). The third phase was used against five states which included Bulgaria and Romania. The last one was applied once at the Paris Meeting, and cases were raised against Bulgaria, Romania, Czechoslovakia, and the GDR. Ibid, p. 79.

<sup>354</sup> Bloed, Arie. "Helsinki-II: The Challenges of Change", *Helsinki Monitor*, 3:3 (1992), p. 46.

use of the mechanism against Eastern states could have a negative impact on their willingness to examine the Western ideas of liberal multiculturalism.

In general, the Office for Democratic Institutions and Human Rights fails to serve as a central ‘depository’ for all actions since states are not obliged to inform the Office of their proceedings.<sup>355</sup> In a sense, the mechanism seems detached from the work of the Office. Despite the positive developments in the monitoring procedures of the OSCE, decision-making is still in the hands of the governments.<sup>356</sup> Decisions are ultimately made in a consensual way with states negotiating on the solutions. Negotiation, however, leaves to states the difficult task of balancing their national interests and their regional commitments. This situation works at the disadvantage of the Roma minorities in Eastern Europe, where states prioritise their territorial integrity and national unity.

### **3.3.3. Structure of the ODIHR. The Office’s soft diplomacy**

As discussed, the effectiveness of organisations depends on their proper management and coordination, the experience and commitment of their staff, and the ability of the organisation to create a sense of common purpose. This section analyses the extent, to which the ODIHR manages to function effectively. Rather than monitoring, the major contribution of the Office has been the advancement of soft diplomacy – the organisation of workshops and initiatives open to the wider public.

The Office has over 120 employees and consists of departments dealing with a number of activities.<sup>357</sup> The Contact Point on Roma and Sinti Issues is the main department that focuses on the integration of Roma and related minorities in their respective societies.<sup>358</sup> The activities of the Contact Point include recording and communicating cases of violence to

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<sup>355</sup> Ibid, p. 46.

<sup>356</sup> Brett, Rachel, “Human Rights and the OSCE”, *Human Rights Quarterly*, 18: 3 (1996), p. 682.

<sup>357</sup> The Democratization Department focuses on the establishment of democratic institutions, rule of law, and freedom of movement. The Human Rights Department deals with broad issues related to the protection and promotion of human rights. The observation of elections, the review of election-related legislation, and the promotion of observer groups fall within the tasks of the Election Department. The Programme on Tolerance and Non-Discrimination collects related information. It follows the progress of participating states, identifies good practices, and makes recommendations. See: Main Issues [<http://www.osce.org/odihr/13478.html>] (accessed: November 3, 2006).

<sup>358</sup> OSCE Homepage, Organizational Structure [<http://www.osce.org/odihr/13406.html>] (accessed: November 3, 2006).

national institutions, responsible for the protection of Roma and Sinti, offering legal assistance, identifying national bodies responsible for mediation, advancing cooperation between associations of the Roma and Sinti, organising meetings on Roma and Sinti issues, and disseminating knowledge about the Roma and Sinti minorities.<sup>359</sup>

Emmanuel Adler observes that the ODIHR has been successful in organizing regional seminars in the framework of the ‘Programme for Newly Admitted States.’<sup>360</sup> A number of events took place, among which the seminars on tolerance, the building blocks of civil society, the protection of Roma, and others. The Workshop on Violence against Roma gathered 35 representatives of Roma and Sinti associations as well as representatives of the UNCHR and the Council of Europe. Most contributors highlighted the fact that discrimination against the Roma and Sinti was pervasive. The phenomenon is manifested in social life and inter-ethnic relations, the functioning of government, the justice and education systems, the actions of police officials, and the language of the media. The participants recommended improving legal assistance, education, and training.<sup>361</sup>

The seminars were successful because they were small, managed to attract local participants, and focused on the specific circumstances of the region where they took place.<sup>362</sup> The events also turned into places for seminar diplomacy. This development is important for the efforts of the OSCE to promote community norms in the new member states. The seminar framework can become ‘a clearinghouse for assistance in democracy-building.’<sup>363</sup> The ODIHR has also made its procedures and documents more accessible to civil society. NGOs are now given the opportunity to inform the OSCE about human rights’ violations.<sup>364</sup> The OSCE Implementation Meeting on Human Dimension Issues of 1998 is

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<sup>359</sup> CPRSI Newsletter in Cumper, Peter, and Stephen Wheatley, *Minority Rights in the „New” Europe*, (The Hague: Martinus Nijhoff Publishers, 1999), p. 40; Sinti are former itinerant communities living on the territory of North Western Europe.

<sup>360</sup> Adler, Emanuel, “Seeds of Peaceful Change: the OSCE’s Security Community- Building Model,” in Adler, Emanuel, and Michael Barnett, eds., *Security Communities*, (Cambridge: Cambridge University Press, 1998), p. 130.

<sup>361</sup> OSCE CPRSI, OSCE CPRSI Newsletter, CPRSI Workshop on Violence against Roma, vol. 1 (1996), pp. 1-2 [http://www.osce.org/documents/odihr/1996/02/1585\\_en.pdf](http://www.osce.org/documents/odihr/1996/02/1585_en.pdf) (accessed: April 07, 2009).

<sup>362</sup> Adler, Emanuel, “Seeds of Peaceful Change: the OSCE’s Security Community- Building Model,” in Adler, Emanuel and Michael Barnett, eds., *Security Communities*, pp. 140-1

<sup>363</sup> Showalter, Vinca “CSCE Tolerance Seminar Breaks New Ground”, *CSCE Digest*, vol. 15 (1992), p. 3.

<sup>364</sup> Adler, Emanuel, “Seeds of Peaceful Change: the OSCE’s Security Community- Building Model,” p. 139.

illustrative of the increased transparency. The initiative attracted 186 representatives of non-governmental organisations and gave them equal access to the speaker's list.<sup>365</sup>

The majority of ODIHR's activities represent a form of soft diplomacy. The former Deputy Secretary-General of NATO has defended this approach by stating that:

Some may view sceptically the importance of "soft" diplomacy. But I take it wrong to underestimate the power of such dialogue and its potential to stimulate and develop constructive and deepening cooperation... To understand how powerful dialogue can be as an instrument of change, you only have to look at the development of CSCE, which began tentatively as a forum of discussion across a geographically and ideologically divided Europe. Now it is a fully fledged organization, building its own capacity for conflict prevention.<sup>366</sup>

On the other hand, analysis indicates that the Office fails to serve as the central structure to deal with human rights within the OSCE. A subsequent section will show that its initiatives for improving the situation of Roma cannot be defined as monitoring. Rather, they can be described as small-scale projects to improve the position of the Roma.

#### **3.3.4. Budget and funding of the ODIHR**

The ODIHR is funded mainly from the regular budget of the OSCE and through small voluntary contributions.<sup>367</sup> This section will illustrate that funding, which is important for the implementation of any project, has been insufficient. However, a recent sizeable increase of the Office's budget indicates a positive tendency in states' commitment to the human rights agenda of the OSCE.

The OSCE allocated EUR 11,523,000 to the Office in 2004.<sup>368</sup> The sum amounts to EUR 11,964,000 in 2005.<sup>369</sup> This funding represents 6.7 percent of the total budget of the

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<sup>365</sup> Implementation Meeting on Human Dimension Issues, p. 3  
[[http://www.osce.org/documents/odihhr/1998/10/1797\\_en.pdf](http://www.osce.org/documents/odihhr/1998/10/1797_en.pdf)] (accessed: November 03, 2006).

<sup>366</sup> Ibid, p. 142.

<sup>367</sup> The only mentioned contribution is that of Poland. The fact that the Office's premises are in Warsaw might speak of a contribution made in exchange for the prestige to host the body. For information on the Polish contribution see, for example: OSCE Financial Report and Financial Statements for the year ended 31 December 2004 and the Opinion of the External Editor, p. 2  
[[http://www.osce.org/publications/sg/2005/12/17492\\_495\\_en.pdf](http://www.osce.org/publications/sg/2005/12/17492_495_en.pdf)] (accessed: November, 03, 2006).

<sup>368</sup> OSCE Financial Report and Financial Statements for the year ended 31 December 2004 and the Opinion of the External Editor, p. 2.

<sup>369</sup> OSCE Financial Report and Financial Statements for the year ended 31 December 2005 and the Audit Opinion, p. 13 [[http://www.osce.org/publications/sg/2006/10/21042\\_680\\_en.pdf](http://www.osce.org/publications/sg/2006/10/21042_680_en.pdf)] (accessed: November 03, 2006).

OSCE in 2004.<sup>370</sup> The corresponding figure for 2005 is 7.5 percent.<sup>371</sup> Compared to the 2 percent allotted to the United Nations High Commissioner, these figures point to a higher involvement of the OSCE states in human rights concerns. The Office is seemingly less dependent on states' voluntary contributions than the United Nations. This might be a deliberate arrangement to prevent states from trying to influence the decision-making process, focusing on their national interests. These developments sound somewhat more optimistic; however, participating states have long acknowledged that the available funding is too limited to cover all activities. They have recommended that the ODIHR receive increased financing from the regular budget of the OSCE.<sup>372</sup>

As a positive development, in 2006, the OSCE approved a 2-million Euro increase for the activities of the Office.<sup>373</sup> Additional resources are welcomed as they strengthen the capacity of the ODIHR to cope with its increased responsibilities.<sup>374</sup> This will improve its effectiveness and ability to react in a timely manner.<sup>375</sup>

### 3.3.5. Activities in Central and Eastern Europe

Like the United Nations, the ODIHR does not have a comprehensive program for improving the Roma's socio-economic status. The Office has been involved in Bulgaria, Hungary, and Romania in three ways. First, the Vienna mechanism has been used by Turkey as a response to human rights' violations. Second, the ODIHR has employed election observation missions to follow the transparency of elections and ensure that the election process is fair to national minorities. Third, the ODIHR has organised trainings and initiatives for the Roma minorities in the three countries.

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<sup>370</sup> OSCE Financial Report and Financial Statements for the year ended 31 December 2004 and the Opinion of the External Editor, p. 2.

<sup>371</sup> OSCE Financial Report and Financial Statements for the year ended 31 December 2005 and the Audit Opinion, p. 2.

<sup>372</sup> Mora-Acuna, Rosa, "Enhancing the Review of Implementation in the Human Dimension: a Report of the OSCE Human Dimension Implementation Meeting (12 – 26 November 1997)", p. 12 [[http://www2.essex.ac.uk/human\\_rights\\_centre/publications/paper23/paper%2023.pdf](http://www2.essex.ac.uk/human_rights_centre/publications/paper23/paper%2023.pdf)] (accessed: September 04, 2006).

<sup>373</sup> "OSCE Adopts 2006 Budget", *Slovenia- 2005 Bulletin*, No. 48 (2005) [<http://www.sta.si/osce/>] (accessed: November 04, 2006).

<sup>374</sup> The Contact Point for Roma and Sinti Issues is an example of a recently created body.

<sup>375</sup> Mora-Acuna, Rosa, "Enhancing the Review of Implementation in the Human Dimension: a Report of the OSCE Human Dimension Implementation Meeting (12 – 26 November 1997)", p. 12.

In Bulgaria, the Vienna mechanism of the ODIHR has been applied to the rights of national minorities. Between 1989 and 1990, Turkey used the Vienna mechanism in response to the Bulgarian treatment of its Muslim minority.<sup>376</sup> Zeinep Ibrahimova retells that between 1984 and 1985, the Communist government commenced the largest initiative to assimilate the Bulgarian Turks and the Muslim Roma. The authorities proceeded with forceful name changing and sent dissenters to labour camps.<sup>377</sup> Turkey applied the first two procedures of the mechanism – exchange of information and bilateral meetings. Turkey warned against these human rights’ violations and the subsequent exodus of the Muslim community.<sup>378</sup> Besides the use of the mechanism, the initiatives of the Office included Roma-related projects such as candidate training for party representatives. The ODIHR trained 75 individuals in campaigning, methods for leading negotiations, and establishing coalitions. The initiative resulted in the election of eight participants in the 2003 local elections.<sup>379</sup>

In Hungary, the ODIHR deployed Election Observation Missions in response to invitations by the Hungarian Ministry of Foreign Affairs. The 2002 mission concluded that the current system of representation (requirement for a 5 percent threshold) limited the opportunities of parties with regional or minority support. While the Constitutional Court ruled that the Parliament must enact a law on minority representation, such legislation has not been adopted.<sup>380</sup> Regarding the political involvement of the Roma minority, the 2002 Final Election Observation Report expressed a concern that the Roma was the most marginalised minority on the political scene. The Office noted that the formal agreement between Fidez, one of the main Hungarian parties, and the Roma Lungo Drom had been a major development. Yet, the report pointed to the concern of some NGOs that Lungo Drom

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<sup>376</sup> Preece, Jennifer, “National Minority Rights Enforcement in Europe: a Difficult Balancing Act”, *The International Journal of Peace Studies*, 3:2 (1998); The Communist regime initiated a policy named the „National Revival Process” at the beginning of the 1980s. The project aimed at assimilating Turks through the prohibition of mother tongue speech and the replacement of Turkish and Arabic names with Slavic ones. When the regime opened the borders in 1989, close to 370.000 people fled to Turkey. See for example: Vasileva, Darina, “Bulgarian Turkish Emigration and Return”, *International Migration Review*, 26:2 (1992), pp. 346-7.

<sup>377</sup> Ибрахимова, Зейнеп, „Помня студа страха, сковали всичко-и пътищата и душите ни” (Ibrahimova, Zeinep, „I Remember the Cold and the Fear That Benumbed Everything - the Roads and Our Souls”) 26 February, 2009 [<http://www.mediapool.bg/show/?storyid=149513>] (accessed May 12, 2009).

<sup>378</sup> Preece, Jennifer “National Minority Rights Enforcement in Europe: a Difficult Balancing Act”.

<sup>379</sup> Contact Point for Roma and Sinti Issues, “ODIHR – European Commission Joint Project “Use Your Ballot Wisely!” Expert Paper. Mapping the Electoral Participation of Roma in South – Eastern Europe”, 2003, p. 6 [[http://www.osce.org/documents/odihhr/2007/01/22963\\_en.pdf](http://www.osce.org/documents/odihhr/2007/01/22963_en.pdf)] (accessed: September 29, 2007).

<sup>380</sup> “Preliminary Statement. First Round of Hungarian Parliamentary Elections in Line with International Standards” [[http://www.eu-nepszavazas.hu/parval2002/esz/esz\\_en/inf\\_en/ebezeng.htm](http://www.eu-nepszavazas.hu/parval2002/esz/esz_en/inf_en/ebezeng.htm)] (accessed: October, 04, 2007).

had become an extension of Fidez.<sup>381</sup> The previous report of the ODIHR of 1998 did not mention the participation of minorities in politics.<sup>382</sup>

The Vienna Mechanism of the ODIHR has been used only occasionally for national minority questions. Hungary applied the first two phases of the Vienna mechanism – exchange of information and bilateral meetings against Romania.<sup>383</sup> However, Hungary has used the mechanism with regard to Pastor Laszlo Toekes and not with respect to the treatment of ethnic Hungarians in Romania.<sup>384</sup>

Romania has not applied the Vienna Mechanism of the ODIHR to the treatment of minorities. In 2004, the Office conducted training sessions within the ‘Use your ballot wisely’ initiative. This project entailed a TV spot encouraging Roma to vote in elections, qualitative monitoring of the minority discourse in six national newspapers, and training and instalment of Roma observers. As a result, 34 Roma monitored the election procedures in 8 counties.<sup>385</sup>

To summarise, the Vienna mechanism of the ODIHR has been used only by Turkey and in response to the attempt of the Bulgarian government at large-scale assimilation of the Bulgarian Muslims. The forceful assimilation has affected the Muslim Roma population. In addition to the use of the Vienna mechanism, the ODIHR has been engaged in various projects in the three states. The activities of the Office covered election observation missions and trainings for the Roma population. Unfortunately, comprehensive strategies for improving the Roma’s situation have not been formulated.

### **3.4. European Monitoring Centre on Racism and Xenophobia (EUMC)**

#### **3.4.1. Background developments of the establishment of the EUMC**

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<sup>381</sup> “Republic of Hungary Parliamentary Elections 7 and 21 April 2002. Final Report, 2002”, p. 7 [http://www.osce.org/documents/odihhr/2002/06/1430\_en.pdf] (accessed: October 4, 2007).

<sup>382</sup> For reference: “Republic of Hungary Parliamentary Elections 10 and 24 May 1998. Final Report, 1998” [http://www.osce.org/documents/odihhr/1998/06/1435\_en.pdf] (accessed: October 4, 2007).

<sup>383</sup> Preece, Jennifer, “National Minority Rights Enforcement in Europe: a Difficult Balancing Act”, [http://www.gmu.edu/academic/ijps/vol3\_2/Preece.htm] (accessed: November 04, 2007).

<sup>384</sup> Heraclides, Alexis, *Security and Co-operation in Europe: the Human Dimension, 1972 – 1992*, (London: Franc Cass & Co.Ltd, 1993), p. 118; In 1989, the police tried to evict Pastor Laszlo Toekes from his parish house. The event prompted peaceful demonstrations, but the police opened fire at the protestors. See for example: Tismaneanu, Vladimir, “The Revival of Politics in Romania”, *Proceedings of the Academy of Political Science*, 38:1 (1991), p. 89.

<sup>385</sup> Contact Point for Roma and Sinti Issues, “ODIHR – European Commission Joint Project “Use Your Ballot Wisely!” Expert Paper. Mapping the Electoral Participation of Roma in South – Eastern Europe”, p. 9.

The European Monitoring Centre on Racism and Xenophobia is the final result of a lengthy process. The beginning was marked by the Joint Declaration of the Parliament, the Commission, and the Council in 1977. The Joint Declaration stressed the ‘prime importance that these bodies attach to the protection of human rights’ and their dedication to ‘respect ... and continue to respect those rights.’<sup>386</sup> A Joint Declaration against Racism and Xenophobia was adopted by the Parliament, the Council, and representatives of the member states in 1986.<sup>387</sup> This document is important for the Roma in focusing on ‘the importance of adequate and objective information and of making all citizens aware of the dangers of racism and xenophobia and the need to ensure that all acts or forms of discrimination are prevented or curbed.’<sup>388</sup> However, the establishment of the EUMC was a lengthy process, which indicated that monitoring was not a priority of the EU Member States. In particular, states have been reluctant to commit extensive resources to improve the Roma’s socio-economic status. Most dominant groups view the Roma as a drain on their national economies. Unfortunately, this cautious attitude is one of the main reasons why Eastern European states are not taking full advantage of the benefits of liberal multiculturalism.

It took nine years before the Commission empowered a Consultative Commission to evaluate the prospects of establishing a Monitoring Centre on Racism and Xenophobia.<sup>389</sup> Several challenges to the Centre’s establishment emerged over the years. For example, the Founding Treaties of the European Union did not contain any reference to racism and xenophobia. The measures required a proper legal basis, and the member states agreed to base their action on the former TEU Article K.1 (7) in 1996.<sup>390</sup> This article provided that the member states would jointly combat racism and xenophobia through ‘police and judicial

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<sup>386</sup> Council Regulation (EC) No 1035/97 of 2 June 1997 Establishing a European Monitoring Centre on Racism and Xenophobia [[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997R1035&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997R1035&model=guichett)] (accessed: November 06, 2006).

<sup>387</sup> Ibid.

<sup>388</sup> Ibid.

<sup>389</sup> Ibid.

<sup>390</sup> Monar, Jorg, “The EU’s Role in the Fight against Racism and Xenophobia: Evaluation and Prospects after Amsterdam and Tampere,” *Liverpool Law Review*, 22:1, 2000, pp. 10-1; The Former Article K. 1 (7) is the current Article 29 of the Treaty of Amsterdam.

cooperation in criminal matters.’<sup>391</sup> In 1997, the Council passed Resolution 1035/97 to establish the Monitoring Centre on Racism and Xenophobia.<sup>392</sup>

The question of whether regional bodies have the capacity to monitor minority protection reappears with regard to the EUMC. The lengthy developments described illustrate that human rights monitoring is not among the key priorities of the European Union. This statement is confirmed by the fact that the new body is not empowered to monitor and penalize states when and if violations of human rights occur.

Council Regulation (EC) No 168/2006 replaced the EUMC with the European Union Agency for Fundamental Rights (FRA). The authority is intended to build on the functions and monitoring capacity of the EUMC, although there have been few actual changes in the powers of the body.<sup>393</sup>

### **3.4.2. Structure and work methods of the EUMC**

The main responsibility of the EUMC was to ‘provide the Community and the member states with objective, reliable, and comparable information on racism, xenophobia, and anti-Semitism at the European level.’<sup>394</sup> The collected information is used to study the causes, effects, and consequences of racial violence and discrimination in terms of free movement, culture, education, social policy, and employment.<sup>395</sup>

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<sup>391</sup> Ibid, p. 10. This decision did not resolve the problem entirely. The establishment of the Centre required financial means, but the EC Treaty did not cover the use of the EC budget for this purpose. Finally, the adoption of the Treaty of Amsterdam changed the situation considerably. The Council was entitled to ‘take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. See: Treaty of Amsterdam Amending the Treaty on the European Union, the Treaties Establishing European Communities and Related Acts, 2006.

<sup>392</sup> Council Regulation (EC) No 1035/97 of 2 June 1997 Establishing a European Monitoring Centre on Racism and Xenophobia 5 November 2006.

<sup>393</sup> COUNCIL REGULATION (EC) No 168/ 2007 of 15 February 2007 Establishing a European Union Agency for Fundamental Rights, *Official Journal of the European Union*, 22 February, 2007 [[http://fra.europa.eu/fraWebsite/material/pub/FRA/reg\\_168-2007\\_en.pdf](http://fra.europa.eu/fraWebsite/material/pub/FRA/reg_168-2007_en.pdf)] (accessed: April 24, 2007).

<sup>394</sup> EUMC Website, About Us [[http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=2](http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp_cat_content&catid=2)] (accessed: November 14, 2006).

<sup>395</sup> European Monitoring Centre on Racism and Xenophobia: Work Programme 2006 [<http://eumc.europa.eu/eumc/material/pub/WP/wp05-en.pdf>] (accessed: November 14, 2006).

The personnel of the body number thirty-five. During 2002, the three units operated with twenty four staff members, and the number of employees increased to twenty eight in 2003.<sup>396</sup>

The European Racism and Xenophobia Network (RAXEN) was the EUMC's primary instrument for data collection. The RAXEN is comprised of twenty five National Focal Points (NFPs), located in the Member States.<sup>397</sup> These NFPs cover various research organisations, NGOs, and specialised bodies that monitor racism and xenophobia.<sup>398</sup> Their tasks primarily involve the collection of information on national and regional level and the administration of the NFP network.<sup>399</sup> The NFPs collect research findings, conduct opinion polls, and gather information on conferences and events.<sup>400</sup> They submit annual National Data Collection Reports on employment, racial violence, legislation, and more. The reports represent a basis for the EUMC's Annual Report on racism and xenophobia.<sup>401</sup>

An analysis of the EUMC's overall functioning is important because most scholars and officials are rather sceptical about the purpose and effectiveness of the EUMC. Its limited role indicates that EU states are unwilling to engage in the monitoring of minority protection.

Discussing the effectiveness of the Centre, Andrew Williams notes that the EUMC relies on information that is open to the public. The EUMC uses the following sources of information for its reports: personal contributions provided by the Management Board of the EUMC, country reports filed by the European Commission against Racism and Intolerance, official documents produced by national public bodies, country reports by the UN Committee

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<sup>396</sup> European Monitoring Centre on Racism and Xenophobia: Activities of the EUMC in 2005, p. 40 [http://eumc.europa.eu/eumc/material/pub/ar06/EUMC-AR-06-p1-EN.pdf] (accessed: November 14, 2006).

<sup>397</sup> EUMC Website, Introduction: General Information [http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\_cat\_content&catid=3e4a71f3d0ab8] (accessed: September 12, 2006).

<sup>398</sup> European Monitoring Centre on Racism and Xenophobia: Activities of the EUMC in 2005, p. 11.

<sup>399</sup> EUMC Website, Introduction: General Information.

<sup>400</sup> EUMC Website, Data Collection,

http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\_cat\_content&catid=3e4fcb4d6e824 (accessed November 16, 2006).

<sup>401</sup> Centre on Racism and Xenophobia: Activities of the EUMC in 2005, p. 14.

for the Elimination of Racial Discrimination, documents produced by specialist NGOs, and press coverage.<sup>402</sup>

Furthermore, there is no mechanism, through which the Community's institutions can observe the Centre's findings or take any action upon its recommendations. The EUMC is dependent on the Community's willingness to take note of its findings or consider its recommendations. For this reason, Williams concludes that the Centre is 'devoid of a framework within which its work may have a practical impact.'<sup>403</sup>

Ann Singleton, a co-founder of Statewatch and the Civil Liberties Network, considers that the National Focal Points are the primary strength of the EUMC. They do not constitute a part of the Commission and have a degree of autonomy. However, the Centre itself is set up and run bureaucratically by the Commission. The staff of the Centre spends a lot of time monitoring the contracts of external experts and NFPs and following the Commission's rules and regulations.<sup>404</sup>

An official, who requested confidentiality, commented that the effectiveness of the EUMC had been a matter of concern over the past years. In her opinion, some of the reports were important, especially those provided by the RAXEN network. However, the Community's institutions do not have proper mechanisms to address the reports and follow-up is very limited. Another concern of hers is that the EUMC addresses problems selectively. For example, in 2001, the EUMC did not participate in a conference on Roma inclusion in Bratislava even though the migration of Roma to the then-15 EU states was an issue. In the official's view, a further concern is the lack of clarity on cooperation with NGOs and especially on cooperation with the European Network against Racism: a network, which unites multiple partners against racism. One aspect that has been noted as somehow successful involves the strengthened role of the media and contact with the media with regard to human rights advocacy.<sup>405</sup>

Finally, Roger Helmer, representative in the European Parliament, explained that bodies such as the EUMC exist because they are 'additional bricks to the EU structure'. In

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<sup>402</sup> European Parliament Report on Countering Racism and Xenophobia in the European Union final A5-0049/2000, para 8 at 14 in Williams, Andrew, *Human Rights Policies: A Study in Irony*, (Oxford: Oxford University Press, 2004), p. 104.

<sup>403</sup> Williams, Andrew, *Human Rights Policies: A Study in Irony*, pp. 103-5.

<sup>404</sup> Singleton, Ann [Ann.Singleton@bristol.ac.uk], November 22, 2006.

<sup>405</sup> Personal correspondence.

his view, the MPs vote in favour of them because ‘they are building Europe’, not because they expect effectiveness. MPs also vote for such institutions as a favour to the cities that host them – these bodies bring prestige, visitors, and money. The representative concluded that he did not expect anything particular or useful from the work of the Centre. The Committee of Regions and the Social and Employment Committee are expensive organisations. These structures waste a lot of time and money to produce reports that no one reads.<sup>406</sup>

The officials quoted above observed that the Centre had a degree of autonomy while the RAXEN reports could be considered informative. However, scholars believe that the reports of the EUMC lack an inside view. They comment that the Centre does not have real monitoring powers, and the follow-up remains limited. Other concerns relate to possible selectivity of issues and the absence of sound cooperation with NGOs. Given that the Centre is run by the bureaucracy of the Commission, the EUMC is overloaded with administrative work. The strictly critical position of the MP Helmer holds that structures such as the EUMC are ineffective. In sum, the majority of opinions point that the EU has been wary of establishing a structure empowered to monitor minority protection. The extent to which states adopt and follow multicultural policies depends on the decisions of governments. In Eastern Europe, the governments have chosen to adopt the liberal model, which focuses on human rights as opposed to the multicultural model, which demands special protection of ethnic minorities.

### **3.4.3. Budget and funding of the EUMC**

This section examines the sources and the amount of funding available to the EUMC. The Centre receives regular funding and is not dependent on voluntary contributions. However, the amount of financing is rather limited, suggesting again that the monitoring of minority protection is low on the agenda of the EU.

The main source of funding for the EUMC is the European Community. The Centre also receives financial support from the Austrian authorities and PHARE funds to facilitate

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<sup>406</sup> Helmer, R. [rogerhelmer@tory.org], November 21, 2006.

the accession of Bulgaria and Romania.<sup>407</sup> The statements of revenues and costs show that the budget is very small, although there is a gradual increase in contributions from the European Community. For example, the funding grew from EUR 7,176,000 in 2003 to EUR 7,969,000 in 2004 and to EUR 8,189,000 in 2005.<sup>408</sup> As previously mentioned, non-governmental organisations such as Amnesty International operate with considerably higher funding.

#### **3.4.4. Activities in Central and Eastern Europe**

Information and personal correspondence reveal that the Bulgarian and Hungarian NFPs function mostly as centres for data collection and promotion of the identity of minorities. The responsibilities of NFPs include publishing books and reports and organizing workshops. The Romanian NFP has been quite successful in lobbying. Yet, as with the other two NFPs, this body has no formal monitoring powers.

The Center for the Study of Democracy is the organisation chosen to act as the Bulgarian National Focal Point for the EUMC. Dimitur Markov, a project coordinator of the Center, explained that collecting information on xenophobia and racism is the most important task of the NFP. The major deliverable to the EUMC, the National Data Collection Report, was due in October, 2006. During the first year of its work, the NFP organised the international workshop “Policing Minorities.”<sup>409</sup> Contributors highlighted that police officials should be trained to work with vulnerable groups such as the Roma.<sup>410</sup> However, Markov explained that the Center is not responsible for organizing annual workshops.<sup>411</sup> The NFP is an information-gathering think tank with no project implementation or monitoring functions.

The Institute for Ethnic and National Minority Studies is the National Focal Point of the EUMC in Hungary. The NFP collects and analyses information supplied by non-governmental organisations, EU Member States, international organisations, and

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<sup>407</sup>Monitoring Centre on Racism and Xenophobia: Activities of the EUMC in 2005, p. 7

[<http://eumc.europa.eu/eumc/material/pub/ar06/EUMC-AR-06-p1-EN.pdf>] (accessed: November 21, 2006).

<sup>408</sup>Budget of the European Monitoring Centre on Racism and Xenophobia for the Financial Year 2005, pp 1-10 [[http://eumc.eu.int/eumc/material/pub/budget/2005/Budget-05\\_en.pdf](http://eumc.eu.int/eumc/material/pub/budget/2005/Budget-05_en.pdf)] (accessed: 7 November 2006).

<sup>409</sup>Dimitar Markov, e-mail message to author, December 22, 2006.

<sup>410</sup>Center for the Study of Democracy, International Workshop: Policing Minorities, 2006.

[<http://www.csd.bg/artShow.php?id=7926>] (accessed: May 26, 2009).

<sup>411</sup>Dimitar Markov, e-mail message to author.

researchers.<sup>412</sup> The Institute has produced several thematic reports, among which is a study of the possibilities for cultural revitalization and research on the stereotypes in Hungary.<sup>413</sup> In addition, the Institute published two books covering the Roma minority: *Roma of Hungary* and *Roma Migration*.<sup>414</sup>

The EUMC also requested that the Institute develop a report on the education of minorities in Hungary. This document gives a positive evaluation of the Act on Education and the various decrees that aim to improve the educational level of minorities. However, the report also notes that the insufficient number of qualified teachers and the inadequate distribution of resources impede the implementation of the legal framework.<sup>415</sup> In principle, the NFP reports these findings to the government through its representative in the Institute, Mr. Andor Urmos, Head of Department at the Ministry for Youth, Family and Social Affairs and Equal Opportunities.<sup>416</sup> However, the Institute is not empowered to monitor the compliance of government institutions with its recommendations and to make decisions. The government decides whether to act upon or ignore the recommendations of the Institute, which means that the NFP has a consultative character.

The Center for Legal Resources (CLR) is the National Focal Point of the EUMC for Romania. This is a non-governmental organisation, which aims to improve the existing anti-discrimination framework, ensure the appropriate enforcement of legal mechanisms, and raise awareness about discriminatory practices.<sup>417</sup> Clearly, such enhanced anti-discrimination mechanisms are particularly important to the Roma population.

The Center has been actively lobbying for amendments to the current anti-discrimination legislation. In 2003, the organisation drafted, together with other NGOs, a letter to the President of the National Council for Combating Discrimination. The document highlighted the need to amend the Romanian Constitution and include the National Council

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<sup>412</sup> Office for Ethnic and National Minorities, "Selection of News on National and Ethnic Minorities in Hungary, 2005", p. 2 [<http://www.szmm.gov.hu/download.php?ctag=download&docID=1135>] (accessed: September 16, 2007).

<sup>413</sup> Research Institute of Ethnic and National Minorities, "Newsletter" [<http://www.mtaki.hu/english/index.html>] (accessed: December 22, 2006).

<sup>414</sup> Research Institute of Ethnic and National Minorities, Publications, Books of the Institute in English [<http://www.mtaki.hu/english/kiadvanyok/index.html>] (accessed: March 20, 2007).

<sup>415</sup> Fleck, Gabor, "Analytical Report of PHARE RAXEN\_CC Minority Education", pp. 10-5 [<http://fra.europa.eu/fra/material/pub/RAXEN/4/edu/CC/EDU-Hungary-final.pdf>] (accessed: March 20, 2007)

<sup>416</sup> Research Institute of Ethnic and National Minorities, "Newsletter".

<sup>417</sup> Centre for Legal Resources, "Fighting Discrimination" [<http://www.crj.ro/nondiscrimination.php>] (accessed: September 29, 2007).

for Combating Discrimination (NCCD) in the text. The CLR noted that the anti-discrimination provisions had to be regulated through the Organic Law of the country instead of a simple Government Ordinance. The Center also offered an alternative to the proposal of the NCCD to amend the anti-discrimination law. Among the many detailed remarks, the text pointed to the need to include the term harassment in the list of prohibited behaviours. Furthermore, multiple acts of discrimination should not represent an aggravating circumstance of a single act of discrimination; the different instances must be treated as separate administrative offences. In its statement of position, the Center pointed to the fact that defendants paid a fine to the state, while victims were not compensated. To compensate for these shortcomings, a set of clear and applicable regulations in the field of anti-discrimination are essential.<sup>418</sup>

It seems that the Center has been quite successful in monitoring the government's legislative measures in other areas of human rights. For example, the CLR worked as the secretary of an inter-agency group that prepared the Bill on Prevention and Combating Trafficking in Human Beings. The Center also managed to secure government support for the establishment of an inter-ministerial expert group (including representatives of the Ministries of Justice, Interior, and Labour, and the CLR) to draft the bill.<sup>419</sup>

The Center has advised various amendments to the anti-discrimination law, which would fully transpose the Directives (e.g. shift of the burden of proof and reasonable accommodation). However, the amendments to the law are still awaiting Parliamentary approval.<sup>420</sup>

The Romanian NFP has been successful in exerting pressure on the authorities. While lobbying has worked in some cases, constructive criticism has not led to transparent legislative and social action in every case. It is clear that the CLR and the Bulgarian and

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<sup>418</sup> Centre for Legal Resources, "To the President of the National Council for Combating Discrimination", 2003 [<http://www.crj.ro/files/Commentslaw.pdf>] (accessed: September 29, 2007).

<sup>419</sup> Ministry of Foreign Affairs, Council of Europe and Human Rights Department, "Fighting against Trafficking in Human Beings in Romania: Joint Actions of the Governmental Agencies and International Cooperation", 2003 [<http://www.legislationline.org/legislation.php?tid=178&lid=7611&less=false>] (accessed: September, 29, 2007).

<sup>420</sup> "Brief Assessment of Romania's Compliance with Some Critical EU Requirements: Accomplishments and Weaknesses", (Bucharest: 2006), p. 13 [[http://www.soros.ro/ro/fisier\\_publicatii.php?id\\_publicatie=11](http://www.soros.ro/ro/fisier_publicatii.php?id_publicatie=11)] (accessed: September 04, 2007).

Hungarian NFPs remain primarily tools for collecting information. The national structures have no formal monitoring powers over their respective governments.

### **3.5. Conclusion**

This chapter has studied the main characteristics of the three monitoring bodies – the Office of the United Nations High Commissioner on Human Rights, the Office for Democratic Institution and Human Rights, and the European Monitoring Centre on Racism and Xenophobia – together with their purposes, functions, aims, achievements, strengths, and perspectives for development. The chapter provided an overview of where, how, why and to what extent human rights monitoring in Central and Eastern Europe fits into the monitoring of human rights in general.

Clearly, the effectiveness of the monitoring bodies depends on the willingness of states to grant them a more independent presence in the field of human rights. The motivation of states determines the extent, to which they provide structural and financial support to deal with human rights concerns in an efficient and timely manner. The United Nations' global agenda fails to motivate states for joint action, as evidenced by the insufficient financial and human resources allocated to the Office of the High Commissioner. The latest increase of the regular budget will serve to create just 91 posts.<sup>421</sup> To improve the overall effectiveness of its human resource base, the Office envisions an updated staff training policy and policy for the field rotation of staff. In addition, the OHCHR will aim to establish a policy, planning, monitoring, and evaluation unit to strengthen its management and planning capacity. Yet, the Strategic Management plan shows that more resources are required to implement these small reforms or they 'will remain merely aspirational.'<sup>422</sup>

The regional approach of the OSCE presents a better alternative, provided that states balance their national interests and regional commitments. However, the chapter has suggested that regional organisations tend to lack impartiality, a fact that has a negative impact on the prospects of liberal multiculturalism in Eastern Europe. Moreover, the involvement of the Office in the OSCE's monitoring mechanisms is limited. The ODIHR

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<sup>421</sup> High Commissioner's Strategic Management Plan 2006 – 2007, p. 5.

<sup>422</sup> Ibid, p. 8.

cannot serve as a main ‘depository’ for all activities because states are not required to inform the Office of their activities.<sup>423</sup> If the ODIHR is to function as the main monitoring body of the OSCE, it has to become the primary location for the coordination of activities and exchanges of information.

On the positive side, efforts to enhance the capacity of the ODIHR have brought some positive results. The funds steadily increased in 2006, and the number of employees expanded from just two officials and several administrative positions.<sup>424</sup> As noted, the Office presently employs over 120 people. Their efforts to diffuse human rights norms have contributed to improving the cooperation and interaction between the ODIHR and the civil sector. Seminars have fostered exchanges of ideas and transfer of knowledge between participants.

The European Union is another regional formation, which has the potential to offer a better-suited approach to monitoring. However, its monitoring body functions mainly as a network for collecting information. The absence of any monitoring functions suggests that monitoring is not a priority for the EU. To enhance the monitoring capacity of the EU, the Commission recently transformed the EUMC into the European Union Fundamental Rights Agency.<sup>425</sup> However, this body has the same powers as its predecessor.

None of the organisations reviewed above has a comprehensive monitoring strategy with regard to the Roma. Yet, monitoring is important for Eastern Europe, where the problem with the fair treatment of minorities, and Roma in particular, is especially acute. Monitoring can contribute to developments in the right direction, which is the direction of accommodating the culture of minority groups.

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<sup>423</sup> Bloed, Arie, “Helsinki-II: The Challenges of Change”, p. 46

<sup>424</sup> Ibid, p. 46.

<sup>425</sup> EUMC Website, Fundamental Rights.

[[http://www.eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=41f60ebfde76f](http://www.eumc.europa.eu/eumc/index.php?fuseaction=content.dsp_cat_content&catid=41f60ebfde76f)] (accessed: November 28, 2007).

## **Chapter 4**

### **In Search of the Millennium: Comparative Analysis of Roma Treatment in Bulgaria, Hungary, and Romania before Transition to Democracy (1100–1989)**

#### **4.1. Introduction**

This chapter provides a historical overview of the policies and treatment of Roma people from Byzantine times to the end of Communism, tracing the historical processes that modelled the Roma at the cusp of the region's transition to democracy in the 1990s. Due to historical developments, the Roma people are in a unique and inferior situation than other ethnic minorities in Bulgaria, Hungary, and Romania. In all three states, Roma formed a marginalised group, but the circumstances and conditions that drive the evolution of policy in the 21<sup>st</sup> century were distinctly different and deserve a more focused inquiry.

This chapter will examine the historical position of the Roma in the Bulgarian, Romanian, and Hungarian societies, examining the differences in the levels of tolerance in the three societies, the political regimes that determined or impacted the status of the Roma population, and its acceptance or rejection by the dominant groups. Beginning with a brief discussion of the Roma living in the Bulgarian and Romanian parts of the Ottoman Empire (14<sup>th</sup> to 19<sup>th</sup> century), the chapter then proceeds with the situation of the Roma in the Hungarian lands of the Habsburg Empire (15<sup>th</sup> to 19<sup>th</sup> century). The assimilatory model of the Habsburg dynasty will be contrasted with the laissez faire approach of the Ottoman Empire. The first part will also examine the enslavement of Roma in Wallachia (as part of the Romanian lands) during this period. The section will analyse both, the official policies and the extent of discrimination in the three societies in the absence of formal minority protection. As underscored in chapter two, human rights standards are fairly recent developments. Minority protection has been non-existent for the larger part of human history.

The second section of the chapter will examine the treatment of Roma after the independence of Bulgaria, Hungary, and Romania. The awakening of civic consciousness among the Roma population during this period is discussed. At the same time, the section

will stress the fact that nation building has been the primary goal of the three states. Minority protection has been only briefly enacted.

The final section will examine the different approaches of the Communist regimes towards the Roma, the outcomes of their policies, and the extent to which the authorities managed to integrate the Roma in the structures of their respective societies. This section is essential since the Roma-related measures of the Communist governments represent a legacy to be dealt with by the present national authorities.

## **4.2. Pre-modern developments in Bulgaria, Hungary, and Romania**

### **4.2.1. Ottoman Empire**

#### **4.2.1.1. Bulgaria**

Between the 14<sup>th</sup> and 15<sup>th</sup> century, the Bulgarian lands fell under the jurisdiction of the Ottoman Empire. The Ottomans preserved the civil status of the Roma although they had a lower social standing than the general population. The authorities looked favourably on the possibility of voluntary assimilation.<sup>426</sup> However, they were mostly concerned with the regular collection of taxes from their subject populations. Taxation was vital for the Empire's functioning, and the subjugated territories were integrated into an elaborate martial-administrative complex.<sup>427</sup>

To some extent, taxes for the Roma depended on their religious affiliation. If they were righteous (Muslims), Roma paid 650 akcheta annually. The raia or Christian Roma paid 720 akcheta. The difference between the taxes is insignificant but indicates a more lenient attitude toward the Muslim Roma. Nomadic Muslim Roma who chose to wander with the Christians were punished. Elena Marushiakova explains that in this case, religion played a

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<sup>426</sup> Marushiakova, Elena, and Vesselin Popov, "Historical and Ethnographic Background. Gypsies, Roma, Sinti" in Guy, Will, ed., *Between Past and Future: the Roma of Central and Eastern Europe*, (Hatfield: University of Hertfordshire Press, 2001), p. 44.

<sup>427</sup> In this system, the land was a nominal possession of the Sultan or the religious institutions. The Sultan had the right to concede parts of the imperial lands to the Ottoman martial aristocracy, the spahii, who would be required to take part in certain military activities (for example, the armament and subsistence of a defined number of people participating in military campaigns). Together with the lands, the spahii gained the right to gather part of the imperial taxes. See: Marushiakova, Elena, and Vesselin Popov, "The Roma – a Nation without a State? Historical Background and Contemporary Tendencies", p. 2 in Burszta, Wojciech et al, eds., *Nationalism across the Globe: An Overview of the Nationalism of State-Endowed and Stateless Nations*, (Poznan: School of Humanities and Journalism, 2005), pp. 433-55 [<http://212.72.210.65/sr-www/files/Virtual%20library/Nation.pdf>] (accessed March: 12, 2007).

role only because the Christian Roma did not pay their taxes regularly.<sup>428</sup> Thus, it seems that the main interest was the regular payment of taxes by the Roma. Moreover, the minority was allowed to participate in the formal institutions of the Empire. They had the right to practice various approved crafts and worked as musicians, goldsmiths, gardeners, servants, doctors and surgeons, among others.<sup>429</sup> It seems that the Roma were fairly integrated into the socio-economic life of the Empire. The broad register of occupations allowed as well as the comparatively lower taxes for the Muslim Roma suggests that the Ottomans encouraged voluntary assimilation. Indeed, Roma were open to the prospect of conversion, and the majority of Roma converted to Islam.<sup>430</sup> The more lenient attitude towards the Muslim Roma and their willingness to convert to Islam are by themselves important historical developments. Firstly, the Roma who converted to Islam were rejecting a major symbol of the Bulgarian nation: the Christian faith. Quite possibly, the Muslim Roma were viewed as siding with the Ottomans, who were perceived as the subjugators of the Bulgarian nation. Secondly, the fact that the Ottomans favoured the Roma minority, the lifestyle of which was disapproved by the dominant group, would have further affected the dominant group's attitude towards the Roma.

Bulgarian folktales and proverbs of this period might help assess the prevailing attitudes of the dominant group toward the Roma. Arguably, folklore encompasses narratives that may be judged as fantastic (ascent to a sky world, descent to an underworld, physical transformations, etc.) Folktales also stand for something more than photographic images of social reality. However, even the most fantastic folktales are constrained by some considerations of reality. If a tale is conceived as a pure wish fulfilment, with no development or conflict that is meaningful within the context of a particular society, it soon goes into oblivion.<sup>431</sup> Moreover, a major function of the folktales is to justify the existing social structure and to express society's demands on its members. Certain social demands are

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<sup>428</sup> Marushiakova, Elena, and Vesselin Popov, *Gypsies in the Ottoman Empire*, (Hatfield: University of Hertfordshire Press, 2001), pp.35-6; Akche is a small silver coin of 0,27 grams. For reference: <http://www.armenianhouse.org/davrizhetsi/history-ru/glossary.html> (accessed: March 12, 2007).

<sup>429</sup> Ibid, p. 44.

<sup>430</sup> Center for Documentation and Information on Minorities in Europe – Southeast Europe, “Minorities in Europe: Roma of Bulgaria”, p. 3[ <http://www.greekhelsinki.gr/pdf/cedime-se-bulgaria-roma.doc>] (accessed: March 20, 2007).

<sup>431</sup> Fischer, John, “The Sociopsychological Analysis of Folktales”, *Current Anthropology*, 4:3 (1963), pp. 237-40.

made upon the characters, their response is judged against the existing norms, and their fate follows in the form of punishment or reward. Ultimately, characters who comply with society's demands are restored to their good fortune, and violators are punished for their failure to act within the boundaries of the socially approved and encouraged behaviours.<sup>432</sup>

In line with this function of folktales, Bulgarian folklore from the Ottoman period abounds stories that depict Roma as the violators of social norms. Numerous tales focus on the Roma's failure to adopt a lifestyle that is approved by the dominant group. In the context of the Bulgarian society, settled life and farming would fall within the scope of approved and encouraged lifestyles. Proverbs and folktales support the view that the Roma are incapable of farming the land to earn a living. One tale from the Sofia region is indicative of the prevailing view, retelling that a Roma man begged the Bulgarian villagers for barley, hoping to raise wheat by peeling the husks.<sup>433</sup> The story reflects the view that the absence of farming skills is equal to laziness. Another story focuses on a Roma man who begs a ploughman for some wheat. The Roma explains that his fate is harder: the ploughman ploughs, grinds, bakes, and eats. Gypsies have to beg, carry the products, bake, and then finally eat. At the end of the story, the ploughman reprimands the Roma for begging<sup>434</sup> (a form of punishment follows the violation of social norms).

While not every society disapproves of living on charity -- Hindu and Islamic societies consider that giving alms is a religious obligation<sup>435</sup> -- for the Bulgarians, begging has meant depreciation and even denial of their farming lifestyle. Furthermore, the nomadic lifestyle of the Roma minority opposes the settled farming life of the dominant group, and therefore, it is unacceptable and rejected by the Bulgarian society.

In addition, Roma are depicted as people who lack faith: 'The Gypsies found sacred texts on the road, but they took the texts for pastry and ate them. Gypsies destroyed God's

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<sup>432</sup> Ibid, pp. 257-60.

<sup>433</sup> СБНУ, т. 3, с. 244 в Мирчева, Кета „Циганите и българската словестна идентичност през XIX век” (Mircheva, Keta, “Gypsies and the Bulgarian Oral Tradition during the XIX Century”), в Аретов, Николай (съст.) *Балканските идентичности в българската култура*, (Aretov, Nikolai, *The Balkan Identities in the Bulgarian Culture*), (София: Кралица Маб, 2003), с. 162.

<sup>434</sup> СБНУ, т. 3, с. 245 в Мирчева, Кета. „Циганите и българската словестна идентичност през XIX век” (Mircheva, Keta, “Gypsies and the Bulgarian Oral Tradition during the XIX Century”), с. 162.

<sup>435</sup> Hancock, Ian, *We Are the Romani People*, (Hatfield: University of Hertfordshire Press, 2002), p. 59.

gift and that is why they have no books or alphabet.<sup>436</sup> In this tale, Roma's illiteracy is the punishment for their perceived lack of faith.

In general, stereotypical images of the Roma people mark the folktales and literature of the Ottoman period. Keta Mircheva notes that some positive portrayals of the Roma appear only when Bulgarians describe the romantic nomad whom they met in extraordinary circumstances. There was no desire to gain an intimate knowledge or to understand the Roma who lived close to the Bulgarians.<sup>437</sup>

While many stereotypical depictions are found in the folklore, some positive developments came as a result of the Ottoman administration of the Bulgarian lands. The Roma were fairly integrated into the socio-economic structure of the Empire and naturally, some ideas of nationhood appeared within their communities.<sup>438</sup> In 1868, for example, the Bulgarian newspaper 'Macedonia' published 'A Letter to the Editor' signed by an 'Egyptian', i.e. Roma. The author, Illia Naumchev, claimed that the Roma language and skills were a sound proof that Roma descended from the ancient Egyptians. The author argued that the Roma settled in the Greek lands and educated the Greeks. The Greeks, however, feared that the Roma would excel and proclaimed themselves the 'enlighteners' of Europe.<sup>439</sup> To hide the truth, the Greeks banned the Roma from the religious rite and made them hateful to all nations.<sup>440</sup>

In sum, during this period, the Ottoman Empire was interested in tax collection rather than the assimilation of the subjected populations. The Muslim Roma were favoured by the Ottoman authorities. On the other hand, the Bulgarian dominant group held a contemptuous attitude towards the Roma.

The minority continued to occupy the niches considered undesirable by the dominant group, which viewed the Roma as foreign and disgraceful people. The dominant group distanced itself from the Roma who were the 'others', the intruders, the unfamiliar, and

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<sup>436</sup> СБНУ, Т. 15, с. 138 в Мирчева, Кета, „Циганите и българската словестна идентичност през XIX век” (Mircheva, Keta, “Gypsies and the Bulgarian Oral Tradition during the XIX Century”), p. 166.

<sup>437</sup> Мирчева, Кета, „Циганите и българската словестна идентичност през XIX век” (Mircheva, Keta, “Gypsies and the Bulgarian Oral Tradition during the XIX Century”), с. 176.

<sup>438</sup> Marushiakova, Elena, and Vesselin Popov, “The Roma – a Nation without a State? Historical Background and Contemporary Tendencies”, p. 2 in Burszta, Wojciech et al, eds., *Nationalism across the Globe: An Overview of the Nationalism of State-Endowed and Stateless Nations*, pp. 433-55.

<sup>439</sup> „Писмо до Редактора на Вестник “Македония”” (“A Letter to the Editor of Newspaper “Macedonia””), *Студии Романи*, Т. 2, pp. 42-6.

<sup>440</sup> *Ibid*, pp. 42-6.

unwelcome. In principle, the Roma were granted the right to participate in the institutions of the Empire, developing civil consciousness as a result. As illustrated later in the chapter, their desire for group rights reappears after the independence. Unfortunately, the dominant group was preoccupied with its own nationalism and paid no attention to the Roma's aspirations for special protection.

#### 4.2.1.2. Romania

The situation of the Roma minority in Romania was quite different from the onset. Even the earliest evidence of settlement suggests that they were enslaved by the Romanian principalities. The 15<sup>th</sup> century witnessed the gradual expansion of slavery throughout the Romanian provinces. By that time, the Ottomans had occupied the Romanian ports on the Danube and the Black Sea. The principalities could no longer act as a transit trade route between Europe and the East. The foreign craftsmen who came with the East-West trade disappeared and economic prosperity declined. The Roma, who were known as adept craftsmen, became a source of skilled labour. The boyars were interested in ensuring a steady supply of labour and bonded Roma as to prevent their flight from the principalities.<sup>441</sup> In 1445, Vlad Dracul brought to Walachia '11.000-12.000 persons, without luggage and animals, who looked like Egyptians' from his successful campaign against the Turks in Bulgaria.<sup>442</sup>

After the two kingdoms became vassals of the Ottoman Empire in 1503, they enjoyed a large degree of self-government in return for their annual payment of tributes and the provision of military support. The Ottomans preserved the status of the local aristocracy and the Roma's slavery persisted.<sup>443</sup>

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<sup>441</sup> Achim, Viorel, *The Roma in Romanian History*, p. 45 quoting: Panaitescu, Petre, "Le Role Economique et Social des Tziganes au Moyen Age en Valachie et en Moldavie" in *XVII Congres International d'Antropologie et d'Archiologie Prehistorique. VII – e Session de l'Institut International d'Antropologie. Bucarest, 1 – 8 Septembre 1937*, (Bucharest, 1939), pp. 933-42.

<sup>442</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, (New York: St. Martin's Press, 1994), p. 108 quoting: Beck, Sam "The Origins of Gypsy Slavery", p. 56; Hancock, Ian, *The Pariah Syndrome*, (Ann Harbour, MI: Karoma Publishers, 1987), p. 22; Castellan, Georges, *A History of the Romanians*, pp. 38-9; Seton-Watson, Robert, *A History of the Roumanians*, p. 44.

<sup>443</sup> Fraser, Angus, *The Gypsies*, (Oxford: Blackwell, 1995), p. 172.

With time, the slaves formed a separate category within the Romanian social organisation. They were the lowest social stratum with no legal personality. Slaves were the property of their master as was their other personal property. The master could treat the slaves as he pleased: he could put them to work, sell or exchange them for other goods, use them to pay off debts, and even bequeath them. The only obligation of the master was to feed and clothe them. The slave master was not sanctioned by the state authorities. For this reason, Roma were often subjugated to arbitrary treatment. Masters abused their rights, punished them with beatings, or put them in prison.<sup>444</sup> The grim picture of the slaves' treatment is presented by one 19<sup>th</sup> century Romanian reformer, Kogălniceanu who campaigned for the emancipation of all slaves:

human beings wearing chains on their arms and legs, others iron clamps round their foreheads, and still others with metal collars about their necks. Cruel floggings and other punishments, such as starvation, being hung over smoking fires, solitary confinement, and being thrown naked into the snow or a frozen river, such was the treatment meted out to the wretched Gypsy.<sup>445</sup>

The situation of Roma remained unchanged until 1830 when a new generation of intellectuals, educated in the West, entered the Romanian public life. The intellectuals embraced the liberal Western ideas and advocated the cultural and institutional modernisation of the Romanian principalities. Revolutionary exiles from France and other states also helped to bring the spirit of the French Revolution to Moldavia and Walachia. A Swiss intellectual, Emile Kohly de Guggsberg, condemned slavery as 'the country's greatest shame, a black stain in front of foreigners.'<sup>446</sup>

Real changes in the situation of Roma occurred after the 1848 revolution in Romania. The revolutionaries in Walachia, intellectuals, boyars, and army commanders, promulgated a new constitution that proclaimed: freedom of the press, equal civil rights, the end of special privileges for the boyars, administrative and legislative autonomy from the Ottoman Empire, a government responsive to a representative assembly, and unification of the two provinces. The Ottoman and Russian powers, backed by boyar units, put an end to the revolutionary

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<sup>444</sup> Achim, Viorel, *The Roma in Romanian History*, p. 35.

<sup>445</sup> Kogălniceanu, Mihail, *Esquisse sur l'Historie, les Moeurs et la Langue des Cigains*, (Berlin, 1837) in Fraser, Angus, *The Gypsies*, p. 223.

<sup>446</sup> Potra, George, *Contribuțiuni la Istoricul Țiganilor din România*, (Bucharest, 1939), p. 102 in Achim, Viorel, *The Roma in Romanian History*, pp. 97-8.

demands, and the old regime was restored.<sup>447</sup> Nevertheless, the new prince of Walachia, Barbu Știrbei, promoted the modernisation of the principality and pressed for the humane treatment of the Roma. He ordered that if a slave owner wanted to sell his slaves, he had to make a request before the Treasury. The latter stepped in immediately to buy and set them free.<sup>448</sup> In 1855, the public divan of Moldavia voted ‘for the abolition of slavery, the settlement of compensation and the transfer of emancipated slaves to the status of taxpayers.’<sup>449</sup> Just a year later, ‘The Law for Emancipation of all Gypsies in the Principality of Walachia’ was promulgated to put an end to slavery in the privately owned estates.<sup>450</sup>

The agrarian reform of 1864 is an important development which gave full personal liberty and freedom from feudal duties and tithes to all Romanian peasants, removing the restrictions on movement. Peasants could purchase the land they had farmed while boyars were compensated by the state for the lost property. This new freedom was extended to the Roma and in principle, their emancipation was complete.<sup>451</sup> At the same time, the Romanians still viewed the Roma as ‘living outside of society and treated them with the greatest disdain.’<sup>452</sup> The writings of a 19<sup>th</sup> century English traveller illustrate this statement:

Although the Gypsies form such an integral part of the community, they are regarded with the greatest disdain by the rest, whose behaviour towards them is scarcely better than towards animals; a man could more easily bear being called a ‘thief’ or something similar than Gypsy.<sup>453</sup>

Discrimination against the Roma in public and the formal denial of their existence would gradually find its way to independent Romania. Poor living conditions, lack of support for Roma’s initiatives and finally, their forceful extradition to labour camps during World War II would come to characterise the next period covered here. This enduring discrimination and exclusion of the Roma is a major obstacle to their equal inclusion in the respective society.

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<sup>447</sup> Lecture 8: National Revival in Romania, 1848-1866 [<http://www.lib.msu.edu/sowards/balkan/lect08.htm>] (accessed: March 11, 2007).

<sup>448</sup> *Buletin Oficial al Prințipatului Țării Românești*, No. 102 (1850), p. 405 in Achim, Viorel, *The Roma in Romanian History*, p. 110.

<sup>449</sup> *Bulletin Official*, No. 100 (1855), pp. 397-8 in Achim, Viorel, *The Roma in Romanian History*, p.111.

<sup>450</sup> *Bulletin Official*, No. 13 (1856), p. 49 in Achim, Viorel, *The Roma in Romanian History*, p.110.

<sup>451</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 120 quoting: Castellan, Georges, *History of the Romanians*, pp. 133-5; Seton-Watson, Robert, *History of the Romanians*, pp. 305-10.

<sup>452</sup> Wilkinson, William, *An Account of the Principalities of Wallachia and Moldavia*, (London, 1820), p. 75 in Achim, Viorel, *The Roma in Romanian History*, p. 54.

<sup>453</sup> *Ibid*, p. 54.

#### 4.2.2. The Habsburg Empire: Hungary

The Roma faced a considerably better treatment during the initial years of their arrival in Hungary. The Hungarian records of 1417 document that a group of Roma travelled through Transylvania and the Slovak parts of Hungary with the special permission of King Sigmund (1387-1437). The King granted travel privileges to the Roma because they had information about the Turks. In 1423, the King granted to the Roma leader Ladisius extensive travel privileges. This generous gesture attracted a significant number of Roma to the Hungarian lands. The newcomers settled as ‘castle musicians and metal workers’ and were highly valued for their skills.<sup>454</sup> The Roma ‘were declared royal servants whose settlement and employment on private estates the consent of the king was necessary.’<sup>455</sup> It is also known that many Roma served in the Hungarian army and were highly regarded for their ferocity.<sup>456</sup> Finally, an important development during this period is the appointment of a ‘chief of the Gypsies’, who was titled ‘egregius’ (distinguished).<sup>457</sup> He had authority over Roma leaders who acted as county ‘judges in Gypsy matters.’<sup>458</sup> This privilege, in effect, translates into what is today the right to self-government.

The Hungarian attitude toward the Roma changed after the Hungarian forces suffered a defeat by the Turks at Mohács in 1526. Previously praised for their knowledge of the Turkish military art, the Roma turned into ‘incendiaries, soldiers or spies.’<sup>459</sup> The Roma who lived in the Ottoman lands ‘became smiths for the Turkish army; others were musicians, barbers, messengers or executioners.’<sup>460</sup>

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<sup>454</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, (London: Taurus Publishers, 1995), p. 70 quoting: Fraser, Angus, *The Gypsies*, pp. 61, 109-11; Bak, Janos, “The Late Medieval Period”, 1382-1526 in Sugar, Peter et al, eds., *A History of Hungary*, (Bloomington: Indiana University Press, 1990), pp. 76-77, 79; Hooz, Istvan “Census Relative to Gypsy Population in the 18<sup>th</sup> and 19<sup>th</sup> Centuries” in *A Magyarorszagban Cziganyösszeiras Erdemeyei: 1893 januar 31 – en vegrehajtott* (Result of the Gypsy Census in Hungary: 31 January 1993) (Budapest: AZ Athenaeum R. Tasulat Könyomdaa, 1893), pp. 19-21.

<sup>455</sup> *Ibid*, pp. 19-21

<sup>456</sup> *Ibid*, pp. 19-21.

<sup>457</sup> Fraser, Angus, *The Gypsies*, p.109.

<sup>458</sup> *Ibid*, p. 109.

<sup>459</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 71, quoting: Mamatley, Victor, *Rise of the Habsburg Empire, 1526 – 1815*, (New York: Holt, Rinehart and Winston, 1971), pp. 32-3; Shaw, Stanford, *History of the Ottoman Empire and Modern Turkey*, vol. 1, (Cambridge: Cambridge University Press, 1976), pp. 101-2; Fraser, Angus *The Gypsies*, pp. 111, 156.

<sup>460</sup> Fraser, Angus, *The Gypsies*, pp. 110.

When the Hungarians drove the Turks out of Hungary, the authorities developed increasingly oppressive policies against the Roma. The reign of successive Austro-Hungarian rulers was marked by policies that entailed strong patronage and interference in Roma's lifestyle. This included purposeful 'civilising' attitude with the ultimate goal of complete and forceful assimilation,<sup>461</sup> processes that have been largely successful. The current ethnic landscape of the Hungarian state consists of dispersed and assimilated minorities. This is one of the reasons why at present, Hungary implements extensive multicultural policies.

Charles VI (1711-1740), for example, treated Roma with an utmost brutality. He ordered the extermination of all Roma subjects within his domain.<sup>462</sup> His daughter, Maria Theresa (1740-1780), led a heavy assimilatory policy. In 1774, the Empress forbade intermarriages between Roma. Moreover, when a Roma woman married a non-Roma, she had to prove she was capable of taking care of the household and was a good Catholic. When a male Roma married a non-Roma, he had to prove he was able to support his family. To further discourage nomadism, Maria Theresa ruled that the Roma could possess horses only for the purpose of farming, although oxen were preferable for ploughing.<sup>463</sup>

These regulations demonstrate the dominant approach toward the Roma: total and forceful assimilation. Having no civil status, the Roma were told how to live and settle, whom to marry, and which faith was righteous and mandatory. These policies have left their mark on the current ethnic landscape in Hungary. The approach to Roma anticipates the Hungarian nationalism to follow. Assimilation rather than inclusion of the Roma was pursued after the Habsburg Empire divided into two kingdoms: Austria and Hungary. The policies of assimilation from the Habsburg period will transform into a drive for a completely homogenous Hungarian state whereas the Magyar ethnicity coincides with the nation-state.

### **4.3. The Roma of independent states in the 20<sup>th</sup> century**

#### **4.3.1. The Roma of Bulgaria**

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<sup>461</sup> Marushiakova, Elena, and Vesselin Popov, "Historical and Ethnographic Background. Gypsies, Roma, Sinti", in Guy, Will, ed., *Between Past and Future: the Roma of Central and Eastern Europe*, (Hatfield: University of Hertfordshire Press, 2001), pp. 44.

<sup>462</sup> Barany, Zoltan, *The East European Gypsies: Regime Change, Marginality and Ethnopolitics*, (Cambridge: Cambridge University Press, 2002), p. 93.

<sup>463</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 75 quoting: Fraser, Angus, *The Gypsies*, p. 159; Guy, Will "Ways of Looking at Roms", p. 207; Horváthová, Emilia, *Cigáni na Slovensku*, pp. 118-25.

The Ottoman Empire did not attempt to efface the civil consciousness of the Bulgarian Roma. Bulgaria, as an independent state, followed suit and granted equality to its minorities. The Treaty of Berlin of 1878 made religious freedom a precondition for the independent status of Bulgaria. Its article 4 stated that in regions with mixed populations of Bulgarian, Turkish, Greek, Romanian, and other nationalities, the interests of all people should be considered during the preparation process of the Bulgarian Constitution. Following this clause, the new Bulgarian constitution, adopted on 16.04.1878, incriminated discrimination on ethnic or religious grounds. It established a law that supported the initiatives of minorities as to preserve and develop their culture.<sup>464</sup> This positive obligation on the part of the state can be interpreted as an early form of multicultural policy. However, multiculturalism entered the political scene of Bulgaria only for a short period of time. In 1901, the National Assembly discussed and approved amendments of the electoral law which deprived Roma of the right to vote. Articles 4 and 7 –“Who cannot be a voter” - of the law included ‘the non-Christian Gypsies and also all those Gypsies who cannot establish residence.’<sup>465</sup> This law aimed to combat the historical enemies of the dominant group: the nomadic lifestyle and Ottoman influence.

In effect, the law of 1901 suspended the electoral rights of all Muslim Roma who represented the majority of the Roma population. The debates around the amendments did not provoke any concern about the discriminatory and anti-constitutional suspension of the rights of Roma. The Roma, who emerged as a minority with civil consciousness, reacted to the legalised discrimination against them. The first Roma conference was organised in 1901 in the town of Vidin. The conference aimed to formulate a response to the amendments. The convenors decided to initiate a campaign to have the measures revoked. They invited Roma leaders from all over the country to Sofia where they would draw up and present a petition to the National Assembly. This petition was taken to the Assembly on 1 June, 1905, but Roma

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<sup>464</sup> Благоев, П. „Българските Конституции за правата на малцинствата” (Благоев, Р. “The Bulgarian Constitutions and the Rights of Minorities”), в *Малцинствата в България в Контекста на човешките права, (Minorities in Bulgaria in the Context of Human Rights)* (София: Комитет за защита правата на малцинствата, 1994), с. 10.

<sup>465</sup> Marushiakova, Elena, and Vesselin Popov, “The Gypsy Minority in Bulgaria – Policy and Community Development”, pp. 4-5 [[http://www.emz-berlin.de/projekte\\_e/pj41\\_pdf/MarushiakovaPopov.pdf](http://www.emz-berlin.de/projekte_e/pj41_pdf/MarushiakovaPopov.pdf)] (accessed: March, 06, 2007).

did not receive a response from any institution. This silence prompted the convocation of the first Roma congress in Sofia which sent a petition with the same demand to the National Assembly. Eventually, the Assembly voted a new electoral law which omitted the restrictions on the voting rights of the Muslim Roma.<sup>466</sup>

The end of World War I marked a period of quick growth of Roma civic organisations. In 1919, the Roma created the organisation Istickbal (Future), which was headed by Shakir Mahmudov Pashov. The organisation existed for a couple of years until its functioning was made illegal by the 1925 Supplements to the Law for the Protection of the State. In 1929, the organisation was restored and two years later, Istickbal began to publish the newspaper Terbie (Education). The 1932 Roma Conference in the town of Mezdra decided to work for the nationwide influence of the organisation.<sup>467</sup> However, the political changes of that period prevented the further growth of such initiatives. On 19 May, 1934, the political formation Zveno overthrew the elected government and assumed control of the state. The new government banned all political parties, restricted the freedom of speech and the press, and liquidated the autonomy of the local self-governments. The Cabinet renounced the 1878 Constitution and disbanded the National Assembly. The Ministers issued decrees to govern the country.<sup>468</sup> In this oppressive political climate, Istickbal ceased to exist.<sup>469</sup>

The emergence of Roma organisations and the Roma civic movement, in general, manifested a desire for equality and the promotion of the Roma's cultural heritage. However, as Marushiakova and Popov mention, such organisations were established independently of the government and without its support.<sup>470</sup> The dominant group showed a rather limited interest in the fate of the Roma minority. In effect, the earlier promise for multicultural policies was largely neglected. Moreover, equality before the law had been disregarded with the amendments to the electoral law. The historical records are silent about the public

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<sup>466</sup> Ibid, pp. 4-5.

<sup>467</sup> Ibid, pp. 4-5.

<sup>468</sup> Димитров, Пламен, „19 Май, българския принос в теорията и практиката на преврата” (Dimitrov, Plamen, “19 May, the Bulgarian Contribution to the Theory and Practice of the Coup”) [[http://members.tripod.com/nie\\_monthly/nie5\\_02/19\\_may.htm](http://members.tripod.com/nie_monthly/nie5_02/19_may.htm)] (accessed: March 06, 2007).

<sup>469</sup> Marushiakova, Elena, and Vesselin Popov, “The Gypsy Minority in Bulgaria – Policy and Community Development”, p. 5

<sup>470</sup> Marushiakova, Elena, and Vesselin Popov, “The Roma – a Nation without a State? Historical Background and Contemporary Tendencies”, p. 4

response to these restrictions. The Bulgarian Roma of this period continued to be neglected, disapproved of, and unsupported by the public and the government alike.

The development of other discriminatory policies against the Roma followed after the Bulgarian state joined the Axis during World War II. Roma were not specifically mentioned in the 1941 Law for the Protection of the Nation which suspended the civil rights of the Jews.<sup>471</sup> However, in May, 1942, King Boris III issued a decree which ordered the compulsory employment of Roma, mainly on public projects. In August, the newspapers *Dnes* and *Dnevnik* announced that the police had initiated searches for idlers around the larger cities and towns. The Roma, who could not provide a proof of useful occupation, were deported and put to work on the road and railway projects. The food rations were reduced for the whole nation; however, information from the town of Razgrad shows that different portions were distributed among the Bulgarians, Jews, and Roma. The Bulgarians were given 200 grams of olives and 500 grams of sugar, the Jews received 100 and 200 respectively, and the Roma had only 50 grams of each.<sup>472</sup> As for more repressive measures, Ibrahim Karahasan-Chanar claims that Roma were interned in several labour camps, one of which was in the town of Dupnica.<sup>473</sup> However, there is no evidence that Roma were deported to extermination camps.<sup>474</sup>

The fact that Bulgaria was preparing for an early surrender to the Allies might explain, in part, the authorities' decision to save the country's Roma and Jews.<sup>475</sup> Before this decision was made, Bulgaria did not hesitate to implement discriminatory policies against its minorities. The fate of the Roma and Jews, in particular, was a low priority, and their treatment was conditional upon the possible benefits from the war (i.e. the acquisition of Macedonia and Thrace).<sup>476</sup>

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<sup>471</sup> Marushiakova, Elena, and Vesselin Popov, "The Bulgarian Romanies during the Second World War" in Kenrick, Donald, and Karola Fings, ed., *In the Shadow of the Swastika: The Gypsies during the Second World War*, (Hatfield: University of Hertfordshire Press, 1999), p. 90.

<sup>472</sup> *Ibid*, p. 91.

<sup>473</sup> Карахасан-Чънар, Ибрахим, *Етническите Малцинства в България: История, Култура, Религия, Обреден Календар*, (Karahasan-Chunar, Ibrahim, *The Ethnic Minorities in Bulgaria: History, Culture, Religion, Ritual Calendar*) (София: ЛИК, 2005), с. 151.

<sup>474</sup> JGLS (3) XXVII, p. 157 in Kenrick, Доналд, Пъксон, Гратон. *Съдбата на Циганите в Европа*, (Kenrick, Donald, and Gratton Puxton, *The Destiny of Europe's Gypsies*) (София: Стигмати, 2006), с. 146

<sup>475</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 19 quoting: Bell, John, *The Bulgarian Communist Party from Blagoev to Zhivkov*, (Stanford, CA: Hoover Institution Press, 1986), pp. 73-6; Brown, James, *Bulgaria under Communist Rule*, (New York: Praeger Publishers, 1970), pp. 8-9.

<sup>476</sup> The discussion of the Hungarian and Romanian policies will prove this suggestion.

This period also witnessed one of the few attempts at civil movement among the Roma population. The Roma exercised the right to freedom of assembly and speech, lobbying the government to revoke the discriminatory electoral law. However, the authorities were quick to suppress the emerging civil consciousness of the Roma. This measure can be viewed as just one of the historical developments that led to the enduring marginalisation of the Roma population. The long-lasting historical discrimination is a major obstacle to the present efforts to improve the socio-economic status of the Roma.

#### 4.3.2. The Roma of Romania

The ethnic consciousness of the Romanian Roma began to emerge in the 1930s, unsupported and undisturbed by the regime. In 1926, Romani intellectuals created the General Union or Rumanian Romi which published the journal *Neamus Tiganesc* (The Gypsy Family). Three years later, the Union sponsored a Roma conference in Bucharest which drew together delegates from throughout Europe. The conference established that the goal of the Roma minority was the ‘rejuvenation of national consciousness and the struggle for Gypsy rights.’<sup>477</sup> The Romanian Roma also founded the General Association of Roma which strove to preserve the traditional culture of Roma, assisting their integration. Some of their ideas sounded like demands for group rights. The reason why the Roma made claims for special measures may lie in their very insecure social position after the abolition of slavery. In particular, the organisation asked the government for ‘a large garden for the Tzigane children, a library, a maternity hospital, and office for the settlement of claims, a dispensary, and a place for refuge for those who had come to Bucharest temporarily or those who are being prosecuted.’<sup>478</sup>

The war years put an end to the Roma’s organised movement for multicultural policies. The Nazis brought the regime of Antonescu into power. The pro-Nazi racist regime

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<sup>477</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 129: quoting: Crowe, David, “The Gypsy Historical Experience in Romania” in Crowe, David, and John Kolsti, eds., *The Gypsies of Eastern Europe*, p. 169; Haley, William, “The Gypsy Conference at Bucharest”, *Journal of the Gypsy Lore Society*, vol. 13 (1934), pp. 182-7; Hancock, Ian, “The East European Roots of Romani Nationalism” in Crowe, David and John Kolsti, eds., *The Gypsies of Eastern Europe*, pp. 140-1; Kenrick, Donald, and Grattan Puxton, *The Destiny of Europe’s Gypsies*, (New York: Basic Books, 1972), p. 205; Bercovici, Konrad, *Gypsies: Their Life, Lore, and Legends*, (New York: Greenwich House, 1983), p. 56.

<sup>478</sup> *Ibid*, p. 129.

strove to clean the country from foreign nationals. They came to be the Romanian Jews and Roma. The approach of the regime appeared under the 'bio-politics' perspective. The Romanian scientists who dealt with the treatment of ethnic minorities coined the concepts of 'ethnic purity', 'inferior ethnic groups', and 'ethnic promiscuity.'<sup>479</sup> According to the scientists, the Jews and Roma were 'minorities of extra-European origin' and 'ballast minorities' which posed a 'bioethnic danger.'<sup>480</sup> In order to remove this racial threat, the researchers proposed to isolate the nomadic and semi-nomadic Roma, in particular, in labour camps where:

They will be forced to change their clothes, they will be shaved, receive a haircut and be sterilized. In order to cover the costs for their upkeep, they will be required to carry out forced labor. We would get rid of them from the first generation. Their place will be taken by national elements capable of ordered and creative work. Sedentary Gypsies will be sterilized at home, so that place in which they reside may be cleaned of their presence in the course of a generation... In this way, the margins of villages and towns will no longer be a source of shame or focus of infection for all the ills of society, but rather an ethnic wall buttressing the nation rather than harming it.<sup>481</sup>

In line with this proposal, the confiscation of their property was ordered with a royal decree of August 1942. It specified which categories of Jews and Roma would be deported and resettled in Transnistria.<sup>482</sup> Over 25,000 Roma and 'other racial undesirables' were shipped to the province, many of whom could not survive the harsh conditions.<sup>483</sup> Donald Kenrick and Karola Fings present an account by one commander who witnessed and described the plight of the Romanian Roma. The official retells that the Roma were housed in barracks at a distance of 8-10 kilometres away from the city of Oceanov. The Roma destroyed all wooden parts of their buildings because the authorities did not supply wood to heat their food and houses. The winter conditions were especially harsh because of the

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<sup>479</sup> Achim, Viorel, *The Roma in Romanian History*, p. 164.

<sup>480</sup> *Ibid.*, p. 164.

<sup>481</sup> *Ibid.*, p. 166.

<sup>482</sup> ASB, IGJ, 59/1942, p. 359 in Kelso, Michelle, "Gypsy Deportations from Romania to Transnistria 1942- 44" in Kenrick, Donald, and Karola Fings, eds., *In the Shadow of the Swastika: The Gypsies during the Second World War*, (Hatfield: University of Hertfordshire Press, 1999), p. 101.

<sup>483</sup> Crowe, David, "The Gypsy Historical Experience in Romania" in Crowe, David, and John Kolsti, eds., *The Gypsies of Eastern Europe*, p. 70.

damaged buildings and the poor clothing. Some died before arriving at the settlements. Of those who survived the long travel to the province, ten to fifteen died daily.<sup>484</sup>

The misery of Roma lasted till the end of World War II. Some constables told the Roma to flee from Transnistria, others left them with no information. The Roma were free to leave the province but as Michelle Kelso summarises, many of them were weakened by the long exile, the betrayal of the government, and the denial of practical means to secure their survival.<sup>485</sup> Only 6,000 out of the 25,000 deported Roma returned to Romania.<sup>486</sup>

In sum, before the war, the Romanian Roma aimed to secure group rights, which are in line with the modern view of minority protection. Yet, during the war period, they were treated as inferior and even denied physical existence. They were the separate and unwanted minority to be removed from the rest of the population. Inferior ethnic groups such as the Roma and Jews posed a 'bioethnic danger' to the Romanian nation. The resettlement policy further solidified the marginal position of the Roma. The long-lasting marginalisation of the Roma and the fact that minorities are perceived as a threat to territorial integrity are major obstacles to improving the present situation of the Roma minority in Romania.

#### 4.3.3. The Roma of Hungary

The academic literature does not offer evidence of the existence of Roma associations in the period before World War II. Elena Marushiakova and Vesselin Popov's list of Roma organisations of the 1920s and 1930s provide information about the Roma's cultural and civil revival in Bulgaria, Romania, former Yugoslavia, and Greece.<sup>487</sup> However, Hungary is omitted from the list, suggesting that tendencies towards organised civil movement were hardly present among the Hungarian Roma. This would be consistent with the centuries long pattern of assimilation within the Habsburg Empire. The Hungarian minorities are largely

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<sup>484</sup> A. S. B., fond I. G. J., dossier 84/1943, pp. 237 - 238 in Kelso, Michelle "Gypsy Deportations from Romania to Transnistria 1942-44" in Kenrick, Donald, and Karola Fings, eds., *In the Shadow of the Swastika: The Gypsies during the Second World War*, p. 114.

<sup>485</sup> Author's interview with survivors in Kelso, Michelle, "Gypsy Deportations from Romania to Transnistria 1942-44" in Kenrick, Donald, and Karola Fings, eds., *In the Shadow of the Swastika: The Gypsies during the Second World War*, p. 129.

<sup>486</sup> ASB, IGJ, 97/1944 in Kenrick, Donald, and Karola Fings, eds., *In the Shadow of the Swastika: The Gypsies during the Second World War*, p. 130.

<sup>487</sup> Marushiakova, Elena, and Vesselin Popov, "The Roma – a Nation without a State? Historical Background and Contemporary Tendencies", p. 3.

dispersed and assimilated today. For this reason, the dominant group does not perceive ethnic minorities as a security threat to the territorial integrity of the state and pursues multicultural policies.

World War II marks a radical shift from the politics of assimilation in Hungary. While nationalistic policies from earlier periods entailed the elimination or at least muting of ethnic characteristics, when the country was forced to choose between the preservation and the sacrifice of its citizens (in exchange of the perceived good of the nation), some people happened to be less Hungarian than others. In 1940, the government adopted a law that arranged for the expulsion of all Roma who were non-citizens prior to 1918.<sup>488</sup> Mass deportations, however, did not begin until the German occupation of Hungary in 1944.<sup>489</sup> By that year, Regent Horthy and the conservative ruling regime aimed to achieve the Hungarian national goals by keeping at least a façade of parliamentary norms and liberties.<sup>490</sup>

Seizing power in 1944, Szalasi's fascist Arrow Cross strove to create Carpathian-Danubian Great Fatherland, composed of Magyar-land, Slovak-land, Ruthene-land, Croat-land, Slovene-land, and Western March (Austrian Burgenland). The dominant group would be the supreme and ruling race, and the Magyar would become the official language of this quasi-federal state. Great Fatherland, according to Salazi, would become one of the three leaders of Europe, alongside Germany and Italy.<sup>491</sup> As a diligent ally of another prospective ruling country, the Salazi government deported approximately 31,000 Roma from Hungary, and only 3,000 returned.<sup>492</sup> However, Donald Kenrick and Grattan Puxton argue that there are no documents pointing to where the large number of Roma was relocated.<sup>493</sup>

The grave atrocities against the Roma are illustrative of the Hungarian aggressive nationalism during the 20<sup>th</sup> century: assimilation turned into extermination of the minority

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<sup>488</sup> Кенрик, Доналд, Пъксон, Гратан, *Съдбата на Циганите в Европа*, (Kenrick, Donald, and Grattan Puxton, *The Destiny of Europe's Gypsies*), с. 139.

<sup>489</sup> Личен разговор в Кенрик, Доналд, Пъксон, Гратон, *Съдбата на Циганите в Европа*, (Kenrick, Donald and Grattan Puxton, *The Destiny of Europe's Gypsies*), с. 139.

<sup>490</sup> Sakmyster, Thomas, "Hungary and the Munich Crisis: the Revisionist Dilemma", *Slavic Review*, vol. 32 (1973), p. 727.

<sup>491</sup> Рауне, Станлей, *A History of Fascism 1914 – 1945*, (Madison: The University of Wisconsin Press, 1995), pp. 271-2

<sup>492</sup> Информация от Унгарската Асоциация на Жертвите от Войната в Кенрик, Доналд, Пъксон, Гратон, *Съдбата на Циганите в Европа*, (Kenrick, Donald and Grattan Puxton, *The Destiny of Europe's Gypsies*), с. 139.

<sup>493</sup> Кенрик, Доналд, Пъксон, Гратон, *Съдбата на Циганите в Европа*, (Kenrick, Donald and Grattan Puxton, *The Destiny of Europe's Gypsies*), с. 140.

when national goals were pursued. The current multicultural policies of the state are also driven by national goals, an issue discussed in chapter five. Hungary aims to set the tone of minority protection in order to secure group rights for its large Hungarian minorities in Romania and other neighbouring states.

#### 4.4. Communist policies towards the Roma

At the beginning of the Communist period, the multicultural perspective reappeared on the political scene in Bulgaria. The Bulgarian authorities, in unison with the Soviet policies, attempted to establish Roma as a separate nationality with equal rights and distinctive ethnic identity. The regime organised the Roma intelligentsia to work for the problems of the Roma population. March 1945 witnessed the establishment of the All-Gypsies' Organisation against Racism and Fascism and for the Promotion of the Cultural Development of the Gypsy Minority in Bulgaria. *Romano Essi*, the first Roma newspaper was also printed in 1946.<sup>494</sup> The Roma theatre 'Roma' opened a year later. The authorities were actively assisting the establishment of local branches of the All-Gypsies' Organisation. Meanwhile, the first National Conference of the Gypsies in Bulgaria took place on 2 May, 1948.<sup>495</sup>

This spirit of tolerance and cultural sensitivity lasted only briefly. The focus of the Communist agenda shifted toward securing national unity in the beginning of the 1950s, and the government prioritised state cohesion over the rights of ethnic groups. In line with the Lockian view of the state as a social contract among unrelated individuals, the authorities focused their efforts on establishing a homogenous nation-state.<sup>496</sup> The ethnic Bulgarians were led to believe that minorities, and more specifically the Turks and Pomaks, were “the

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<sup>494</sup> The only Roma magazine, *Roma Neve* (New Roma) was published by Sulio Metkov in 1957; for reference see: Карахасан-Чънар, Ибрахим, *Етническите Малцинства в България: История, Култура, Религия, Обреден Календар*, (Karahasan-Chunar, Ibrahim, *The Ethnic Minorities in Bulgaria: History, Culture, Religion, Ritual Calendar*), с.157.

<sup>495</sup> Marushiakova, Elena, and Vesselin Popov, *Gypsies/ Roma in Times Past and Present. Photo – Book*, (Sofia, 2000) in Marushiakova, Elena, and Vesselin Popov. “The Gypsy Minority in Bulgaria – Policy and Community Development”, p. 6.

<sup>496</sup> Eminov, Ali, *Turkish and Other Muslim Minorities in Bulgaria*, (New York: Routledge, 1997), p.6.

other”. They were dangerous to the state in striving to ‘to cut off a part of the national territory and annex it to Turkey.’<sup>497</sup>

At the same time, the Bulgarian government adopted the Stalinist conservative approach to culture. The local branches of the Roma organisation were dissolved, and it ceased to exist. The authorities sent its leader, Shakir Pashov to the island of Belene’s concentration camp. The Roma theatre ‘Roma’ merged with the local cultural organisations and also disappeared. These developments marked the beginning of a new period for the Bulgarian Roma. Their existence as a distinct ethnic community was considered incompatible with the ‘Bulgarian socialist nation’, and the government focused its efforts on a policy of ethnic and cultural effacement with the aim of complete assimilation.<sup>498</sup>

Initially, the Communist authorities attempted to formulate an ideological basis for the already developed assimilatory policies. They requested the Bulgarian Academy of Sciences to send expeditions of ethnographers, historians, and philologists to regions with compact minority populations. The expeditions had to explore the ethnic origin and the national specifics of the target groups. Their aim was to find out whether forceful conversions to Islam had taken place. The scientists welcomed the task but found no evidence of forceful conversions and no single trait to prove that Roma were of Bulgarian ethnic origin.<sup>499</sup>

The Politburo of the Central Committee of the Communist party was disturbed by the findings: not only were Roma of non-Bulgarian origin, but their isolation and affiliation with the Turks prevented the penetration of a more civilised (Bulgarian) influence among them.<sup>500</sup> In 1962, the Central Committee adopted decision A 101, aiming ‘to curb the negative tendencies ... among Bulgarian Muslims, Gypsies and Tatars to identify with the Turks ... and to enhance patriotic education.’<sup>501</sup> In order to assimilate the Roma, the government proclaimed that they ‘register themselves and their children as Bulgarians, and change their

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<sup>497</sup> Mutafchieva, Vera, “The Turk, the Jew and the Gypsy”, p.33 in Eminov, Ali, *Turkish and Other Muslim Minorities in Bulgaria*, p. 6.

<sup>498</sup> Marushiakova, Elena, and Vesselin Popov, “The Gypsy Minority in Bulgaria – Policy and Community Development”, p. 7.

<sup>499</sup> Буксенштютц, Улрих, Малцинствената Политика в България, (Buksenstutz, Ulrich, *Minority Policy in Bulgaria*), (IMIR, 2000) с. 42-3.

<sup>500</sup> Zang, Theodore, *Destroying Ethnic Identity: The Gypsies in Bulgaria*, (New York: Helsinki Rights Watch, 1991), p. 63.

<sup>501</sup> Marushiakova, Elena, and Vesselin Popov, “The Gypsy Minority in Bulgaria – Policy and Community Development”, p. 8.

first, middle and last names without a ruling of the People's Court but simply by a legal request sent to the respective local councils.<sup>502</sup> Marushiakova explains that these policies reflected the fear of the dominant group that the Muslim Roma may become a bridge for Muslim and Turkish influence in the country. Moreover, if Roma joined the Turkish community in Bulgaria, they would 'make it too big and dangerous.'<sup>503</sup> This fear and the view that ethnic groups are a source of threat to territorial integrity drive the development of policies at present. As a result, the post-Communist Bulgarian authorities have shown preference for the liberal model of citizenship rights.

Following these initial policies, in the 1960s, the government implemented a series of measures in the education system.<sup>504</sup> These measures reflected a concern that those Roma who identified with the Turkish minority preferred to send their children to Turkish schools. If they were to receive a proper Communist education, the attendance of Bulgarian schools was necessary.<sup>505</sup> Although the policies described below appear as a form of minority protection, their goal was to assimilate the Roma minority. Some initiatives aimed to increase the overall competence of the Roma but in reality, they resulted in the lower educational level of the minority.

In general, the measures were intended to stimulate Roma families to send their children to Bulgarian educational institutions. The government built new schools in the Roma neighbourhoods and provided most textbooks free of charge. Local cooperatives and town halls paid the food for the school canteens, and a high proportion of the expenses for heating, food, and education in the nursery schools was covered by the state.

The government also established a special type of school which aimed to increase the vocational training of students of Roma origin. Their curricula contained little general education in subjects such as Bulgarian, mathematics, foreign languages, or physics and was focused more closely on vocational training. As a result, graduates had difficulties when

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<sup>502</sup> Ibid, p. 8.

<sup>503</sup> Marushiakova, Elena, and Vesselin Popov, "The Gypsy Minority in Bulgaria – Policy and Community Development" [[http://www.osi.hu/esp/rei/Bulgaria\\_Marushiakova-Popov.html](http://www.osi.hu/esp/rei/Bulgaria_Marushiakova-Popov.html)] (accessed: May 12, 2009).

<sup>504</sup> Буксеншютц, Улрих, Малцинствената Политика в България, (Buksenstutz, Ulrich, *Minority Policy in Bulgaria*), с. 43.

<sup>505</sup> *Destroying Ethnic Identity: The Gypsies of Bulgaria*, pp. 61-7 in Буксеншютц, Улрих, Малцинствената Политика в България, (Buksenstutz, Ulrich, *Minority Policy in Bulgaria*), с. 49.

applying for university programs.<sup>506</sup> Those who wanted to start working were not allowed by law. Vocational students completed school at the age of 13-14, but the Bulgarian Code of Labour forbade working before the age of 16. In this situation, many graduates were compelled to work in breach of the law.<sup>507</sup>

Further, the percentage of Roma who attended the so called 'special schools' was disproportionately high. These institutions comprised of schools for mentally retarded children, institutions for juvenile delinquents, and establishments for pupils with impaired vision, hearing, or speech. As Ilona Tomova illustrates, the Roma comprised only 9.7% of students in the mainstream educational institutions but constituted 21.6% in the vocational schools, 32.1% in the auxiliary institutions, and 29% in the schools for students with deviant behaviour.<sup>508</sup> This fact is striking considering that during the last century, the Roma minority represented between 2 and 5 percent of the total population. Even current census data of 2001 reveals that the number of Romani is around 370,000 or 4.7 percent of the total Bulgarian population.<sup>509</sup>

The government also initiated a housing program which may be considered a part of a package of special measures directed toward the Roma. In reality, the housing plan aimed to assimilate the Roma rather than improve their socio-economic situation.

The Roma neighbourhoods, usually located in the outskirts of the populated areas, became increasingly segregated. According to the Central Committee of the Communist Party, the authorities had to focus on specific measures

to gradually eliminate the segregated sections and quarters in the next ten to twelve years, to improve the professional skills of working Gypsies, to construct a vast network of day-care centres and kindergartens to enable children learn the Bulgarian language at an early age, to ban all segregated schools and boarding-schools, to make special efforts to attract Gypsies to amateur art groups, to reflect and artistically recreate the positive changes in the life and thinking of the Bulgarian Gypsies.<sup>510</sup>

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<sup>506</sup> Tomova, Ilona, *The Gypsies in the Transitional Period*, (Sofia: IMIR, 1995), pp. 39-40 [<http://www.imir-bg.org/Books/Microsoft%20Word%20-%20GypsyEng.pdf>] (accessed: March 12, 2007).

<sup>507</sup> Буксеншютц, Улрих, *Малцинствената Политика в България*, (Buksenstutz, Ulrich, *Minority Policy in Bulgaria*), с. 52.

<sup>508</sup> Tomova, Ilona, *The Gypsies in the Transitional Period*, pp. 39-40.

<sup>509</sup> Simenova, Maria et al, "Analytical Report on: The Roma Population in Bulgaria: New Challenges", p. 1 [http://www.fes.bg/calendar/2007/03/Roma\\_in\\_Bulgaria\\_Summary.pdf](http://www.fes.bg/calendar/2007/03/Roma_in_Bulgaria_Summary.pdf) (accessed May 18, 2007).

<sup>510</sup> Marushiakova, Elena, and Vesselin Popov, "The Gypsy Minority in Bulgaria – Policy and Community Development", pp. 9-10.

The practical results of these measures were negligible and actually worked to the contrary of official expectations. Only 36 of the 547 Roma quarters were closed, and some of them developed again in several years. A few families received apartments; the others remained in their old quarters or moved to live with relatives in other accommodation around the country.<sup>511</sup>

Other culturally insensitive policies included the building of self-contained houses for the Roma, which were most often located on the outskirts of the bigger cities. The houses, which were initially planned for single families, contained two bedrooms. In time, this space became insufficient, and the Roma built additional structures to host the families of each married son. As a result of the illegal constructions, most buildings remained without sewage facilities. The authorities did not feel responsible for the settlements. At present, waste water and sewage flows down the streets, and the water mains and the sewage network are rarely repaired.<sup>512</sup>

The last phase of the government's assimilatory politics coincided with the 1984-5 'Process of Revival.'<sup>513</sup> This process represented a forceful re-naming of persons who had Arabic names and affected a considerable number of the Muslim Roma. As in previous periods, the treatment of Roma was subordinate to the goal of limiting the Muslim influence within the country. In a report presented to Politburo, the future Prime Minister, Georgi Atanasov, stated that around 250,000 Roma had accepted Bulgarian names. In this way, the authorities had stopped the tendency toward 'Turkicization' and consolidated the Roma minority within the framework of the Bulgarian socialist nation.<sup>514</sup>

Additional measures were adopted to efface the culture of the minority. The Roma were not allowed to communicate with the authorities in their language, display their traditional clothing, and practice their customs. Some traditions were proclaimed 'dangerous

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<sup>511</sup> Ibid, pp. 9-10.

<sup>512</sup> Tomova, Iona, *The Gypsies in the Transitional Period*, p. 45.

<sup>513</sup> Marushiakova, Elena, and Vesselin Popov, "The Gypsy Minority in Bulgaria – Policy and Community Development", pp. 9-10.

<sup>514</sup> Доклад на Георги Атанасов на срещата на първите секретари на ОК на БКП – 18 Януари 1985 г. (Report by Georgy Atanasov on a meeting of the first secretaries of the Communist Party) в *Права и Свободи (Rights and Freedoms)* No 4 от 11. 3. 1991, с. 9 в Буксеншютц, Улрих, *Малцинствената Политика в България*, с. 62; According to Karahasan-Chanar the re-naming campaign affected around 180.000 Roma with Turkish-Arabic names, for reference see: Карахасан-Чънар, Ибрахим, *Етническите Малцинства в България: История, Култура, Религия, Обреден Календар*, (Karahasan-Chunar, Ibrahim, *The Ethnic Minorities in Bulgaria: History, Culture, Religion, Ritual Calendar*), с. 152.

heritage from the old times or cultural vulgarity.<sup>515</sup> Practices such as traditional bathing of brides, male circumcision, and arranged marriages were banned.<sup>516</sup>

In sum, the government sought to assimilate the Roma in order to accomplish the goals of the nation: a socialist state built on social cohesion and territorial integrity. The Roma had to become ethnic Bulgarians and live up to the standards of the dominant group. The use of the Roma language and the practice of their customs and beliefs were discouraged as to efface their identity. In a nutshell, if Roma had a different identity, they would have a different kind of needs to be taken care of. A common identity resolves the problem of accommodating multiple identities that may be perceived to be competing for individual loyalties. And even when the government introduced policies that aimed to raise the standard of the minority, the measures were not successful. The special schools gave inferior education to the Roma students, failing to prepare them for higher education. The constructed neighbourhoods were not properly maintained and turned into ghettos. As a result, the Roma remained the least prepared group to face the transitional period that followed after the fall of Communism.

In Romania, the situation continued to revolve around the superiority of the Romanian nation. It was not until the 1960s that a form of national representation was introduced for the Hungarian, German, and other minorities. The Roma, however, were not included in the list of ‘co-habituating nationalities’ and not entitled to representation.<sup>517</sup> They had no voice at the Party level or within the state administration; no institution promoted their collective interests and no council of Roma workers was created to represent them.<sup>518</sup> These facts seem striking in view of the fact that the Roma was and remains the largest minority in Romania. In Ceausescu’s own words, the Roma represented 3 million out of the total 23 million population of Romania (approximately 13%).<sup>519</sup> In line with the general indifference to the problems of the Roma, no policies were developed to improve their quality of life. The authorities undertook to settle nomadic Roma, but the policy did not aim

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<sup>515</sup> Marushiakova, Elena, and Vesselin Popov, “The Gypsy Minority in Bulgaria – Policy and Community Development”, p. 11.

<sup>516</sup> Ibid, p. 11.

<sup>517</sup> Achim, Viorel, *The Roma in Romanian History*, p. 190.

<sup>518</sup> p. 190.

<sup>519</sup> Pavel, Dan, “Wanderers: Romania’s Hidden Victims (1991)” in Tong, Diane, ed., *Gypsies: An Interdisciplinary Reader*, (New York: Garland Publishing, Inc., 1998), p. 71.

to improve their socio-economic situation.<sup>520</sup> The absence of other policies directed toward the Roma supports this fact.

In 1983, a report of the Propaganda Section of the Central Committee of the Romanian Communist Party stated that some Roma 'persist[ed] in retrograde traditions and mentalities, tend[ed] to lead a parasitic way of life, refused to go to work ... live[d] in precarious conditions, and refused to take part in activities for the welfare of society.'<sup>521</sup>

Taking into account these conclusions, the government introduced series of measures to eliminate the Roma's backwardness. They were to be found jobs in the fields of construction and agriculture. County officials would work with the Roma to build homes on authorized building areas. Health officials had to immunise all Roma and perform monthly health and hygiene checks in their quarters. The Ministry of Education had to adopt special measures so that Roma students from low-income families received adequate education. The Ministries of Health, Labour, and Education had to ensure the placement of 'abandoned Gypsy children, beggars, and vagabonds in special social assistance units.'<sup>522</sup>

These policies were only partially implemented for a brief period of time. Because of the social and economic problems of Romania in the mid-1980s, further progress was not made toward implementing the measures. The final years of Communism in Romania were especially harsh for the Roma who belonged to the least qualified and least integrated social class in Romania.<sup>523</sup> The failure of the first and only program to improve the situation of the Roma can be explained, in part, with the economic downturn caused by the regime of Ceausescu. The failure to implement the measures is also explainable by the limited funding provided by the state.<sup>524</sup> The roots of the problem seem to lie in the general disinterest of the government in improving the poor socio-economic status of the Roma. The absence of a consistent, long-term strategy to solve their problems confirms this conclusion. During the final years of Communism, there were certain accusations that Ceausescu promoted anti-

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<sup>520</sup> Achim, Viorel *The Roma in Romanian History*, p. 191.

<sup>521</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 140 quoting: *Destroying Ethnic Identity*, pp. 108-9, Gilberg, Trond, *Nationalism and Communism in Romania: the Rise and Fall of Ceausescu's Personal Dictatorship*, (Boulder, CO: Westview Press, 1990), p. 166.

<sup>522</sup> Crowe, David. *A History of the Gypsies of Eastern Europe and Russia*, p. 140 quoting: *Destroying Ethnic Identity: The Gypsies in Bulgaria*, pp. 114-5.

<sup>523</sup> Achim, Viorel *The Roma in Romanian History*, p. 191.

<sup>524</sup> *Ibid*, p. 198.

Roma policies, but those accusations cannot be supported.<sup>525</sup> It is more realistic to assume that the situation of the Roma minority did not receive a serious attention because the authorities did not believe that a serious problem existed.

The Communist policies in Hungary continued the assimilatory approach of the previous periods. However, the regime established a double standard for the Roma, treating them as inferior citizens. For example, the regime showed no concern for those Roma who were sent to the German labour and death camps. No reparations were paid to the victims, and no memorials were established for several decades.<sup>526</sup> As another discriminatory measure of 1954, the regime introduced a different kind of identity cards for the Roma. The police issued special black books that were reserved for untrustworthy citizens.<sup>527</sup> Illustrative of the assimilatory approach is the fact that the Communist regime did not acknowledge the existence of the Roma minority as a distinct group.<sup>528</sup>

Believing that socialism would automatically solve the problem of nationalities, the authorities coined some policies that accounted for ethnic differences. Classes in Hungarian as well as minority languages were taught in special schools. The Roma language was not included in the school curriculum.<sup>529</sup> The authorities expected that in time, the Roma would assimilate into the Hungarian society. In order to speed up the process, the regime had to implement a combination of campaigns. ‘Discipline of regular labour’ and ‘the civilizing effects of decent housing and educational achievement’ were intended to efface the differences between the Roma and the other members of the Hungarian society. The regime followed this logic in the form of the theory: ‘(Gypsy) x (socialist wage-labour + housing + education) = (Hungarian worker) + (Gypsy folklore).’<sup>530</sup>

Questions about the fair treatment of minorities did not drive the introduction of culturally sensitive policies for Hungary’s ethnic minorities. Hungary was increasingly

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<sup>525</sup> Ibid, p. 200.

<sup>526</sup> Stewart, Michael, “Communist Roma Policy 1945-89 as seen through the Hungarian Case” in Guy, Will, ed., *Between Past and Future: the Roma of Central and Eastern Europe*, pp.74-5.

<sup>527</sup> Ibid, p. 75 quoting: Jelentés a cigánylakosság helyzetének magjavításáról szóló párthatározat rendőri vonálon történt végrehajtásáról. Belügyministerium, Bünyügyi Osztály, Bp. 1962. szeptember 19 in Léváltár, Ú. XIX – 1 – 4 – g. 46. d. in Sággy, E. „Cigánzpolitika Magyarországon 1945 ü 1964” *Regio* 10:1, pp. 16-35.

<sup>528</sup> The members of the Roma minority are approximately 400.000. See: Hancock, Jan, *The Pariah Syndrome*, [<http://www.geocities.com/Paris/5121/pariah-ch13.htm>] (accessed: May 16, 2007).

<sup>529</sup> Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 92.

<sup>530</sup> Stewart, Michael, “Communist Roma Policy 1945-89 as seen through the Hungarian Case” in Guy, Will, ed., *Between Past and Future: the Roma of Central and Eastern Europe*, p. 83.

concerned about the treatment of ethnic Hungarians in neighbouring states<sup>531</sup> and gradually adopted the multicultural approach to accommodating the cultures of minority groups. The main goal was to gain a better position to negotiate special rights for the ethnic Hungarians in Romania.

In this relation, in 1961, a resolution of the Central Committee of the Hungarian Socialist Worker's Party stated that although the Roma did not constitute a nationality, their group size entitled them equally to 'developmental and constitutional privileges.'<sup>532</sup> After the adoption of this resolution, the authorities confirmed that the Roma constituted an ethnic group. In 1988, the Politburo of the Party granted them a nationality status.<sup>533</sup>

The treatment of minorities under the Hungarian Communist regime had been shaped by the state's national interests. During World War II, Hungary sided with Germany in order to gain some of the territories lost in World War I.<sup>534</sup> During the Communist period that followed, the establishment of a socialist state was one of the top priorities. Another priority was to negotiate special protection for the ethnic Hungarians in Romania. The situation of the Roma minority was ignored at first. Then, the Roma were forced to fit the format of the Hungarian socialist worker but were not granted the privileges that other minorities enjoyed. The Roma were not granted a nationality status, making it impossible to voice their problems as a national minority. Finally, due to concerns about the fair treatment of ethnic Hungarians in neighbouring states, the authorities expanded the list of recognised national minorities, as a result of which the Roma received a national minority status. The Central Committee granted this status to the Roma based on the large size of the minority and not because of its distinct ethnic characteristics. As in Bulgaria and Romania, it was not a priority of the authorities to accommodate the culture of the Roma. Moreover, the Roma were the least prepared minority to face the transition to democracy.

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<sup>531</sup> Crowe, David, "The Roma (Gypsies) of Hungary during the Kádár Era", p. 299 in Crowe, David, *A History of the Gypsies of Eastern Europe and Russia*, p. 92.

<sup>532</sup> Sánta, G. "Sokan vagzunk és semmink sincsÉ Beszélgetés Osztojkán Bélával II", *Beszélő*, 10 August, 1991, pp. 18-19 in Barany, Zoltan, *The East European Gypsies: Regime Change, Marginality and Ethnopolitics*, p. 116.

<sup>533</sup> *Ibid.*, p. 116.

<sup>534</sup> The Peace Treaty of Trianon reduced the territory of Hungary by two thirds and deprived the country of 60% of its population, half of which were ethnic Hungarians. Siding with the Axis powers, Hungary was able to regain some of the lost territories. See: Lévai, Csaba, "The Hungarian Minority in Czechoslovakia after the Second World War", p. 306 [<http://www.cliohres.net/books/7/24.pdf>] (accessed: March 21, 2007).

#### 4.5. Conclusion

During all historical periods, the Roma were discriminated against by the authorities and the general population. This chapter examined historic marginalisation and discrimination, demonstrating that these processes have taken many centuries.

In Bulgaria, the Roma had been treated as foreign, unpredictable, and failing to live up to the standard of the dominant group. Because of the Ottoman rule over the Bulgarian lands, the dominant group was occupied with its own undesirable circumstances. This pattern persisted after the independence. The emergence of aspirations for nationhood has been delayed for five centuries, and the dominant group was preoccupied with its own nation building. Minority questions were, therefore, left to the capacities of the minorities themselves. The Roma were the pariah minority and as such, they faced some discriminatory measures, the voting act being an example. They could exercise other citizenship rights, such as the right to express their culture, without the interference of the state. Yet, they did not receive financial assistance to promote their culture, a fact that fits the pattern of limited involvement with minorities and their problems. During the war period, national benefits in the form of possible territorial expansion took priority over the rights of minorities. The government initiated some blatantly discriminatory policies, although they were among the most lenient policies in comparison to other European countries. The Communist period brought a fairly new policy line aimed to assimilate the Roma, but some of the old patterns persisted. The regime tried to fit the Roma within the model of the socialist worker through improved standard of living, education, and indoctrination with the socialist values. However, follow-up did not accompany the policies to evaluate their effectiveness. The Roma represented a marginalised group that existed outside the norms of society, and this could easily become a justification for the failure to improve their socio-economic situation.

The half-hearted and half-accomplished policies of the Bulgarian government can be characterised as an attempted assimilation, combined with a degree of indifference. The authorities built schools for the Roma, but they were inferior to those attended by the general population. With the 'solution' of the housing problem, Roma were left to maintain the newly built neighbourhoods by themselves. The only persistence the government showed was in claiming that the Roma were not a separate ethnic minority. By making this claim, the

government aimed to curb possible Turkish influences within the country. The Roma had to be assimilated into the dominant population so that they did not adopt a Turkish identity. The ethnic identity of the minority was a matter of political correctness. Overall, the authorities developed ill-thought assimilatory policies and pursued them inconsistently.

Hungary was included in the makeup of the Austro-Hungarian Empire which had led a deliberate policy of assimilation toward its minorities. The Roma possessed valuable skills and knowledge of the Turks, and were highly valued initially. When the Ottomans invaded the Habsburg lands, this same knowledge turned Hungarians against the Roma. The former valuable workers were viewed with suspicion and mistrust. Successive rulers limited the autonomy of the Roma and imposed a number of measures to assimilate them into the Hungarian population. These measures aimed to civilise the Roma and efface their foreign identity, ruling them more easily as separate subjects than as a group.

After the independence, Hungary preserved the assimilatory politics of the previous periods. The absence of ethnic associations proves that efforts toward assimilation have been successful. While assimilation has been a major goal, the physical survival of Roma as a group was at stake during World War II. The government in power used the Roma as an exchange coin for benefits promised by the Nazi regime, shipping Roma to the concentration camps. As with assimilation, extermination was determined by political convenience. The post-war Communist regime did not acknowledge the atrocities of the war, and successive governments failed to establish a nationality status for the Roma. The situation changed in response to the growing concerns about the fair treatment of Hungarian minorities in neighbouring states. As a result, the list of recognised minorities was expanded, and the Roma were granted a national minority status.

The Romanian Roma have held the most precarious position within their society. They were enslaved during the Middle Ages and subjected to unfair and arbitrary treatment by their masters. The authorities did not sanction arbitrary treatment and the Roma suffered in the absence of legal protection. With the abolition of slavery, Roma finally gained a citizenship status but discrimination against them persisted. They did not have personal belongings or land to farm and could not rely on the authorities for support.

Yet, remembering their precarious position, Roma were quick to organise and press for multicultural forms of minority protection. The outbreak of World War II put an end to

the organised movement of Roma, marking a new grim period. According to the views of Romanian scientists, Roma were inferior to the ethnic Romanians and presented an obstacle to the purification of the Romanian race. The solution was to completely isolate them from the ethnic Romanians. Many Roma were deported to settlements in Transnistria and left without the basic means for survival. Few Roma survived the deportations of the war period. The following decades were marked by inconsistent measures to improve their socio-economic situation, which were ultimately unsuccessful.

In Bulgaria, Hungary, and Romania, Roma formed a marginalised minority, but the circumstances that inform the evolution of policy today were distinctly different. The Communist regimes in Central and Eastern Europe have had their effect on the status of the Roma people which is an additional reason why the Roma minority faces unique problems today. Chapter five will examine the impact of democratisation on the region in the last 20 years and the effect of government measures for integration on the situation of Roma.

## **Chapter 5**

### **Domestic and International Visions of Minority Protection: Healthy Nexus or Uneasy Compromise? (1990-2008)**

#### **5.1. Introduction**

This chapter presents an analysis of the implementation of international human rights legislation within the domestic legal standards of Bulgaria, Hungary, and Romania. The chapter explores the impact of democratisation of Eastern and Central Europe on the situation of the Roma, paying close attention to the scope and effectiveness of government measures for improving the socio-economic status of this minority. The study of government approaches helps outline more specific policies to solve the problematic situation of the Roma in Bulgaria, Hungary, and Romania.

The chapter draws upon the historic transformations described in chapter four and explores the extent, to which those developments have moulded the modern concepts of minority protection. The historical frame will suggest the underlying reasons for the adoption of either the liberal model, based on human rights, or the multicultural model of accommodating the cultures of minority groups. The present situation of dominant group-minority relations is also a result of historical processes that have determined the geopolitical position of states. The current position of states is informed, at least in part, by the presence of ethnic minorities abroad, the homogeneity of states' populations, and the level of trust in the citizenship loyalty of domestic minorities.

The situation of the Roma in Bulgaria, Hungary, and Romania, as elsewhere in Eastern Europe, also results from historic power redistributions, annexations of territories, and the level of states' encapsulation in nationalistic terms. As a result, the present day Roma communities display signs of economic, educational, and social exclusion and corresponding isolation at the lower level of the hierarchical structures.

The first section of this chapter will describe the socio-economic situation of the Roma in each state and then, the chapter will outline the general historic argument that drives

the adoption of a liberal or multicultural model of accommodating the rights of minority cultures. Although some historical developments are unrelated to the treatment of the Roma, such events have been conducive to the development of different concepts of minority protection that affect the Roma. Therefore, the subsequent discussion of approaches to minority protection, their benefits, the rationales behind their adoption, and the availability or absence of more suitable alternatives aims to explore the argument or the position of the three states.

The chapter will interlink the reasons why states show preference for the liberal or multicultural model with the resulting domestic legislations and structures for accommodating ethnic minorities. Conversely, the adopted provisions and the scope of the principles of non-discrimination and equality, in terms of individual and collective rights to participation, will illustrate the states' views on accommodating minorities. The specific programs targeting the Roma minority, their coherence and level of implementation, will also build upon the underlying assumptions of the safe borderline between the territorial integrity of states and accommodating the culture of ethnic minorities.

## **5.2. Minorities vs. states**

### **5.2.1. Minorities in numbers**

#### **5.2.1.1 Bulgaria**

The Roma population of Bulgaria is largely sedentary.<sup>535</sup> Statistical data from the 2001 census reveals that 370,908 Bulgarian citizens identified themselves as Roma.<sup>536</sup> Most communities have settled in the countries' larger towns and cities in search of better economic opportunities.<sup>537</sup> However, the Roma live in impoverished areas, and a quarter of their houses are illegal. Their neighbourhoods carry evocative names such as 'Abyssinia' and

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<sup>535</sup> Research shows that more than 90 percent of the Bulgarian Roma are permanently settled. For more information see: Giordano, Christian et al, "Roma's Identities in Southeast Europe: Bulgaria", The Ethnobarometer Working Paper Series, Ethnobarometer, 2003, p. 35 [<http://www.ethnobarometer.org/images/pdf/wp08.pdf>] (accessed: May 18, 2008).

<sup>536</sup> "Национален съвет за сътрудничество по етническите и демографски въпроси, "Етнически малцинствени общности" (National Council for Cooperation on Ethnic and Demographic Issues, "Communities of Ethnic Minorities") [<http://www.nccedi.government.bg/page.php?category=92&id=247>] (accessed: January 12, 2010).

<sup>537</sup> Giordano, Christian et al, "Roma's Identities in Southeast Europe: Bulgaria", The Ethnobarometer Working Paper Series, Ethnobarometer, 2003, p. 35.

'Cambodia' - none-too-subtle indicators of their ghetto status, a status starkly underscored by a host of social indicators.<sup>538</sup> The majority of households (95.4 percent) do not have electricity. Almost 37 percent of the Roma sleep on earthen floors, and only 9.4 percent have access to hot water.<sup>539</sup> At a threshold of \$2.15 per day, the level of poverty is 41.1 percent for the Roma and just 4.1 percent for the non-Roma.<sup>540</sup> The level of unemployment ranges between 60 and 65 percent, especially in areas of compact Romani population.<sup>541</sup> The educational status of the Roma is significantly lower than the national average. Around 63 percent of them have basic or no education, 32.2 percent have completed primary school, and just 0.2 percent hold university degrees. In comparison, 41.8 percent of ethnic Bulgarians complete secondary school, and 16.1 percent graduate from universities.<sup>542</sup> About 70 percent of school-age Roma study in segregated schools.<sup>543</sup> The material conditions in these schools are sub-standard – some lack basic facilities such as blackboards and chalk, and more than half have no glass windows.<sup>544</sup> The quality of education is poor, which prevents the pupils from pursuing higher education. When the Roma study in integrated schools, they are isolated due to their imperfect command of the Bulgarian language. Moreover, the children who live in segregated neighbourhoods cannot possibly have the same social experience as other students. If the teachers do not have the time, knowledge, or willingness to integrate these children, the latter feel confused by the school environment.<sup>545</sup>

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<sup>538</sup> Centre for Intercultural Dialogue and Tolerance "Amalipe", "The Roma Strategies in Bulgaria in the Eve of EU Accession", 2006, p. 19 [[http://www.geocities.com/amalipe2002/Roma\\_strategies\\_in\\_Bulgaria\\_report.pdf](http://www.geocities.com/amalipe2002/Roma_strategies_in_Bulgaria_report.pdf)] (accessed: September 19, 2007).

<sup>539</sup> Ibid, p. 19, quoting Revenga et al, 2002, "Roma in an Expanding Europe", *Breaking the Poverty Cycle*, (World Bank, 2005).

<sup>540</sup> Институт за регионални изследвания и анализи, "Някои факти за ромите" (Institute for Regional Research and Analysis, "Some Facts about the Roma"), 2003 [[http://iria.sliven.net/index.php?lang=bg&page=social+ROMI\\_bg](http://iria.sliven.net/index.php?lang=bg&page=social+ROMI_bg)] (accessed: September 19, 2007).

<sup>541</sup> Симеонова, Мария и др., „Аналитичен доклад на тема: ромите в България: новите предизвикателства”, (Simeonova, Maria et al, "Analytical Report: the Roma of Bulgaria: the New Challenges"), 2005, p. 13 [[http://www.fes.bg/calendar/2007/03/Romite\\_v\\_Bulgaria\\_Doklad.pdf](http://www.fes.bg/calendar/2007/03/Romite_v_Bulgaria_Doklad.pdf)] (accessed: September 19, 2007).

<sup>542</sup> Centre for Intercultural Dialogue and Tolerance "Amalipe", "The Roma Strategies in Bulgaria in the Eve of EU Accession", p. 10.

<sup>543</sup> "Информация за политиката на българското правителство за подобряване на положението на ромското население в България" ("Information on the Policy of the Bulgarian Government for the Improvement of the Situation of the Roma Population in Bulgaria"), 2003 [<http://www.ncedi.government.bg/8.Doklad-Budapest-1.07.03>] (accessed: September 19, 2007).

<sup>544</sup> *Equal Access to Quality Education for Roma. Bulgaria. From Volume 1: Bulgaria, Hungary, Romania, Serbia*, pp. 103-5, quoting „Roma Schools in Bulgaria”, (Sofia: OSF, 2001), pp. 10-1.

<sup>545</sup> "Мониторинг на изпълнението на национален план за действие – десетилетие на ромското включване" ("Monitoring of the Implementation of the National Plan for Action – Decade of the Roma

Poverty, malnutrition, and limited access to healthcare services account for the comparatively poorer health of the Roma. The ethnic Bulgarians live 15 years longer than the average Roma, only 1 percent of whom live beyond the age of 70.<sup>546</sup> During the last decade, child mortality among the Roma has been twice that of the Bulgarians. The Roma are also more susceptible to diseases commonly linked to poverty and substance abuse, such as tuberculosis, hepatitis B, and HIV.<sup>547</sup>

The socio-economic plight of the Roma may be addressed at the policy level by including members of the minority in the decision-making process. However, data from the 2005 elections reveals that only 100 Roma competed with 5,900 other candidates. One Roma, Toma Tomov of the Bulgarian Socialist Party, won a seat in Parliament.<sup>548</sup> The post-election distribution of posts resulted in the appointment of two Roma Deputy Ministers for the first time. Yavor Dimitrov was appointed at the Ministry of Labour and Social Policy, and Aleksander Filipov became a Deputy Minister of Emergency Situations.<sup>549</sup> While these appointments represent a precedent, they are not indicative of an emerging trend of including the Roma in the political process.

Moreover, a survey of social attitudes reveals that the majority of Bulgarians are unwilling to empower ethnic communities. 20 percent of Bulgarians object to minority (Roma and Turkish) cultural organisations, 25 percent express opposition to political representation for the ethnic minorities, and 48 percent oppose the existence of ethnic political parties. As explained in the next section, the ethnic Bulgarians fear that minorities could monopolize the political life of the country.<sup>550</sup>

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Inclusion”), 2006-2007, p. 18 [[http://rc.cega.bg/files/Hronika/Monitoring\\_01-156.pdf](http://rc.cega.bg/files/Hronika/Monitoring_01-156.pdf)] (accessed: September 20, 2007).

<sup>546</sup> Национален демократически институт за международни дейности на САЩ, “Политическо участие на ромите в България” (National Democratic Institute for International Activities of USA, “Political Participation of the Bulgarian Roma”), p. 4, quoting „Здравни проблеми на малцинствата”, 2003 [[http://www.accessdemocracy.org/library/1611\\_romaassess\\_020803\\_bul.pdf](http://www.accessdemocracy.org/library/1611_romaassess_020803_bul.pdf)] (accessed: September 20, 2007).

<sup>547</sup> „Политическо участие на ромите в България” (“Political Participation of the Bulgarian Roma”), p. 4.

<sup>548</sup> Войнова, Севдалина, “Ромското участие в парламентарните избори 2005 г. в България” (Voinova, Sevdalina (“The Roma Participation in the 2005 Parliamentary Elections in Bulgaria”), pp. 2-7 [[http://www.ndi-bg.org/docs/OSCENDIRonRPinBG\\_bg.pdf](http://www.ndi-bg.org/docs/OSCENDIRonRPinBG_bg.pdf)] (accessed: September 20, 2007).

<sup>549</sup> Ibid, p. 11.

<sup>550</sup> Митев, Петър-Емил, „Българския етнически модел – проблематизирано постижение в обединяващо се Европа” (Mitev, Petar-Emil. “The Bulgarian Ethnic Model – A Questionable Achievement in Unifying Europe”) в *Етническо многообразие и обединяваща се Европа*, (София: Център за исторически и политологически изследвания, 2005), pp. 16-20.

To sum up, most Bulgarian Roma have abandoned their traditional occupations and nomadic lifestyle. They have moved to the cities in search of subsistence, but their poor education and lack of marketable skills relegate them to the impoverished periphery. The environment of the periphery presents few opportunities because education, healthcare, and infrastructure fall below the national standard. The dominant group opposes the cultural and political mobilization of ethnic minorities, which represents a further obstacle to improving the socio-economic situation of the Roma.

#### 5.2.1.2. Romania

As in Bulgaria and Hungary, the Romanian Roma are poorly educated, largely unemployed, and living on the fringes of society. Education statistics show that only half of the children aged seven to ten attend primary school, and just 7 percent enrol in universities.<sup>551</sup> Research among Roma respondents conducted by the Soros Foundation reveals that 23 percent have no education, 27 percent have only primary education, and 33 have graduated from secondary school.<sup>552</sup> As in Bulgaria, there are segregated institutions with high concentration of Romani pupils. Mihai Surdu's research indicates that around 12 percent of all Roma pupils attend schools where more than fifty percent of the student body is of Roma origin.<sup>553</sup> The facilities and the quality of teaching in the segregated institutions are inferior to those of the regular schools.<sup>554</sup> Interviews in Ocolna revealed that the Roma studying in the local schools could not write their own names and did not know their age, and there were graduates of the local school who were unable to read and write.<sup>555</sup> Segregation is only one reason for the poor educational achievements of the Roma children. School attendance is impeded by the poor infrastructure in and around the Roma residential areas.

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<sup>551</sup> Cosma, Teodor, et al, "The Education of Roma children in Romania: Description, Difficulties, Solutions", *Intercultural Education*, 11: 3 (2000), p. 282.

<sup>552</sup> Roma Inclusion Barometer – Press Release [[http://www.osf.ro/en/comunicat\\_detaliu.php?id\\_comunicat=22](http://www.osf.ro/en/comunicat_detaliu.php?id_comunicat=22)] (accessed: September 3, 2007).

<sup>553</sup> Surdu, Mihai "Desegregating Roma Schools: a Cost – Benefit Analysis", p. 8

[<http://www.policy.hu/surdu/final%20policy%20paper.pdf>] (accessed: September 3, 2007).

<sup>554</sup> "State of Impunity: Human Rights Abuse of Roma in Romania", ERRC Report, 2001, p.66

[[http://lists.errc.org/publications/reports/romaniaE\\_2001.doc](http://lists.errc.org/publications/reports/romaniaE_2001.doc)] (accessed: September 13, 2007).

<sup>555</sup> *Ibid*, p. 66.

This includes poor or no roads to the communities, absence of public transportation, and the distance of schools from the neighbourhoods.<sup>556</sup>

The poorly developed residential areas fail to provide other basic services, such as healthcare. A survey of two regions revealed that 98 percent of poor Romanians were registered with a general practitioner in comparison to 48 percent of Roma people.<sup>557</sup> The Roma who are excluded from the healthcare system cannot enjoy the benefits of regular medical checkups and preventive healthcare. Preventive medical care is crucial in diagnosing medical conditions before they do serious damage to one's health. Persons who have access to preventive healthcare have a longer life expectancy, show better productivity at work, and enjoy a higher quality of life.<sup>558</sup>

Being excluded from the healthcare system, the Roma children suffer from higher rates of vitamin deficiency, malnutrition, anaemia, dystrophy, and rickets than the non-Roma children.<sup>559</sup> According to the Public Health District Office of Mures, the Roma community has the highest rate of tuberculosis, AIDS, hepatitis, and neuropsychological disorders of all Romanian ethnic groups.<sup>560</sup>

Poor education, health, and living conditions drive a poverty rate of 75.1 percent and a severe poverty rate of 52.1 percent among the Roma in Romania.<sup>561</sup> In 1998, roughly 40 percent had no occupation and only one-half of a percent were employers.<sup>562</sup> The Roma employed by the state worked mainly in the field of education: teachers and teaching assistants, school mediators, and inspectors. At the level of government, just two of the 485

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<sup>556</sup> "Advancing Education of Roma in Romania: Country Assessment and the Roma Education Fund's Strategic Directions", 2007, p. 39.

<sup>557</sup> Schaaf, Marta, "Confronting a Hidden Disease: TB in Roma Communities", (Open Society Institute, 2007), p. 13, quoting "Doctors of the World, Romania TB KABP Survey", On file with the author.

<sup>558</sup> Lengel, Raymond, "Preventive Health Care" [<http://nursece4less.com/Tests/Materials/N020Materials.pdf>] (accessed: January 12, 2010).

<sup>559</sup> Zoon, Ina, "On the Margins: Roma and Public Services in Romania, Bulgaria, and Macedonia", pp. 78-80, quoting "Save the Children, Roma Children in Romania. Research Report. Summary" in Final Report to the International Workshop on Roma Children in Europe (Bucharest, 1998), p. 82.

<sup>560</sup> Ibid, quoting Buceanu, Mariana, "Answers of Public Health Directors Concerning the Health Situation of Romani Communities" (GLAR – Working Group of Roma Associations, unpublished).

<sup>561</sup> Ibid, p. 15.

<sup>562</sup> Duminica, Gelu, "Roma Access to Social Services: 2005 Facts and Trends" (Bucharest: AMM Design, 2006), p. 17 [<http://www.coe.int/t/dg3/romatravellers/documentation/Employment/roma%20access%20to%20social%20services.pdf>] (accessed: September 3, 2007).

deputies of the previous parliament were of Roma origin.<sup>563</sup> Currently, the Roma Party Pro Europe holds one seat in Parliament.<sup>564</sup> At the ministerial level, none of the 24 Ministers is Roma, and only one (Mrs. Maria Ionescu) of the 180 state secretaries is of Roma origin.<sup>565</sup> The Romanian President and the Minister of Foreign Affairs have no Roma employees.<sup>566</sup> The President, Traian Basescu has debased the Roma at the highest official level by stating that '[they] are nomads and nobody can do anything about them ... they will bring their horses into the flats and there any attempt to civilize them ends ... we should build special camps and keep them outside our cities.'<sup>567</sup> The President was also recorded on a cell phone while calling the journalist Andrea Pana 'a stinky Gypsy'. Basescu formally apologized for the 'undeserved moral prejudice' and added that 'the used phrasing ... [does not] represent in any way the President's attitude ... to the Roma community in our country.'<sup>568</sup>

An optimistic trend is the general decrease of the dominant group's intolerance of the Roma. In 1993, more than 70 percent of ethnic Romanians objected to having Roma neighbours. By 2006, this rate had declined to 36 percent. Still, only one third of the Romanians approve of mixed marriages, and status indicators such as education and income do not enhance the level of tolerance. The Romanians accept the idea of the Germans keeping their traditional lifestyle but are less willing to consent that the Roma traditions represent an alternative and equally merited lifestyle. Factors such as residence, tolerance of differences, higher trust in people outside the family, and existing social contacts with Roma can act to diminish the preconceived notions and increase the level of tolerance.<sup>569</sup> Still, urgent, comprehensive, and efficient governmental action is necessary to eliminate discrimination and increase the social capital in terms of education and employability.

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<sup>563</sup> "Roma Political Participation in Romania", 2003, p. 7

[[http://www.romanothan.ro/engleza/reports/docs/1629\\_ro\\_romaparticip\\_022803.pdf](http://www.romanothan.ro/engleza/reports/docs/1629_ro_romaparticip_022803.pdf)] (accessed: September 4, 2007).

<sup>564</sup> Its representative, Mr. Nicolae Paun is also the President of the "Commission for human rights, religious denominations, and problems of national minorities. For more information see for example: "Brief Assessment of Romania's Compliance with Some Critical EU Requirements: Accomplishments and Weaknesses".

<sup>565</sup> Nicolae, Valeriu, "European Employment Network and its Effects for the European Roma. Could Romania Be a Solution?" [[http://www.ergonetwork.org/article1.html#\\_ftn33](http://www.ergonetwork.org/article1.html#_ftn33)] (accessed: September 4, 2007).

<sup>566</sup> Presidential Anti-Gypsyism. [<http://www.ergonetwork.org/Romania.htm>] (accessed: September 4, 2007).

<sup>567</sup> "Regele Mihai, ingrijorat de criza politica actuala", 13 May 2007

[<http://www.romanialibera.ro/a94974/regele-mihai-ingrijorat-de-criza-politica-actuala.html>] (accessed: September 4, 2007).

<sup>568</sup> "President Traian Basescu Appologizes", 25 May 2007

[[http://www.romanicriss.org/documente//Noutati/pres%20release\\_basescu.pdf](http://www.romanicriss.org/documente//Noutati/pres%20release_basescu.pdf)] (accessed: September 4, 2007).

<sup>569</sup> Badescu, Gabriel et al, „Roma Inclusion Barometer”, pp. 56-61

‘[http://www.osf.ro/en/documente.php?id\\_document=365](http://www.osf.ro/en/documente.php?id_document=365)] (accessed: September 5, 2007).

### 5.2.1.3. Hungary

Due to the Holocaust legacy, Hungarian law forbids data collection regarding ethnic origin and religious affiliation. Even the authorities rely on statistics provided by non-governmental organisations for its work. Therefore, the compilation of relevant and timely demographic information about the Hungarian Roma is difficult.<sup>570</sup> Toso Doncsev explains that the Roma population is not concentrated in some parts of the country. The Roma inhabit some 2,000 of the 3,200 Hungarian settlements, but, as in Bulgaria, more than two-thirds live in urban areas, typically in provincial towns.<sup>571</sup> Around one third of the Roma live in completely segregated settlements.<sup>572</sup> In its extreme form, residential segregation is sustained through the construction of walls that physically separate the Roma from the rest of society. Such a wall, for example, was build around a Roma community in the Hungarian town of Keszthely. Similar to Bulgaria, many Roma settlements lack infrastructure and basic facilities such as sewage systems, solid roads, access to public transportation, street lighting, garbage collection, telephone lines, and emergency services.<sup>573</sup> Research on the Roma's standard of living has documented that just 45.1 of them have hot water, 41.4 possess a telephone, and 50.2 have a shower.<sup>574</sup>

The Roma's living conditions relate to a long-term poverty rate of 53 percent.<sup>575</sup> Approximately two-thirds of working-age Roma engage in unskilled or semi-skilled labour.

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<sup>570</sup> Holbrook, Eshter, and William Ejalu, "ENAR Shadow Report 2005. Racism in Hungary", p. 3 [http://www.enar-eu.org/en/national/hungary/Hungary\_2005.pdf] (accessed: September 10, 2007).

<sup>571</sup> Doncsev, Toso, ed., *Measures Taken by the State to Promote the Social Integration of Roma Living in Hungary*, (Budapest: Rudolf Joó, 2000) [http://www.amrita-it.com/ciganyasag/measures.htm] (accessed: September 10, 2007).

<sup>572</sup> Havas, Gábor et al, *Cigány gyerekek az általános iskolában*. Oktatókutató Intézet, 2001, Budapest in Hagan, Margaret, and Tara Bedard, "Out and Away: The Housing Rights Situation of Roma in Hungary" [http://www.errc.org/cikk.php?cikk=1332] (accessed: October 10, 2007).

<sup>573</sup> Hagan, Margaret, and Tara Bedard, "Out and Away: The Housing Rights Situation of Roma in Hungary".

<sup>574</sup> Revenga, Anna et al, *Poverty and Ethnicity. A Cross-Country Study of Roma Poverty in Central Europe*, (Washington: World Bank, 2002), p. 10 [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/01/07/000094946\_02122404075867/Rendered/PDF/multi0page.pdf] (accessed: September 10, 2007).

<sup>575</sup> Hungary. Long-Term Poverty, Social Protection and the Labor Market (In Two Volumes) Volume 1: Main Report (World Bank, 2001) [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/06/01/000094946\_01051904010041/Rendered/PDF/multi0page.pdf] (accessed: October 25, 2007).

A mere 22 percent have skilled 'blue collar' jobs, and just 8 percent hold skilled positions.<sup>576</sup> Gabor Kertesi explains that in Hungary, those who graduate from primary schools are ten times less likely to remain in the labour force. The chances of those who have completed vocational school are fourfold, and a university diploma makes one 50 times more likely to find a job.<sup>577</sup> The marketable skills and employment opportunities of the Roma minority are diminished by its low education. Around half of all Hungarian children advance beyond the eighth grade, but among the Roma, this figure is only 3 percent. Just 0.1 percent of them are admitted to the universities.<sup>578</sup>

There are no segregated educational facilities as in Bulgaria. However, administrators often form classes with a high percentage of Romani children. The concentration of Roma pupils is also noticeable in remedial classes that are intended to provide supplemental academic help. Parents claim that their children are often ignored, and even bright and prepared pupils are kept in these classes.<sup>579</sup> Research indicates that more than 50 percent of the students in these schools are Romani.<sup>580</sup> The low quality of segregated education is only one reason behind the Roma's failure in the Hungarian education system. Teachers often assume that the Roma are less intelligent, and almost every Romani student can tell a story of prejudice and discrimination by teachers and classmates. Parents lack faith in traditional education because they have had negative school experiences as well.<sup>581</sup> Discrimination in the education system is symptomatic of a general negative attitude that is noticeable even at the highest levels of government. Péter Szegvári of the Prime Minister's Office stated that 'it should be proposed to supply the Roma population with free contraceptives ... The increase of the Gypsy population is too high compared to their living conditions. Having six to eight

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<sup>576</sup> Kállai, Erno, and Erika Törzsök, *A Roma's Life in Hungary. Report 2003: Illusory Politics and Standing Still*, (Budapest: PFECMR, 2003), p. 38 [[http://www.mtaki.hu/docs/eokik\\_romareport\\_2003.pdf](http://www.mtaki.hu/docs/eokik_romareport_2003.pdf)] (accessed: October 10, 2007).

<sup>577</sup> Kertesi, Gabor "The Labour Market Situation of the Gypsy Minority in Hungary (An Empirical Analysis)", (Budapest, 1994) in Human Rights Watch/ Helsinki, *Rights Denied. The Roma of Hungary* (Human Rights Watch, 1996) p. 85 [[://www.hrw.org/legacy/reports/1996/Hungary.htm](http://www.hrw.org/legacy/reports/1996/Hungary.htm)] (accessed: October 10, 2007).

<sup>578</sup> *Rights Denied. The Roma of Hungary*, p. 62.

<sup>579</sup> *Ibid*, p. 64.

<sup>580</sup> *Stigmata. Segregated Schooling of Roma in Central and Eastern Europe*, (Budapest: European Roma Rights Center, 2004), p. 26.

<sup>581</sup> Van Driel, Barry, "The Gandhi Secondary School: An Experiment with Roma Education", *European Journal for Intercultural Studies*, 10: 2 (1999), p. 174.

children, they are reproducing their own misery and have no chance to get out of it.’<sup>582</sup> Non-governmental organisations objected to Szegvári’s purported ideas of Roma sterilization. The official was eventually dismissed, but for reasons unrelated to his comments.<sup>583</sup>

Officially manifested expressions of discrimination suggest that the Roma do not have a strong political lobby that could act as a deterrent. In fact, the political representation of the Roma has been quite modest in all democratic parliaments.<sup>584</sup> Roma have entered the higher levels of government only through the lists of the major political parties. Roma political parties stood for election twice (1990 and 1994) but were unable to attract a sufficient number of votes.<sup>585</sup> A positive development is the fact that the Roma, as other officially recognised Hungarian minorities, have been granted the right to self-government.

The isolation of the Roma people is comparable to, though not a mirror image of the problems of the Bulgarian Roma. However, an analysis of the legal and practical measures for improving the Roma’s socio-economic situation will illustrate that both states differ significantly in their preference for the liberal or multicultural model.

#### **5.2.1.4. Concluding Remarks**

Historically, the Roma had been marginalised at the peripheral socio-economic niches, living separately from the dominant groups, which looked upon them with suspicion and mistrust. The policies of slavery, assimilation, or indifference resulted in the further marginalisation of the Roma and left little room for the development of civic consciousness.

The governments of the transitional period faced a large number of destitute Roma with poor skills who could hardly sustain the pressures of the market economies. This situation poses a difficult dilemma for governments. They could either attempt to integrate

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<sup>582</sup> “News Round – Up for Hungary”, *Central Europe Review*, 2002 [<http://www.ce-review.org/00/12/hungarynews12.html>] (accessed: September 11, 2007).

<sup>583</sup> Ibid.

<sup>584</sup> In 1990, two members of the Alliance for Free Democrats, Aladar Horvath and Antonia Haga, and the socialist representative Tamas Meli entered the Parliament. Antonia Haga and Tamas Meli were reelected in 1994. The following elections of 1998 brought no Roma representatives to the Parliament. In 2000, Florian Farkas, Josef Vagra, Mihaly Lukacs from FIDEZ and Laszlo Lukacs from the Socialist party were elected; “Roma and the Economy” Overview Reports, pp. 37-8 [[http://www.emz-berlin.de/projekte\\_e/pj49\\_pdf/Roma\\_Economy.pdf](http://www.emz-berlin.de/projekte_e/pj49_pdf/Roma_Economy.pdf)] (accessed: September 11, 2007).

<sup>585</sup> Sobotska, Eva, “The Limits of the State: Political Participation and Representation of Roma in Czech Republic, Hungary, Poland, and Slovakia”, 2001/2002 [<http://www.ecmi.de/jemie/download/Focus11-2001Sobotka.pdf>] (accessed: January 12, 2009).

the Roma under the terms of the liberal approach to universal human rights or they could develop special policies to accommodate the culture of Roma, as to improve the group's socio-economic status.

### **5.2.2. The argument of the state**

All three states participated in the constitution of imperial formations, but the terms of participation differed in the three contexts. The Bulgarians, as other nationalities in Eastern Europe, have a distinct history of imperial domination. Being subjugated earlier, the dominant group focuses on the historical injustices that were inflicted upon it and need to be acknowledged or remedied. Kymlicka notes that in the Western societies, minorities seek an apology and compensation from the state for their mistreatment, and the argument of historic injustice strengthens their claims for equality. For instance, indigenous people in Australia, Canada, and New Zealand make claims for the rectification of historic injustices. The argument of past wrongdoings serves to strengthen the demands of minorities for special protection and a more just distribution of available resources.

In Eastern Europe, it is the dominant groups who claim to be the victims of historical oppression, usually at the hands of minorities collaborating with the nations' enemies. Consequently, the dominant group expects the guilt and apology of the minorities as a confirmation of their loyalty to the state.<sup>586</sup> Bulgaria was under the rule of the Ottoman Empire for almost five centuries. The Turkish minority in the country has the former subjugator as a kin-state. Consequently, the members of the dominant group view this minority as attempting to resume its previous dominant status. The Roma, half of whom converted to Islam, are also conceived as bearers of non-Orthodox and therefore non-Bulgarian moral values. For the dominant group, the moral code of the Roma does not entail the values of a strong loyalty to the state and a desire for social advancement through knowledge and hard work. Yet, the turbulent historic relationship between the Bulgarians and the Turkish minority is the main reason why the dominant group shows preference for a strong state with weak and disempowered minorities.

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<sup>586</sup> Kymlicka, Will *Multicultural Odysseys: Navigating the New International Politics of Diversity*, pp. 187-90.

The framework of the historic injustice argument may apply differently in the Hungarian and Romanian contexts. Hungary had led a robust assimilation policy during its imperial, independent, and early Communist periods. The suppressed mobilization of ethnic minorities later opened room for experiments with multicultural ideas of non-territorial autonomy. However, developments following World War I also entailed restructuring borders and transferring Hungarian-populated territories to neighbouring countries. The perception of historic injustice against the dominant group in Hungary marks the development of subsequent policies which, although targeting Hungary's home minorities, aim to become a model for the treatment of Hungarian minorities abroad.

A large Hungarian minority inhabits the region of Transylvania in Romania. The territory, which was annexed by Romania during World War II, encompassed 2 million ethnic Hungarians.<sup>587</sup> Romania has claimed ownership of the territory in the past 1000 years and considers the Hungarian rule a historic injustice. The annexation resolved the dispute in favour of Romania. However, mistrust and suspicion among Transylvania's Romanians and Hungarians prompted the development of assimilatory policies by the Communist regime.<sup>588</sup> National security submerged the issue of justice yet again.<sup>589</sup>

Proponents of the liberal model explain that perceptions of injustice disappear when the members of ethnic minorities are treated in the same way as members of the dominant group.<sup>590</sup> Universal human rights close the gap between alternative universes, advance 'mutual understanding [and] encourage the cultivation of habits of cooperation and sentiments of trust.'<sup>591</sup> Group-based measures might also be admissible if suffering arises from conditions beyond the community's responsibility. However, the measures are justifiable as long as the inequality persists.<sup>592</sup> The principles of justice require the provision of opportunities and equal rights, which may not translate into equal outcomes for all individuals. Some cultures encourage educational achievements, while others place less value

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<sup>587</sup> Lorant, Czigani "A History of Hungarian Literature: From the Earliest Times to the Mid-1970's" [<http://mek.niif.hu/02000/02042/html/63.html>] (accessed: November 2, 2007).

<sup>588</sup> Roe, Paul, "Misperception and Ethnic Conflict: Transylvania's Societal Security Dilemma", *Review of International Studies*, 28:1 (2002), p. 58.

[[http://journals.cambridge.org/download.php?file=%2FRIS%2FRIS28\\_01%2FS0260210502000578a.pdf&code=3b431b59e2fe2fa600062d1042e9273c](http://journals.cambridge.org/download.php?file=%2FRIS%2FRIS28_01%2FS0260210502000578a.pdf&code=3b431b59e2fe2fa600062d1042e9273c)] (accessed: November 2, 2007).

<sup>589</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, pp. 187-91.

<sup>590</sup> Barry, Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, p. 23.

<sup>591</sup> *Ibid*, p. 88.

<sup>592</sup> *Ibid*, p. 13.

on or neglect education. Positions requiring higher academic qualifications will disproportionately be filled by members of the educationally-oriented groups. Individuals of other cultural backgrounds may be better suited for positions requiring different skills, for example, interaction and teamwork. Those who do not have the qualities underlying success will change their view of life or cluster at the lower end of the occupational hierarchy.<sup>593</sup> In sum, improving the quality of life of ethnic minorities means they have to be treated in the same way as the members of the dominant groups. In Bulgaria and Romania, where tensions exist, the equal treatment of all citizens would reduce the mistrust of minorities. The communities with competitive labour values and skills would flourish at the expense of some less acculturated minorities. For example, if the values of capitalism are not as valuable to the Roma, their culture would be doomed to extinction under the pressures of the market economy. The minority will either accept the values of the dominant group or remain at the bottom of the hierarchy.

The multicultural scholarship advances the counterclaim that the liberal approach of minorities' acculturation deprives ethnic groups of their sense of unique identity. Group members will suffer identity distortion, and their misrecognised or denied identities will become an instrument for internalized oppression.<sup>594</sup>

The remedy for the unequal position of ethnic minorities is to accord them group or collective rights.<sup>595</sup> Kymlicka notes that Western liberal states such as Canada increasingly adopt such multicultural approaches to ethno-cultural diversity. Their geopolitical stability, the 'de-securitization' of ethnic relations, and the consensus on human rights have reduced the risk of accepting claims for special protection.<sup>596</sup> In contrast, the dominant groups in post-Communist Central and Eastern Europe fear the potential disloyalty of minorities and endorse the idea of a strong state that is capable of minimising diversity.<sup>597</sup>

The recognition that differences are important for their bearers might be a first step, giving visibility to different identities and conceptions of the good life. Visibility will legitimize the presence of different cultures in the public realm, making minorities feel

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<sup>593</sup> Ibid, pp. 91-2.

<sup>594</sup> Taylor, Charles, *Multiculturalism and the Politics of Recognition*, pp. 25-32.

<sup>595</sup> Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, p. 109.

<sup>596</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 122.

<sup>597</sup> Ibid, p. 194

entitled to their identities.<sup>598</sup> On the other hand, if the dominant groups learn to empathise with their stigmatised minorities, they will help eliminate the feeling of oppression. Empathy with the suffering of minorities will open the path to a more equal inclusion of devalued minorities.<sup>599</sup>

International norms stipulate that ethnic minorities have the right to participate in public life, especially in matters of their concern. The idea of effective participation sounds attractive to states because it is vague, subject to multiple and diverse interpretations, and can accommodate different conceptions of state – minority relations. The minimal reading of effective participation requires only non-discrimination, the standard right to vote, engage in advocacy, and run for office. A more robust interpretation of participation requires that states grant their minorities some form of autonomy or representation in the legislature.<sup>600</sup> A degree of power decentralisation, together with cultural accommodation, is necessary to ensure justice.<sup>601</sup> However, post-Communist states might opt for the minimum reading of international norms ‘as the outside limit of legitimate minority mobilization.’<sup>602</sup> The acceptance of international standards would be seen as eliminating the need to establish or even debate on different forms of sharing power. The multiculturalism proponents express hope that in time, post-Communist states will find their own trends toward liberal multiculturalism. Toward this goal, norms must be the ‘floor from which minority rights should be domestically negotiated and not the ceiling beyond which minorities must not seek to go.’<sup>603</sup>

### **5.3. Legal guarantees of minority rights and state programs for Roma integration**

#### **5.3.1. Bulgaria**

##### **5.3.1.1. Legal framework within the human rights system**

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<sup>598</sup> Galeotti, Anna, *Toleration as Recognition*, p. 101.

<sup>599</sup> Thomas, Laurence „Moral Deference” in Willet, Cynthia, *Theorizing Multicultural Citizenship: A Guide to the Current Debate*, p. 378.

<sup>600</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 240.

<sup>601</sup> Parekh, Bhikhu, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, p. 212.

<sup>602</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 310.

<sup>603</sup> *Ibid*, p. 310

Bulgaria has adopted all relevant human rights international instruments, discussed in chapter two, which fall within the framework of the liberal approach.<sup>604</sup> The Bulgarian state has confirmed that the conventions incorporated in the Constitution are an inseparable part of domestic legislation and have priority over the domestic norms that contradict them (Art. 5 of the Constitution). In line with the liberal approach, adopted in the context of most international instruments, Bulgaria recognises the existence of persons belonging to national and ethnic minorities rather than collectives or groups. However, the collective term ‘national minority’ is not unknown to the Bulgarian legal tradition.<sup>605</sup> The Constitution of 1947 incorporates the terminology in Article 79.<sup>606</sup>

All citizens have the right to education ... National minorities have the right to study in their mother tongue and to develop their national culture, as the study of Bulgarian language is obligatory.<sup>607</sup>

The present Constitution does not contain a ‘national minority’ clause, although the Constitutional Court has ruled that the term is conventional and needs no formal mention in the constitutional text.<sup>608</sup> On the other hand, the individual approach to ethnic minorities of the FCNM, ICCPR, and other international instruments represents the dominant model of accommodating the rights of ethnic minorities within the Constitutional framework.

Bulgarian scholars rationalise that the principle of individual protection stems from the assumption that generic rights cannot be exchanged for other public goods without a person’s explicit consent. The Constitution envisages that war or a state of emergency may

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<sup>604</sup> These include the European Convention on Human Rights (ECHR), the Convention on the Prevention of Torture, the Revised European Social Charter, the Framework Convention for National Minorities (FCNM), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESP), and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). See: “Human Right Conventions Ratified by Candidate Countries, 15 September 2002” [[http://www.fifoost.org/ungarn/EU\\_Hungary\\_2002/node91.php](http://www.fifoost.org/ungarn/EU_Hungary_2002/node91.php)] (accessed: September 20, 2007).

<sup>605</sup> Институт за регионални изследвания и анализи, “Доклад на Република България съгласно член 25, ал. 1 от рамковата конвенция за защита на националните малцинства” (Institute for Regional Research and Analysis, “Report of the Republic of Bulgaria in Relation to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities”)

[<http://iria.sliven.net/index.php?lang=bg&page=social+ROMA-doklad>] (accessed: September 20, 2007).

<sup>606</sup> Ibid.

<sup>607</sup> “Конституция на Народна Република България от 1947 год” (“The Constitution of the Republic of Bulgaria from 1947”), *БГ Наука*, април, 2006, [[http://bg-science.info/view\\_bg\\_his.php?id=19](http://bg-science.info/view_bg_his.php?id=19)] (accessed: October 26, 2007).

<sup>608</sup> Институт за регионални изследвания и анализи, “Доклад на Република България съгласно член 25, ал. 1 от рамковата конвенция за защита на националните малцинства” (Institute for Regional Research and Analysis, “Report of the Republic of Bulgaria in Relation to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities”).

necessitate the temporary limitation of some basic rights, except for the prohibition of torture, the right to life, the presumption of innocence, the inviolability of one's personal life, and the freedom of conscience, thought, and religion. In this way, the Constitution ensures that the rights guaranteeing the safety of each individual, member of a dominant group or an ethnic minority, are inviolable, even when the circumstances require that emergency measures be imposed.

The negative framing of this right corresponds to a limitation of the state's interference with the autonomy of the individual. Social, cultural, and economic rights are, on the other hand, positive guarantees for the realisation of the individual interests in view of the pursued goods. These generic rights are in line with the liberal model and interlink with the principle of social equality.<sup>609</sup> Norms of this type are well developed within the constitutional regulations as constituted through the right to labour and private property, the right to participation in strikes, and the right to social welfare and healthcare. A third layer of the Constitution entails the right to common cultural heritage and full development. This norm is specified in Article 54 of the Constitution.<sup>610</sup> The article postulates that each individual has the right 'to develop one's culture in accordance with his or her ethnicity which is recognised and guaranteed by the law.'<sup>611</sup>

The right to full development translates the language of the international norms that grant protection to individuals rather than collectives.<sup>612</sup> This right is neither positive nor negative, but reflects the principle of solidarity.<sup>613</sup>

The Constitution stipulates that all citizens are entitled to the three layers of rights and consequently, everyone is obliged to respect the rights of their fellow citizens (Art. 58).<sup>614</sup> This provision extends the equality requirement from state institutions to the citizens through

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<sup>609</sup> Тачев, Евгени, *Въведение в Конституционното право*, (Tachev, Evgeni, *Introduction to Constitutional Law*) (София: Сиби, 2003), pp. 383-91.

<sup>610</sup> *Ibid*, pp. 383-91

<sup>611</sup> Конституция на Република България (Constitution of the Republic of Bulgaria) [[http://www.online.bg/law/const/const2\\_b.htm](http://www.online.bg/law/const/const2_b.htm)] (accessed: September 20, 2007).

<sup>612</sup> Articles 5 (1), 6, and 15 of the FCNM guarantee the right of persons belonging to ethnic minorities to preserve and develop their culture and to participate in the political, economic, and social life of the state. See: Framework Convention for the Protection of National Minorities.

<sup>613</sup> Тачев, Евгени, *Въведение в Конституционното право*, (Tachev, Evgeni, *Introduction to Constitutional Law*), p. 391.

<sup>614</sup> *Ibid*, p.391.

Article 6 (par. 2), stating that ‘limitations of a person’s rights and privileges, based on his race, nationality, ethnic belonging ... are prohibited’.<sup>615</sup>

The clause contains the negative requirement to abstain from discrimination that is valid for both state institutions and private citizens as incorporated in various statutory laws. The Law on Social Welfare (Art. 3), the Law on Education (art. 4, par. 2), and the Penal Code (art. 10, par. 1) prohibit limitations or privileges and proclaim the principle of equality.<sup>616</sup> However, their provisions do not account for all forms of discrimination and contain some contradictory or obscure texts.<sup>617</sup>

The new Law for the Protection from Discrimination unifies the existing anti-discrimination legislation and harmonises the Bulgarian legal code with the standards of the European Union. The law is in line with the Employment Equality Directive 2000/78/EC and the Racial Equality Directive 2000/43/EC.<sup>618</sup> The text of the law covers all equality provisions enshrined in them. The new legislation is also an integral part of the planned measures under the Framework Program for the Equal Integration of Roma in the Bulgarian society. The Program promotes Roma’s empowerment, but a substantial portion of the provisions involve the recognition and prevention of discrimination and the establishment of instruments that combat discriminatory acts.<sup>619</sup>

In view of this goal, the law aims to protect all natural persons on the territory of the Republic where they are discriminated on grounds covered by the Directives and by international conventions, to which the state is a party. Three main areas are covered by the

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<sup>615</sup> Конституция на Република България (Constitution of the Republic of Bulgaria) [[http://www.online.bg/law/const/const1\\_b.htm](http://www.online.bg/law/const/const1_b.htm)] (accessed: September 20, 2007).

<sup>616</sup> Институт за регионални изследвания и анализи, “Доклад на Република България съгласно член 25, ал. 1 от рамковата конвенция за защита на националните малцинства” (Institute for Regional Research and Analysis, “Report of the Republic of Bulgaria in Relation to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities”).

<sup>617</sup> See for example discussion on the prohibition of discrimination in the Labour Code in Стайко Ивайлов, „Националната правна уредба за забраната за дискриминация в трудовите отношения” (Staiiko Ivailov, „The National Legal Framework of the Ban on Discrimination in Labor”) [<http://lib.nbu.bg/html/spisania/law/broi2/1.pdf>] (accessed: December 28, 2007).

<sup>618</sup> Directive 2000/43 ‘implements the principle of equal treatment between people irrespective of racial or ethnic origin and ensures protection from discrimination in the fields of employment, training, education, social advantages, participation in organizations’. Directive 2000/78 incorporates ‘the principle of equal treatment in employment and training irrespective of religion or belief, disability, age or sexual orientation’ in Anti-Discrimination Directives, DG Employment, Social Affairs & Equal Opportunities [[http://ec.europa.eu/employment\\_social/fundamental\\_rights/legis/lgdirect\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/legis/lgdirect_en.htm)] (accessed: September 21, 2007).

<sup>619</sup> Monitoring the EU Accession Process: Minority Protection. vol. 1 An Assessment of Selected Policies in Candidate States, (Budapest: Open Society Institute, 2002), p. 77.

provisions for the protection from discrimination – employment, education, and participation in civic and professional organisations. Additional orders stipulate that state and local authorities encourage the balanced participation of ethnic groups and religious and linguistic communities in the decision-making process. A final section arranges the statute and competencies of the Commission for the Protection against Discrimination.

At first, the Legislative Council of the Ministry of Justice expressed the opinion that the establishment of a state anti-discrimination body was unconstitutional.<sup>620</sup> This interpretation was in line with the minimalist reading of international norms, according to which the principle of equality represents an effective guarantee for the protection of all individuals. The Parliament decided to opt for a more robust approach to the principle of effective participation, as constituted in the positive interpretation of Article 14 of the FCNM, and established the Commission for the Protection against Discrimination – a structure with the capacity to monitor the implementation of the non-discrimination principle. This structure of the state administration became a specialised body that determines the facts of discrimination, imposes appropriate sanctions, renders independent assistance to victims of discrimination, and publishes independent reports and recommendations on all questions related to discrimination.<sup>621</sup>

Several aspects of the Commission’s functions, specifically those related to its objectivity, workload, and resources, necessitate a brief discussion. First, the members of staff are jointly appointed by the Parliament and the President.<sup>622</sup> Under this arrangement, the impartiality of the Commission would be questionable in cases of anti-discrimination procedures against them. Another obstacle is the fact that the Commission has an overwhelming number of different functions and duties, including the possibility to act upon its own discretion and to investigate cases *ex officio* (by virtue of their position).<sup>623</sup>

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<sup>620</sup> Ibid, p. 77.

<sup>621</sup> Български център за нестопанско право, “Приет е закон за защита срещу дискриминацията” (Bulgarian Centre for Public Law, “A Law against Discrimination Has Been Enacted”), 2007 [<http://www.bcnl.org/newsbg.php?n=57>] (accessed: September 21, 2007).

<sup>622</sup> Ibid.

<sup>623</sup> Екимджиев, Михаил “Законопроект за предотвратяване на дискриминацията практически аспекти и проблеми” (Ekimdziev, Mihail “Bill for the Prevention of Discrimination, Practical Aspects and Problems”), [[http://www.eurorights-bg.org/bg/categories/legal\\_doctrine/m\\_ekimdziev/discrimination-aspects\\_and\\_rblems.html](http://www.eurorights-bg.org/bg/categories/legal_doctrine/m_ekimdziev/discrimination-aspects_and_rblems.html)] (accessed: October 22, 2007).

Secondly, Members of Parliament such as Plamen Savov, Trifon Mitev, and Rupen Krikorian noted that the Commission's work necessitated frequent travelling around the country. The employees are often forced to work overtime, and the workload seems disproportionate to their remuneration.<sup>624</sup> In 2006, the Commission had just six regional representatives, and the administrative personnel were reduced from 42 (as per statutory regulations) to 35.<sup>625</sup> The Council of Ministers also adopted the reduced budget of BGN 1,644,000 (around EUR 545,000) instead of BGN 1,800,000 as requested.<sup>626</sup>

While keeping in mind these administrative constraints, the Commission is the only specialised organ to investigate cases free of charge and over a short period of 30 days.<sup>627</sup> The Roma, who often lack financial means for litigation, can turn to the body and ask for prompt corrective measures. Commission chairman Kemal Etup explained that the Roma initiated most of the cases involving ethnic discrimination. They complain of limited access to public places and services, denial of medical care, and discrimination in job interviews. However, the official also added that 'it [was] in the mentality of Roma to complain and think that the state owe[d] them everything.'<sup>628</sup> This statement is in breach of the FCNM's prohibition against discrimination in the media.<sup>629</sup> It is also in violation of the Law for the Protection from Discrimination. The establishment of an anti-discrimination body with real executive powers has proven the efficacy of the government's robust approach toward the protection of minorities. However, discrimination on the top tier of the very structure empowered to fight discrimination casts suspicion on the consistent enforcement of the law.

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<sup>624</sup> "Проект закон за изпълнение и допълнение на Закона за защита срещу дискриминацията (Обн., ДВ, бр. 86 от 2003 г.; изм. и доп., бр. 70 от 2004 г. и бр. 105 от 2005 г.)" ("Bill for the Amendment of the Law for the Protection against Discrimination; Amended: State Newspaper, Issue 86 of 2003; Amended and Supplemented: Issue 70 of 2004 and Issue 105 of 2005") [<http://www.parliament.bg/bills/40/654-01-62.pdf>] (accessed: September 22, 2007); In 2006, the Commission accepted 389 complaints, investigated 220, and resolved 62 of the cases. See: "Комисия по защита от дискриминация. Годишен отчет 2006", ("Commission for the Protection from Discrimination. Annual Report"), pp. 16-22 [[http://www.kzd-nondiscrimination.com/images/stories/pdf/Otchet\\_KZD\\_2006.pdf](http://www.kzd-nondiscrimination.com/images/stories/pdf/Otchet_KZD_2006.pdf)] (accessed: September 22, 2007).

<sup>625</sup> "НС прие отчета на Комисията за защита от дискриминация за 2006 г." (The Parliament Accepted the 2006 Report of the Commission for Protection from Discrimination") [<http://news.club.bg/122748.html>] (accessed: September 22, 2007).

<sup>626</sup> "Защита на гражданските права пред Брюксел" ("Defence of the Civil Rights in Brussels") *Sega*, 2006 [<http://www.segabg.com/online/article.asp?issueid=2162&sectionid=5&id=0002401>] (September 22, 2007).

<sup>627</sup> Йорданова, Я. "Кемал Еюп, Председател на Комисията за защита от дискриминация: Най-голяма е трудовата дискриминация" (Jordanova, J. "Kemal Etup, Head of the Commission for Protection against Discrimination: Discrimination in Labour is the Greatest Problem") *Monitor*, 2007.

<sup>628</sup> *Ibid.*

<sup>629</sup> Article 9 (1) of the FCNM.

Besides the Commission and the courts, the Roma can turn to the institution of the Ombudsman. Procedures established by the Ombudsman include accepting and evaluating complaints, mediation, making recommendations for legislative amendments and improvements of the administrative efficiency, and acting upon the Ombudsman's own initiative.<sup>630</sup> According to Article 152a of the 2005 Law on the Ombudsman, the institution works toward the 'discontinuation of human rights violations, restoration of the damages, and creation of conditions for the unobstructed and efficient exercise of those rights.'<sup>631</sup>

This broad provision of the law has been restricted by regulations within the Rules on the Organisation and Activities of the authority. Under these rules, the Ombudsman has no authority over the judiciary, investigative services, and prosecution offices. Outside the scope of the Ombudsman are the President, the National Assembly, the Supreme Judicial Council, and the Constitutional Court.<sup>632</sup> In other words, the Ombudsman does not have executive powers and cannot impose fines. The sanctions of the institution are only moral, suggesting that the Ombudsman's establishment is formulated as a broad forum for civic dialogue rather than with the aim to enforce the anti-discrimination legislation. The voice of the Ombudsman has the potential to enhance the general knowledge of discriminatory practices, but the institution does not have judicial authority to prosecute discrimination.

An important fact is that the Bulgarian legal framework was conceived according to the principle of democratic constitutional rule that prioritises the rights of all citizens.<sup>633</sup> The Constitutional text protects the autonomy of the individual by minimising the state's interference with generic human rights. Bulgarian legislation excludes special protection of minority cultures on the grounds that personal autonomy provides freedom of choice between alternatives and the power to remove barriers to a preferred alternative. Personal autonomy allows individuals to refine and develop their abilities and moral virtues.<sup>634</sup> It can be argued that generic minority standards do not respond to the circumstances of each group and that

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<sup>630</sup> Centre for the Study of Democracy, "First Steps of the Bulgarian Ombudsman", 2003, p. 3  
<http://www.anticorruption.bg/ombudsman/eng/fileSrc.php?id=1372> (accessed September 23, 2007).

<sup>631</sup> Център за изследване на демокрацията, "Институцията Омбудсман в България" (Centre for the Study of Democracy, "The Institution of Ombudsman in Bulgaria"), 2005, p. 19.  
[<http://www.anticorruption.bg/ombudsman/bg/fileSrc.php?id=1378>] (accessed: October 22, 2007).

<sup>632</sup> Centre for the Study of Democracy, "First Steps of the Bulgarian Ombudsman", p. 3.

<sup>633</sup> Тачев, Евгени, *Въведение в Конституционното право*, (Tachev, Evgeni, *Introduction to Constitutional Law*), p 393.

<sup>634</sup> *Ibid*, pp. 397-8.

the prohibition against discrimination might simply deter or penalize its manifestations. Excluded groups remain on the fringes because of the limited opportunities to advance alternative views of identity and the common good. However, the dominant group's view that ethnic minorities are a security threat to the state's territorial integrity may be confirmed by the imposition of group rights. In this sense, the democratic processes that build up mutual trust and tolerance would ideally coincide with the development of mutually agreeable forms of collective empowerment. The liberal notion of effective participation and peaceful democratic deliberations can be conducive to the gradual development of a country-specific approach to multiculturalism.<sup>635</sup>

### **5.3.1.2. Government measures for Roma integration**

The Constitutional cultural, social, and economic rights of the Roma pertain to their decent employment, housing, education, access to healthcare, and cultural preservation and development. The Framework Program for the Equal Integration of Roma acknowledges the disadvantaged and isolated position of the minority. The program envisages the formulation of specific measures that aim to optimise the Roma's chances for integration. The occupational measures include training, re-qualification, and employment combined with improved quality of education and free access to integrated schools. The Roma's housing situation is considered in light of the illegal status of many settlements and the inadequate infrastructure of their neighbourhoods. Finally, the state should encourage the minority to preserve and develop its culture, which the members of the dominant group are unfamiliar with. This is the reason why the Roma are isolated by the dominant group.<sup>636</sup>

The program of the Bulgarian government may be studied in light of the social equality principle rather than in terms of affirmative action. Affirmative action builds on compensatory and distributive justice rationales, while the social equality principle focuses

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<sup>635</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 310.

<sup>636</sup> "Рамкова програма за равноправно интегриране на ромите в българското общество" ("Framework Program for the Equal Integration of the Roma in the Bulgarian Society") [<http://www.hs.government.bg/hs/documents/FrameProgram.doc>] (accessed: September 25, 2007).

on disadvantage and exclusion.<sup>637</sup> The Bulgarian approach to integration does not entail affirmative mechanisms such as quotas and targets, thus moving away from the individual compensatory mechanisms. The measures of the Bulgarian program have a group-specific component and represent a departure from the liberal model of human rights. However, every model of differential treatment runs the risk of being proclaimed as ‘preferential treatment.’<sup>638</sup> The following overview reveals that the government has shown preference for the liberal model of human rights while formulating strategies and structures to implement the adopted measures.

From 1997 to 2006, the government implemented the provisions of the program with the assistance of the National Council on Ethnic and Demographic Issues (NCEDI). The establishment of this structure was in line with the requirement of the FCNM to ensure the effective participation of minorities in public life. According to this interpretation of Article 15, the government had to establish a consultative organ that formulated strategies and drafted legislative acts, monitored the situation of minorities, prepared reports, and coordinated activities across agencies.<sup>639</sup> A stronger reading of Article 15 would vest the organ with delaying and blocking powers.<sup>640</sup> However, the government chose to establish an inter-departmental, coordinating, and consultative body within the Council of Ministers.

The choice of a liberally-oriented approach to the functions of the National Council can be attributed mainly to the tensions ensuing from the Bulgarian ethnic model. The establishment of an executive organ with delaying and blocking powers might substantiate the impression that minorities are granted special protection at the expense of the dominant group’s prosperity. Thus, the liberal paradigm establishes minority instruments that suppose less direct involvement and therefore more limited expenditure of resources.<sup>641</sup> Another explanation is that the initial preference for liberal measures relates to the economic recession during the transitional period. The country’s GDP declined, the capital stock

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<sup>637</sup> McHarg, Aileen, and Donald Nicolson, “Justifying Affirmative Action: Perception and Reality”, *Journal of Law and Society*, 33:1 (2006), pp. 15-20.

<sup>638</sup> *Ibid*, p. 13.

<sup>639</sup> Weller, Marc, “Article 15” *Rights of National Minorities*, pp. 447-8.

<sup>640</sup> *Ibid*, p. 446.

<sup>641</sup> Томова-Брайкова, Татяна, “Ромската политика: политика с големи цели, малки резултати и неблагоприятен отзвук” (Томова-Braikova, Tatiana, „The Roma Politics: Politics of High Goals, Limited Results, and Unfavourable Echo”) [[http://politiki.bg/downloads/2033159589/Roma\\_Policy\\_Report.doc](http://politiki.bg/downloads/2033159589/Roma_Policy_Report.doc)] (accessed: December 27, 2007).

shrank, and the state's industries hardly functioned.<sup>642</sup> These facts suggest that consecutive governments have been under pressure to develop a functioning and competitive market economy at a time when special protection of the culture of minority groups necessitated a substantial investment of resources.

The negligible budget of the National Council on Ethnic and Demographic Issues is indicative of the latter assumption. In 2001, the structure appropriated BGN 104,317 (approximately EUR 58,000). It is doubtful that the sum was sufficient to cover the various fields listed in the government's report, including development of minority media, cultural events and celebrations, and the establishment of information and cultural centres.<sup>643</sup> The focus on cultural activities and the exclusion of socio-economic measures illustrate the government's preference for the liberal view of a more limited involvement of the state in minority protection.<sup>644</sup>

While the Council focused on cultural initiatives, the implementation of the Framework Program followed confused patterns. Its two-year Plan of Action secured housing funding of BGN 300,000 in 2006 and BGN 13.36 million in 2007. Given that the deadline of the program is 2015, future governments will have to appropriate BGN 1.246 billion. In addition, the Action Plan does not envisage the legalisation of existing housing, which is in breach of the commitments within the Framework Program.<sup>645</sup>

Efforts in the field of healthcare resulted in the formulation of strategies that had no follow-up implementation. In September 2006, the government adopted a Health Strategy for Disadvantaged Persons Belonging to Ethnic Minorities and a corresponding Plan of

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<sup>642</sup> Mitev, Emil-Petar et al, „The Price of Procrastination? The Social Costs of Delayed Market Transition in Bulgaria” in Emigh, Rebecca, and Ivan Szeleniy, eds., *Poverty, Ethnicity, and Gender in Eastern Europe during the Market Transition*, (Westport: Praeger Publishers, 2001), p. 42.

<sup>643</sup> “Доклад на Република България съгласно член 25, ал. 1 от рамковата конвенция за защита на националните малцинства” (“Report of the Republic of Bulgaria in Relation to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities”).

<sup>644</sup> In 2006, the government replaced the NCEDI with a National Council for Cooperation on Ethnic and Demographic Issues. The body was again conceived as a consultative and coordinating organ to the Council of Ministers. The NCCEDI is entitled to advise the state institutions on policies related to Roma integration but cannot oblige them to act or undertake actions on its own. In other words, the structure has no decision-making functions as its predecessor. See for example: Centre for Intercultural Dialogue and Tolerance “Amalipe”, “The Roma Strategies in Bulgaria in the Eve of EU Accession”, pp. 6-7.

<sup>645</sup> Иванов, Михаил “Гетата в България” (Ivanov, Mihail “The Ghettos in Bulgaria”), *Обектив*, 2006 [<http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=obektiv13416>] (accessed: October 27, 2007).

Action.<sup>646</sup> The package envisaged measures to reduce infant mortality and to optimise early prevention programs. It aimed to strengthen the role of the health mediator and to train medical personnel to work with minorities, among others.<sup>647</sup> The government planned to secure BGN 500,000 for the Strategy but in reality provided the negligible sum of BGN 30,000.<sup>648</sup>

Educational measures have been advanced in two major documents. The Strategy for the Educational Integration of Children and Students from the Ethnic Minorities was adopted by the Ministry of Education in 2004. The document aimed to ensure access to integrated intercultural education, including steps toward desegregation. The Action Plan of the Strategy envisaged the establishment of a Center for Intercultural Integration for Children and Students of Ethnic Minority Origin that would raise funds from foreign donors. The aim was to provide the financial means to implement the strategy.<sup>649</sup> At present, the Center disposes of BGN 500,000 and finances projects related to school network optimisation, renovation of school premises, organisation of re-qualification courses for teachers, intercultural activities, and others.<sup>650</sup> The distribution of funding can only encourage but not mandate the process of desegregation.

The government has devolved authority over the school system to the local governments instead of to minority bodies, and desegregation depends on the willingness of municipalities to apply for grants. Realistically, the strategy does not have much weight because it was adopted by the Bulgarian Ministry of Education, not the Parliament. Another strategy, the National Program for Development of School Education and Pre-school

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<sup>646</sup> “Правата на човека в България през 2006 година. Годишен доклад на Българския Хелзинкски Комитет март 2007” (“Human Rights in Bulgaria for 2006. Annual Report of the Bulgarian Helsinki Committee, March 2007”) [<http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=459#10>] (accessed: October 27, 2007).

<sup>647</sup> “План за действие към Здравната стратегия за лица в неравностойно положение, принадлежащи към етнически малцинства 2005 – 2007 г.” (“Plan of Action to the Health Strategy for Disadvantaged Persons Belonging to Ethnic Minorities 2005 – 2007”) [[http://www.ncedi.government.bg/ZADRAVNA%20STRATEGIA\\_AO.htm](http://www.ncedi.government.bg/ZADRAVNA%20STRATEGIA_AO.htm)] (accessed: September 27, 2007).

<sup>648</sup> “Правата на човека в България през 2006 година. Годишен доклад на Българския Хелзинкски Комитет март 2007” (“Human Rights in Bulgaria for 2006. Annual Report of the Bulgarian Helsinki Committee, March 2007”).

<sup>649</sup> Decree 4/11.01.2005 of the Council of Ministers stipulates that the government will supplement the resources by a state subsidy of 1 million BGN; See: Centre for Intercultural Dialogue and Tolerance “Amalipe”, “The Roma Strategies in Bulgaria in the Eve of EU Accession”, p. 10.

<sup>650</sup> “Център за образователна интеграция на децата и учениците от етническите малцинства” (“Center for Intercultural Integration for Children and Students of Ethnic Minority Origin”) [<http://coiduem.mon.bg/?m=3>] (accessed: September 27, 2007).

Upbringing and Instruction, was adopted by the Bulgarian Parliament and has greater bearing on the issue. However, the Program does not focus on desegregation and merely places minority pupils under the concept of ‘socialization of children whose mother tongue is not Bulgarian.’<sup>651</sup> So far, the government has abstained from restructuring the education system despite the requirement of the ECHR for equal access to education on all levels.<sup>652</sup>

To summarise, the politics of integration includes a series of active measures to improve the Roma’s socio-economic status through enhanced opportunities for education, work, healthcare, housing, and cultural preservation. The simultaneous completion of all tasks is possible if the authorities are able and willing to invest sufficient financial resources in the initiatives.<sup>653</sup> The liberal paradigm counteracts the ideas of social equality and limits the amount of funding available for the implementation of measures. The healthcare strategy, for example, contains a multitude of ambitious measures but attracted little financial support. The housing program secured financing, but its short-term absorption has been limited. The inadequate long-term distribution of resources is the result of an oversized project that lacks appropriate implementation schedules.<sup>654</sup>

The government prioritises every area in theory but allocates available resources, the amount of which is limited. The allocation of considerable funding risks provoking discontent among the members of the dominant group. Moreover, this large-scale multidimensional planning cannot account for the specifics of each problem. A focused effort to identify and resolve the most pressing concern, for example the need for marketable skills, could bring more visible results. Another issue is the involvement of different decision-makers in the same policy field. The Ministry of Education and the Bulgarian Parliament both participate in the formulation of the educational policy. Such overlap of policymaking might lead to an inefficient expenditure of human resources and financing. The decision-

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<sup>651</sup> “Bulgaria. Decade Watch: Roma Activists Assess the Progress of the Decade of Roma Inclusion”, p. 61 [http://demo.itent.hu/roma/portal/downloads/DecadeWatch/DecadeWatch%20%20Bulgaria%20(English;%20Advance%20Printing).pdf] (accessed: October 28, 2007).

<sup>652</sup> “Framework Convention for the Protection of National Minorities and Explanatory Report” [http://www.coe.int/t/e/human\_rights/minorities/2.\_framework\_convention\_(monitoring)/1.\_texts/PDF\_H(1995)010%20E%20FCNM%20and%20Explanatory%20Report.pdf] (accessed: November 1, 2007).

<sup>653</sup> Татьяна Томова, „Ромската политика: максималистични цели и минималистични инструменти” (“The Roma Politics: Ambitious Goals and Limited Instruments”), *Политики*, 8 (2006) [http://politiki.bg/?cy=47&lang=1&a0i=222759&a0m=readInternal&a0p\_id=104] (accessed: December 20, 2007).

<sup>654</sup> Ibid.

making structures compete with one another as to which one can develop a more effective strategy. This results in the formulation of over-ambitious goals.<sup>655</sup> Alternatively, it leads to the overall underestimation of a project that has strong points.

In line with the liberal model, the National Council for Cooperation on Ethnic and Demographic Issues participates marginally in the implementation of policies for improving the Roma's socio-economic position. The municipalities are also peripheral actors in policymaking. The government has devolved various responsibilities to the local authorities, such as school desegregation, without securing budgets for the implementation of projects. The result of this discrepancy is that municipalities cannot participate effectively in the development of policies. The position of the Expert on Ethnic and Demographic Issues was also introduced at the local level, but this position is only to assist the municipalities. There is no adequate mechanism to oblige or stimulate the introduction of local projects that take into account the specifics of the respective Roma communities. The lack of focus on a grassroots' level is regrettable because the development of local projects could provide a more accurate estimate of the necessary human and financial resources and the reasonable time limits for implementation. The current large-scale program of the government contains very ambitious goals, but each area necessitates substantial planning, coordination, and resources. Finally, large-scale programs that target ethnic minorities run the risk of losing the dominant group's support. They also raise the expectations of the targeted minority, and the failure of the national project could result in the discontent of the minority.

### **5.3.2. Romania**

#### **5.3.2.1. Legal framework within the human rights system**

Romania has adopted the relevant body of human rights treaties.<sup>656</sup> The Romanian Constitution stipulates that international treaties override domestic legislation unless the

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<sup>655</sup> Ibid.

<sup>656</sup> The more important treaties are: the Framework Convention on National Minorities, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Revised European Social Charter, and the European Convention on Human Rights. "Human Right Conventions Ratified by Candidate Countries, 15 September 2002".

latter ensure greater protection.<sup>657</sup> However, in a report to the Council of Europe, Romania explained that

the correlation between international regulations and domestic law does not alter or reduce the major role which national legislation plays in proclaiming and guaranteeing human rights. That is so because the State is and remains the framework within which human rights and fundamental freedoms are realized.<sup>658</sup>

This statement illustrates the conviction that adherence to international legal norms is secondary to domestic priorities which, on the other hand, pertain to the existence of a ‘sovereign, independent, unitary and indivisible National State.’<sup>659</sup> The use of the term ‘national’ masks the fact that 14 ethnic minorities co-exist on the territory of the state.<sup>660</sup> Moreover, a reference to state integrity is made even within the provision against discrimination in stating that the country is a ‘common and indivisible land to all citizens.’<sup>661</sup>

The government attempted to enhance minority protection through Ordinance 137, enacted in August 2000. The ordinance forbids discrimination by public authorities, legal entities, or private persons on the basis of race, nationality, ethnicity, and religion. Romania was the first European country to adopt anti-discrimination provisions with respect to Directives 43/2000/EC and 78/2000/ EC.<sup>662</sup>

However, Law 48/2002 does not comply with all the provisions of the Directives. The text does not explicitly prohibit indirect or structural discrimination, and reversal of the burden of proof has not been incorporated. In fact, the law relies on another procedural rule,

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<sup>657</sup> “Constituția României modificată și completată prin Legea de revizuire a Constituției României nr. 429/2003, republicată de Consiliul Legislativ, București, 23 octombrie 2003. Romanian 1991 (Constitution as revised in October 2003), arts. 11, 20 in “Life Doesn’t Wait” Romania’s Failure to protect and Support the Children and Youth Living with HIV”, (New York: Human Rights Watch, 2006) [[http://hrw.org/reports/2006/romania0806/7.htm#\\_ftn213](http://hrw.org/reports/2006/romania0806/7.htm#_ftn213)] (accessed: September 6, 2007).

<sup>658</sup> Report Submitted by Romania Pursuant Article 25 Paragraph 1 of the Framework Convention for the Protection of National Minorities [[http://www.coe.int/t/e/human\\_rights/minorities/2.\\_framework\\_convention\\_%28monitoring%29/2.\\_monitoring\\_mechanism/3.\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/1.\\_first\\_cycle/PDF\\_1st\\_SR\\_Romania.pdf](http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/3._state_reports_and_unmik_kosovo_report/1._first_cycle/PDF_1st_SR_Romania.pdf)] (accessed: January 16, 2007).

<sup>659</sup> Article 1 (1), Constitution of Romania [[http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=1#t1c0s0a4](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=1#t1c0s0a4)] (accessed: January 16, 2007).

<sup>660</sup> Bugajski, Janusz, *Ethnic Politics in Eastern Europe. A Guide to Nationality Policies, Organizations, and Parties with a New Postscript* (Armonk: M. E. Sharpe, 1995), p. 207.

<sup>661</sup> Constitution of Romania.

<sup>662</sup> “Monitoring the Adhesion Process to the European Union, Minorities Protection in Romania”, (Budapest: Open Society Institute, 2001), p. 74 in Gergely, Dezideriu “Anti-discrimination Legislation in Romania: Moving toward Enforcement and Implementation” in *Separate and Unequal*, (Budapest: Public Interest Law Initiative/ Columbia University Kht. 2004), pp. 87-8 [[http://www.pili.org/en/dmdocuments/SU\\_two.pdf](http://www.pili.org/en/dmdocuments/SU_two.pdf)] (accessed: September 6, 2007).

the law on misdemeanours, which allows no room for incorporating the reversal of the burden of proof.<sup>663</sup> The law is also more restrictive than the requirement of the 43/2000/ EC Directive to ensure that organisations ‘with legitimate interest in combating discrimination’ may initiate legal or administrative procedures on behalf of victims.<sup>664</sup>

The Romanian courts have used this wording to restrict the involvement of non-governmental organisations in legal cases. One court has required that an NGO proves its statutory provisions contain clauses on the protection of human rights. ‘Representation’ by an organisation has been interpreted as the provision of power-of-attorney documents by the NGO, which incurs additional expenses to the claimants.<sup>665</sup> In June 2006, Romania amended the law to meet the requirements of the directives, but the Parliament has yet to approve the bill on discrimination.<sup>666</sup>

It is commendable that the terms of the current law provide for the establishment of a specialised authority, the National Council for Combating Discrimination, which evaluates complaints concerning the principles of non-discrimination and equal treatment. The National Council targets ‘discrimination on the grounds of race, nationality, ethnicity, language, religion, social origin, beliefs ...or belonging to a disfavored category (refugees, asylum seekers, pensioners, etc.)’<sup>667</sup> The Council also proposes measures and drafts laws for the protection of disadvantaged individuals, cooperates with relevant organisations in the field, sanctions discrimination by public authorities or natural persons, and implements informative national programs and campaigns.<sup>668</sup> The Council’s powers were limited until 2005 because the structure was a part of the local public administration and hence dependent on the government’s approval of the implementation of the proposed measures. The appointment and dismissal of its board members were in the hands of the Prime Minister,

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<sup>663</sup> Tabacu, Andreea, “Not Yet Viable: Anti-Discrimination Action in Romania” [<http://www.errc.org/cikk.php?cikk=1411>] (accessed: September 6, 2007).

<sup>664</sup> Gergely, Dezideriu, “Anti-discrimination Legislation in Romania: Moving toward Enforcement and Implementation” in *Separate and Unequal*, p.89.

<sup>665</sup> *Ibid*, pp. 89-90.

<sup>666</sup> “Amnesty International Report 2007. Romania” [<http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Romania>] (accessed: September 7, 2007).

<sup>667</sup> Migration Policy Group, “Profile of Partner Equality Body”, p. 2 [[http://www.migpolgroup.com/multiattachments/2913/DocumentName/Equinet\\_Romania\\_en.pdf](http://www.migpolgroup.com/multiattachments/2913/DocumentName/Equinet_Romania_en.pdf)] (accessed: September 7, 2007).

<sup>668</sup> Council of Europe, “National Council for Combating Discrimination Romania” [[http://www.coe.int/t/e/human\\_rights/ecri/1-ecri/3-general\\_themes/2-examples\\_of\\_good\\_practices/1-specialised\\_bodies/SB\\_Romania.asp](http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/2-examples_of_good_practices/1-specialised_bodies/SB_Romania.asp)] (accessed: September 7, 2007).

while the various ministries proposed candidates for board members.<sup>669</sup> The limited authority vested in the Council points to the reluctance of the Romanian authorities to create a government structure tasked with decision-making and follow-up implementation.

In 2005, the government transformed the Council into a presumably independent structure under the Parliament.<sup>670</sup> Procedural rules designated the Council as a body that establishes the facts of alleged discrimination and issues administrative decisions. In case the NCCD issues a positive decision which is not appealed or is upheld upon appeal, there is a formal recognition of the discriminatory deed, and the perpetrator pays a fine to the state. However, it is not within the Council's capacity to issue binding recommendations (for example, order a school to enrol HIV positive children). The victim remains in the position created by the act of discrimination because the Council is not entitled to accord the victim compensation. The plaintiff has to bring the findings of the Council before the civil courts in order to sue for damages.<sup>671</sup>

Furthermore, the Council does not have the capacity to serve as the main anti-discrimination body. The potential victims of discrimination are the 22 million Romanian citizens, refugee and asylum seekers, and those who live in Romania regardless of their legal status. In 2003, the NCCD had a board of 7 members and less than 30 employees, with plans to hire 50 more officers in the following years. The limited staff is unable to sufficiently answer complaints and complete other tasks.<sup>672</sup> The funding of the Council is also insignificant. The Parliament approved LEI 2,560 or approximately EUR 770 in 2005.<sup>673</sup> The financing in 2006 was equal to LEI 2,300 or EUR 690. In comparison, the 2006 budget of the

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<sup>669</sup> "Implementation of the European Anti-discrimination Legislation"; Romani CRISS–Roma Center for Social Intervention and Studies "Equal Opportunities in Accessing Public Services and Places: Case of Roma in Romania", 2001 [www.romanicriss.org] in Gergely, Dezideriu "Anti-discrimination Legislation in Romania: Moving toward Enforcement and Implementation" in *Separate and Unequal*, p. 90.

<sup>670</sup> "Advancing Education of Roma in Romania", p. 21; During the same year, the Council received 382 cases, resolved 360, and imposed sanctions in 60 of them. See: "2005 National Council for Combating Discrimination Activity Report", pp. 5-6 [http://www.cncd.org.ro/] in "Shadow Report. United Nations Convention on the Elimination of All Forms of Discrimination against Women in Romania for Its Consideration at the 35<sup>th</sup> Session 15 May to 2 June 2006" [http://www.iwraw-ap.org/resources/pdf/Romania(2)\_SR.pdf] (accessed: September 6, 2007).

<sup>671</sup> Tabacu, Andreea, "Not Yet Viable: Anti-Discrimination Action in Romania".

<sup>672</sup> Ibid.

<sup>673</sup> "Budget Requests by Ministry against Final Allocation for 2005 and Ten Month Expenditure for 2005" [http://www.mfinante.ro/engl/plan\_strateg/Annex2b.htm] (accessed: September 7, 2007).

Presidency's administration was almost LEI 29 million (around 8.7 million EUR).<sup>674</sup> It is not surprising that the limited human and financial resources have turned the NCCD into the only national institution without local structures.

To sum up, the priority status of the state becomes evident upon examination of the Constitutional provisions and derivative statutory legislation. The state is conceived as belonging to the nation, which contradicts the fact that there are 14 recognised minorities on its territory. The notion of the nation-state is confirmed by the establishment of an anti-discrimination structure that does not attend to minority remedial requests but collects fines in the name of the state. Notably, the anti-discrimination base of the Constitution and the new law are restrictive in comparison to the Bulgarian legislation. In addition, the Romanian Constitution limits socio-economic rights to the individual while the founding text contains a list of prohibitions. An example is the restriction on the right to speak one's mother tongue at the administrative level, even if a minority forms a local numerical majority in its respective area. One Hungarian deputy has concluded that a democratic government could guarantee the protection of the country's minorities on the basis of the current Constitution. However, under nationalistic leadership, 'the text could even lead to genocide.'<sup>675</sup> This statement might be a little far-fetched, but it is clear that Romania's suspicion of ethnicity has downplayed the efforts toward minority protection.

### **5.3.2.2. Government measures for Roma integration**

The Government Strategy for Improving the Situation of Roma represents a national strategy, developed to deal with the situation of the minority in the country.<sup>676</sup> The Strategy focuses on 10 priority areas. They are 'community development and public administration, housing, social security, health care, economic justice and public order, child welfare,

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<sup>674</sup> "Budget Request by Ministry against Final Allocation for 2006"

[[http://www.mfinante.ro/engl/plan\\_strateg/Annex2c.htm](http://www.mfinante.ro/engl/plan_strateg/Annex2c.htm)] (accessed: September 7, 2007).

<sup>675</sup> Bugajski, Janusz, *Ethnic Politics in Eastern Europe. A Guide to Nationality Policies, Organizations, and Parties with a New Postscript*, p. 208.

<sup>676</sup> OSI & RCRC, "Monitoring Local Implementation of the Government Strategy for the Improvement of the Condition of Roma", 2004, p. 20.

[[http://www.soros.org/initiatives/roma/articles\\_publications/publications/romap\\_20040927/3overview.pdf](http://www.soros.org/initiatives/roma/articles_publications/publications/romap_20040927/3overview.pdf)] (accessed: September 8, 2007).

education, culture and religious affairs, communication and civic involvement.<sup>677</sup> The Strategy was developed by the National Office for Roma, a structure of the Department for the Protection of National Minorities within the Ministry of Public Information at the time.<sup>678</sup> The National Office for Roma (NOR) became the decision-making structure of a Joint Committee for the Implementation and Monitoring of the Strategy. The latter was tasked with ‘the organization, planning, coordination and control of the carrying through of the activities stipulated in the master plan of measures for the application of the strategy.’<sup>679</sup> According to the plan, the Joint Committee consisted of Roma leaders, state secretaries, Executive Undersecretary for Roma, and a State Secretary for Inter-Ethnic Relations. They met once a month and discussed whether progress was made with respect to the scheduled activities.<sup>680</sup>

This minority-specific and minority-inclusive executive structure goes beyond the minimum standards of minority protection. However, the effectiveness of the committee was questionable because only lower rank delegates attended the discussions. They met on a random basis and did not focus exclusively on the Strategy. Roma integration was considered an ‘extra task’,<sup>681</sup> and discussions ‘d[id] not follow any methodology. [Meetings] [we]re simply information sessions by state secretaries saying that everything [wa]s going well in

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<sup>677</sup> “Government Strategy, Chapter VII” in Duminica, Gelu “Roma Access to Social Services: 2005 Facts and Trends”, p. 67; The text outlines a number of principles that will guide the government’s efforts in achieving these objectives: consensuality or joint efforts of the government and the Roma organisations; sectoral utility or targeting specific needs of the Roma community; ‘sectoral distribution’ where various bodies are assigned tasks in their areas of competence; decentralisation to local institutions; ‘identity differentiation’ that allows the Roma to assert and protect their identity; and equality of ethnic groups to ensure that measures devised for the Roma community would not place other communities at a disadvantaged position.

<sup>678</sup> OSI & RCRC, “Monitoring Local Implementation of the Government Strategy for the Improvement of the Condition of Roma”, p. 20.

<sup>679</sup> “Strategy of the Government of Romania for Improving the Conditions of the Roma”, pp. 13-4 [<http://www.guv.ro/engleza/obiective/tromi/roma%20strategy-part1.pdf>] (accessed: September 8, 2007).

<sup>680</sup> *Ibid.*, p. 14.

<sup>681</sup> Chiriac, Marian, “A Necessary Change of Strategy – Report on the Implementation of the Romanian Government’s Strategy for the Improvement of the Roma Situation”, p. 16, quoting information by a government representative who stated that in 2003, the Joint Committee never met; according to Illie Dinc, Sub-secretary of State, the Committee met ‘at least six times to discuss various problems’; however, only representatives of Roma organisations were present. [[http://www.edrc.ro/docs/docs/Report%20on%20Roma%20Strategy\\_2004.pdf](http://www.edrc.ro/docs/docs/Report%20on%20Roma%20Strategy_2004.pdf)] (accessed: September 8, 2007).

the country.’<sup>682</sup> The executive core of the Committee, the National Office for Roma, had just two members: Julius Rosta and Dan Oprescu. The latter made a statement that,

we do not know what we deal with, even with respect of the number of the Roma. We do not know either how to establish the priorities for our actions, nation-wide, related to a program for the improvement and alleviation of the situation of most Roma communities in Romania ... [T]here is still a mystery who is supported to start doing it and with what funding.<sup>683</sup>

In 2004, the poor performance of the Committee prompted the transfer of staff and responsibilities to a new National Agency for Roma. Its main task was the coordination of public policies for the Roma.<sup>684</sup> Its efforts were directed toward an improved functioning on national and local levels. By the end of 2005, the Agency hired 24 new staff members for its regional offices in addition to the 48 officials already working for the NAR. It is commendable that the Agency recruited young Roma activists with previous experience in public and non-governmental organisations. However, the Agency only received resources for its basic functions and no additional funds for the implementation of activities.<sup>685</sup> Initially, the Agency was responsible for the administration of PHARE funds, which amounted to LEI 107 billion in 2005. With the government’s Emergency Ordinance of 2005, the Government General Secretariat (GGS) became responsible for the funds’ administration. The PR of the GGS, Cristian Sinc, justified the transfer by stating that the Implementation Department of the Agency ‘did not auction the projects meant to improve ethnic Roma condition. Moreover, the Implementation Department has not drawn up a project to support these projects.’<sup>686</sup> It seems that at present, the Agency deals mostly with strategic policy planning rather than implementation of activities.<sup>687</sup>

The overall implementation of the Strategy entails three additional components – Ministerial Commissions subordinate to the Joint Committee of Implementation and

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<sup>682</sup>Chiriac, Marian, “A Necessary Change of Strategy – Report on the Implementation of the Romanian Government’s Strategy for the Improvement of the Roma Situation”, p. 16, quoting interview with Costel Bercuş.

<sup>683</sup>Oprescu, Dan, “Public Policies on National Minorities in Romania (1996 – 1998)”, p. 78 in Nastasa, Lucian, and Levente Salat, *Interethnic Relations in Post-Communist Romania*, (Cluj-Napoca: Fundația CRDE, 2000 ) [[http://www.edrc.ro/publicatii/Cartea\\_Alba/eng/white\\_book3.pdf](http://www.edrc.ro/publicatii/Cartea_Alba/eng/white_book3.pdf)] (accessed: September 8, 2008).

<sup>684</sup>Ionescu, Mariaea, and Sorin Cace, *Public Policies for Roma. Evolution and Perspectives*, (Bucharest, 2006), p. 68 [[http://www.anr.gov.ro/docs/Publicatii/Public\\_policies\\_for\\_roma.pdf](http://www.anr.gov.ro/docs/Publicatii/Public_policies_for_roma.pdf)] (accessed: September 08, 2007).

<sup>685</sup>“Brief Assessment of Romania’s Compliance with Some Critical EU Requirements: Accomplishments and Weaknesses”, p. 19.

<sup>686</sup>“National Agency for Ethnic Roma Remains without PHARE Money”, *Divers Bulletin*, 27: 155 (2005) [<http://cm.greekhelsinki.gr/index.php?cid=915&sec=192>] (accessed: September 2007).

<sup>687</sup>Ibid.

Monitoring, Local Experts on Roma Affairs, and County Offices on Roma. The Ministerial Commissions are in charge of planning, organising, and implementing the activities in the context of the Strategy.<sup>688</sup> The Ministry of Health has established a functioning Commission, chaired by a state secretary and charged with reviewing and evaluating policies. The Ministry is the only authority that receives funding from the state's annual budget and runs a successful health mediator's program, turning Romania into a regional leader in healthcare policies targeting the Roma population.<sup>689</sup> This policy is also group-specific because the health mediators aim to improve the health of the Roma population. Respectively, close to 200 health mediators are working across the country, and their geographical distribution is based on the need and local willingness to participate. Each mediator is assigned to a local general practitioner and meets with him or her on a weekly basis to discuss the progress of activities. The local and national authorities, as well as the Romani organisation CRISS monitor the activities of the health workers.<sup>690</sup> The Ministry of Health informs that mediators have assisted 40,015 Roma in obtaining health insurance, helped 3,521 women to register with a general practitioner, aided 1,180 people in acquiring identity documents, and identified 12,836 children in need of vaccinations.<sup>691</sup>

The other ministries have introduced policies that either do not take ethnicity into account or target members belonging to the Roma minority. The Ministry of Labour, for example, has inconsistent employment strategies, and job fairs appear to be the sole source of information on work positions. Due to the insufficient promotion of job fairs, only a small number of employers and job seekers attend them.<sup>692</sup> A Ministerial Commission for Roma functions within the Ministry of Labour, working to increase the Roma's employment

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<sup>688</sup> "Strategy of the Government of Romania for Improving the Conditions of the Roma", pp. 13-4.

<sup>689</sup> "Decade Watch. Roma Activists Assess the Progress of the Decade of Roma Inclusion 2005 – 2006", (Hungary: Createch Ltd., 2007), p. 43 [<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8664&chapter=6&query=Romania%40ref&highlight=&querytype=bool>] (accessed: September 10, 2007).

<sup>690</sup> "Mediating Romani Health: Policy and Program Opportunities", (New York: Open Society Institute, 2005), pp. 19-20. [[http://www.soros.org/initiatives/health/focus/roma/articles\\_publications/publications/romanihealth\\_20051201/roma\\_health\\_mediators.pdf](http://www.soros.org/initiatives/health/focus/roma/articles_publications/publications/romanihealth_20051201/roma_health_mediators.pdf)] (accessed: September 10, 2007).

<sup>691</sup> *Ibid*, pp. 47-8.

<sup>692</sup> "Decade Watch. Roma Activists Assess the Progress of the Decade of Roma Inclusion 2005 – 2006", p. 43.

opportunities. However, only 202 out of the 23,961 persons who received vocational training in 2003 were Roma.<sup>693</sup>

The Ministry of Education and Research has developed a strategy on Roma education.<sup>694</sup> Furthermore, the government initiated affirmative action for high school education and vocational training. In line with the liberal approach, Romania is the only country of the three states that introduced the quota system for the purposes of education. Arguably, affirmative action focuses on the individual because it represents a preventative procedure, which aims to minimize the possibility of discrimination.<sup>695</sup> In this sense, Romania again adopts measures that are focused on the integration of persons of Roma origin and not on the Roma's social inclusion as a group.<sup>696</sup> At the same time, affirmative action aims to deal with 'inequitable outcomes of social arrangements without disturbing the underlying framework that generates them.'<sup>697</sup> These policies attempt to correct final outcomes rather than the processes that generate inequality.<sup>698</sup>

The Ministry opened 1,350 places for Roma students and increased their number to 3,000 the following year. Approximately 2,500 students were admitted to secondary schools in 2004 and 2005.<sup>699</sup> During the next year, the government adopted affirmative measures for tertiary education and opened 398 university places for young Roma candidates.<sup>700</sup> The

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<sup>693</sup> "CEACR: Individual Observation Concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Romania (ratification: 1973) Published: 2006" [<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8664&chapter=6&query=Romania%40ref&highlight=&querytype=bool>] (accessed: September 10, 2007).

<sup>694</sup> The Strategy aims at: encouraging the Roma to enter universities through publicly funded places for Roma candidates; establishing classes for Roma speaking teachers who will be working with Roma students; providing classes in Romani as a native language in the schools; and others. See: "Advancing Education of Roma in Romania: Country Assessment and the Roma Education Fund's Strategic Directions", p. 47.

<sup>695</sup> Tierney, William, "The Parameters of Affirmative Action: Equity and Excellence in the Academy", *Review of Educational Research*, 67: 2 (1997), p. 167.

<sup>696</sup> McHarg, Aileen and Donald Nicolson, "Justifying Affirmative Action: Perception and Reality", p. 15

<sup>697</sup> Fraser, Nancy, "A Rejoinder to Iris Young" in Willett, Cynthia, *Theorizing Multiculturalism: A Guide to the Current Debate*, pp. 31-2.

<sup>698</sup> *Ibid*, pp. 31-2

<sup>699</sup> "Advancing Education of Roma in Romania: Country Assessment and the Roma Education Fund's Strategic Directions", pp.147-8.

<sup>700</sup> "Minority Protection in Romania, EU Accession Monitoring Program", 2002, p. 502

[[http://www.eumap.org/topics/minority/reports/minority02/international/sections/romania/2002\\_m\\_romania.pdf](http://www.eumap.org/topics/minority/reports/minority02/international/sections/romania/2002_m_romania.pdf)] (accessed: March 6, 2006).

government also issued legal notification against segregation in schools, but segregation is likely to continue unless the warning transforms into a governmental decree or decision.<sup>701</sup>

In sum, the government did not adopt policies targeting the entire education system but measures directed toward members of the respective minority.

The last two structures in line with the Strategy, the Roma experts and County Offices on Roma work on the local level. Such decentralisation of power advances the goals of liberal multiculturalism if the local and regional structures are committed to accommodating ethnic minorities. Adjustments are more readily identified, of smaller scale, and less expensive. Local authorities may experiment with different practices, and it is less costly to correct inadequate policies on a limited scale. Regional authorities may exchange experience and learn from the practices of other regions. A decentralised network is an important precondition for the growth of civic culture.<sup>702</sup>

The Romanian County Offices work under the supervision of the Joint Committee of Implementation and Monitoring, and the experts assist the offices on Roma and the mayor. The county offices are responsible for the planning and coordination of activities on the local level.<sup>703</sup> As a part of a frequently recurring scenario, their employees had no access to the organisational resources of the local administration, and the prefects did not assist the Offices. It was difficult to estimate the necessary funds, and the Offices only carried out activities that required no resources, such as informational campaigns, seminars, participation in the Census, conflict resolution, signing partnerships with NGOs and decentralised institutions for project implementation at the local level and implementation of projects that are funded as a part of the Strategy, to a more limited extent.<sup>704</sup>

The other local structure, the Roma expert represents the main mediator between the authorities and the public.<sup>705</sup> The Roma experts function within the Counties' Prefectures, which do not have funding available for the position. The Regional Councils are the

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<sup>701</sup> "Advancing Education of Roma in Romania: Country Assessment and the Roma Education Fund's Strategic Directions", p. 47

<sup>702</sup> Parekh, Bhikhu. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, p. 212.

<sup>703</sup> "Strategy of the Government of Romania for Improving the Conditions of the Roma", pp. 14-5.

<sup>704</sup> Ionescu, Mariea, and Sorin Cace, *Public Policies for Roma. Evolution and Perspectives*, p. 47.

<sup>705</sup> "Strategy of the Government of Romania for Improving the Conditions of the Roma", p. 15.

institutions responsible for the allocation of funds, but the Roma experts were not invited to the sessions, during which financial decisions were made.<sup>706</sup>

In general, the Strategy does not invoke funding sources, and this fact poses a serious concern for the government's ability to implement the measures.<sup>707</sup> The Strategy received a low level of direct funding considering the government's own estimate that EUR 105 million was required over a period of 10 years. According to the estimate, 69 percent of the funding would come from international donors, and the government would contribute the rest of the money or approximately EUR 32.55 million. Three years after the Strategy was adopted, the government has allocated no more than EUR 3 million. A contribution of 1.6 million was secured for the improvement of Roma's living conditions, and 1.33 million was provided for the education of disadvantaged groups, with a special focus on the Roma.<sup>708</sup> The public authorities submitted 220 projects to an evaluation and selection committee, which identified 83 of them as eligible and funded only 17.<sup>709</sup> Information about these projects and their budgets remains confidential.<sup>710</sup>

The fact that the implementation of policies did not lead to a significant improvement of the situation of the minority can be attributed to the effects of the transitional period on the Romanian state. Romania went through a period of recession that affected its capacity to independently fund the Government Strategy for Improving the Situation of Roma. With respect to effectiveness, the Strategy has been more about 'conceiving', 'planning' or 'elaborating' than about the actual implementation of measures.<sup>711</sup> The idea that 'the process is more important than the product' has become a guiding line of a program 'obsessed with planning.'<sup>712</sup> A statement of Prime Minister Natase illustrates the overall implementation of

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<sup>706</sup> Bunescu, Ioana "EU Eastern Enlargement „Conditionality” of Minority Protection as a Political Opportunity for Romanian Roma", p. 17 [[http://www.in-spire.org/articles/ib02062007\\_Romanian\\_Roma.pdf](http://www.in-spire.org/articles/ib02062007_Romanian_Roma.pdf)] (accessed: September 10, 2007).

<sup>707</sup> "State of Impunity: Human Rights Abuse of Roma in Romania", p. 72.

<sup>708</sup> "Monitoring Local Implementation of the Government Strategy for the Improvement of the Condition of Roma", p. 25.

<sup>709</sup> Most projects (9 of the total) entailed infrastructural improvements, building electricity supply networks, paving roads, and establishing a community cultural centre. One project envisaged the establishment of a healthcare facility, three others proposed school renovation, and the rest pertained to activities generating income. See: Ionescu, Marica, and Sorin Cace, *Public Policies for Roma. Evolution and Perspectives*, p. 91.

<sup>710</sup> "Monitoring Local Implementation of the Government Strategy for the Improvement of the Condition of Roma", p. 25.

<sup>711</sup> Interview with Dan Oprescu, 2 February 2001, Bucharest in "State of Impunity: Human Rights Abuse of Roma in Romania", p. 72

<sup>712</sup> *Ibid*, p. 72.

activities: ‘The Strategy is excellent, we adopted it, everybody was satisfied and after that we put it in the drawer.’<sup>713</sup>

The general Romanian approach to minorities remains closer to the liberal model of human rights. The fact that the Council and the local structures have limited authority suggests that the Romanian government has been reluctant to adopt special measures for accommodating the ethnic minorities in the country. This reluctance is explainable considering the geopolitical situation of Romania, whose Hungarian minority has an external homeland and is therefore seen as a security threat to the Romanian state.

On the other hand, chapter four on the historical treatment of minorities has illustrated the many ways, in which the Roma minority was marginalised, of which the long period of slavery is one example. The relatively ineffective attempt to improve the situation of the minority can be explained considering this legacy of marginalisation, combined with the negative attitude of the dominant group toward the country’s ethnic minorities and the lack of sufficient resources for the implementation of measures. In principle, the government program entails even more measures than its Bulgarian counterpart. The central and local levels participate in their implementation, and there is a structure to monitor and coordinate the planned activities. However, the ambitious program lacks a clear vision of priority areas. The government has introduced a successful and commendable health mediators’ program, but the Strategy does not mention or justify the need to focus on this specific concern. The enduring marginalisation of the minority presupposes clear criteria for evaluating its living conditions. These would enable the government to articulate the most pressing concerns and the most feasible and effective solutions. Finally, real devolution of authority to the local administrations would engage the skills of actors that have knowledge on the grassroots’ level.

### **5.3.3. Hungary**

#### **5.3.3.1. Legal framework within the human rights system**

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<sup>713</sup> “Prime Minister Adrian Năstase, Video-Conference with Counties and Bucharest municipality, Friday, 6 September 2002” in “Monitoring Local Implementation of the Government Strategy for the Improvement of the Condition of Roma”, p. 10.

The Hungarian Constitution guarantees the autonomy of the individual from state authority as per Article 70/ A of Act XX, which adopts the ECHR's prohibition of discrimination. The article postulates that Hungary 'shall respect the human and civil rights of all persons in the country without discrimination,' with national origin among the protected characteristics.<sup>714</sup>

The scope of Paragraph 1 is limited to civil and human rights, but the Constitutional Court has extended the non-discrimination principle to the entire legal system.<sup>715</sup> Discrimination, in this sense, is defined as the limitation of some right or duty by the state or the imposition of obligations that are not prescribed to others.<sup>716</sup> The constitutional text does not elaborate on the concept of discrimination.<sup>717</sup> Similarly, article 70/A makes no reference to the responsibility of individuals and private entities to abide by the principle of non-discrimination.

The imprecise formulation of the principle does not arise from the unwillingness of the Hungarian state to provide guarantees against unequal treatment. The text of the current Constitution is the result of the 1989 Round Table negotiations between the hardliners and reformers of the Hungarian Socialist Workers' Party and the fairly undifferentiated oppositional structures.<sup>718</sup> As a result, the amendment to the Constitution represented a political compromise that contained a number of contradictory and imprecise formulations. However, a premature promulgation of a new Constitution may have contributed to a 'conservation of transitory state of affairs full of compromises.'<sup>719</sup>

The statutory laws based on the amended Constitution contained general anti-discrimination provisions only. The Parliament proceeded to refine the existing legislation in

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<sup>714</sup> Act XX of 1949, The Constitution of the Republic of Hungary

[<http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf>] (accessed: September 13, 2007).

<sup>715</sup> The Constitutional Court voted on decision 61/1992 (XI. 20) to incorporate the principle of non-discrimination into national legislation; Kadar, Andras, and Lilla Karkas, "Report on Measures to Combat Discrimination. Directives 2000/ 43/ EC and 2000/ 78/ EC. Country Report Hungary, 2005" [[http://migpolgroup.socialchange.net.au/multiattachments/3467/DocumentName/hurep05\\_en.pdf](http://migpolgroup.socialchange.net.au/multiattachments/3467/DocumentName/hurep05_en.pdf)] (accessed: 13, September 2007).

<sup>716</sup> ABH 45/200 para. 3.2 in Zentai, Violetta, and Andrea Kirzan, "Policy Frames and Implementation Problems: the Case of Gender Mainstreaming. State of Art and Mapping of Competences in Hungary", p. 6 [<http://www.mageeq.net/docs/hungary.pdf>] (accessed: December 29, 2007).

<sup>717</sup> Zentai, Violetta, and Andrea Kirzan, "Policy Frames and Implementation Problems: the Case of Gender Mainstreaming. State of Art and Mapping of Competences in Hungary", p. 7.

<sup>718</sup> Elster, Jon, "Constitutionalism in Eastern Europe: An Introduction", *The University of Chicago Law Review*, 58: 2 (1991), p 456.

<sup>719</sup> Halmai, Gabor, "Reform of Constitutional Law in Hungary after the Transition", *Legal Studies*, 18:2 (1998), p. 190-4.

2004 by adopting Act CXXV on Equal Treatment and Promoting Equal Opportunities (ETA). The Act transposes the Race Equality and Labor Equality Directives into national legislation.<sup>720</sup> The law provides comprehensive safeguards against discrimination through a non-exhaustive list of protected characteristics. It also allows for non-governmental organisations and government structures to act on behalf of victims.<sup>721</sup>

This approach is in line with the Hungarian rationale that domestic devolution of authority will serve as an example for the empowerment of Hungarian minorities abroad. In accordance with this view, the Equal Treatment Authority, which is the main anti-discrimination structure, enjoys wide authority over case investigations and can impose fines on those who violate the equality provisions.<sup>722</sup> This flexibility is possible because the body has its independent funding and cannot be instructed in its sphere of competence.<sup>723</sup> As a result, the authority is able to resolve cases quicker than other existing mechanisms. It takes between 4 and 5 months to make a decision, while a court case continues for a year, and a case before the ECtHR can extend to 3-5 years.<sup>724</sup> The fact that the ETA is empowered to review complaints across the country<sup>725</sup> further illustrates the substantial authority vested within the anti-discrimination structure.

A second investigative mechanism, the Minority Ombudsman, named Parliamentary Commissioner for the Rights of National and Ethnic Minorities, examines Constitutional rights' violations and initiates measures to remedy them. Any person who suffers injustice by

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<sup>720</sup> Holbrook, Eshter, and William Ejalu "ENAR Shadow Report 2005. Racism in Hungary", p. 3.

<sup>721</sup> Ibid, p.3

<sup>722</sup> Fines vary between of 50.000 – 6.000.000 HUF (200 – 24,000 EUR). See: Office for Ethnic and National Minorities, "Equal Treatment Authority Took up in 2005", 2005, p.2 [www.szmm.gov.hu/download.php?ctag=download&docID=1132] (accessed: September 13, 2007); The most frequent complaint has been discrimination at the workplace, affecting mostly the Roma, the disabled, and mothers of young children. The largest fine that ETA imposed was 1.3 million HUF (5000 EUR) on two companies that rejected Roma applicants after 30-second interviews. See, for example: Freedom of Association and Labor Law. Hungary, Legislationline [http://www.legislationline.org/?tid=221&jid=24&less=false] (accessed: September 13, 2007).

<sup>723</sup> The budget law assigned 202 million HUF (769,000 EUR) for 2006 and 161 million HUF (613,000 EUR) for 2007. Since January 2007, the Authority has used 50 percent of the imposed fines for different goals specified by the ETA. See, for example: "Implementation of the International Covenant on Economic, Social and Cultural Rights, Committee on Economic, Social and Cultural Rights, February 2007" [http://209.85.129.104/search?q=cache:gPLpGiZSKVUJ:www.unhchr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/c50baca85edfed36c1257214004acdc5/%24FILE/G0741357.doc+Equal+Treatment+Authority+HUF+Hungary&hl=bg&ct=clnk&cd=55&gl=bg] (accessed: September 15, 2007).

<sup>724</sup> "CHCF Business Plan, Chance for Children Foundation"

[http://www.cfcf.hu/?nelement\_id=27&article\_id=65] (accessed: September 15, 2007).

<sup>725</sup> "Levels of Discrimination in Hungary among the Highest in Europe".

the public authorities can turn to the Parliamentary Commissioner in cases, where all other routes have been exhausted or do not exist. The Ombudsman investigates all public authorities and can request information, hearings, written explanations, opinions from a competent official, etc. Upon finding a violation, the Ombudsman issues recommendation, to which the perpetrator must respond within a period of one month.<sup>726</sup> However, the body cannot issue a legally binding decision or correct the abuse. Its role is to merely investigate cases and propose measures to the organ concerned. A case of the 2006 Ombudsman Report illustrates the limited power of the body to influence perpetrators' actions. The report states that the Ombudsman 'received numerous complaints, including from the National Roma Self-Government that the Hungarian Roma community's dignity had been violated by the false picture conveyed by the media of Roma and which was also capable of inciting hatred.'<sup>727</sup>

The Ombudsman requested that the Cooperation Board of the journalists' organisations condemn the anti-Roma speech and called for journalistic self-restraint and responsibility. The Board replied in several months, merely stating that the press organisations had not agreed on a joint statement. Four organisations agreed with a draft response produced by the Cooperation Board, two gave evasive replies, and the other four did not react to the Ombudsman's request.<sup>728</sup> It is clear that if accusers exhaust all other channels for remedy, they have to rely on the good will of authorities and organisations to consider the request of the Ombudsman. As in the Bulgarian case, the Ombudsman represents an alternative form to the executive anti-discrimination body that serves to facilitate dialogue and increase the general knowledge of discriminatory practices.

In sum, the Hungarian approach to anti-discrimination has been the transposition of generic international norms, combined with a positive obligation to monitor and respond to discriminatory acts. Concurrently, Hungary has adopted the multicultural model of special protection in the form of non-territorial autonomy. The discussion in chapter four suggests that the Hungarian assimilative approach has eliminated the perception that minorities could be a security threat to the state's territorial integrity. Ethnicity could safely become a

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<sup>726</sup> Kadar, Andras, and Lilla Farkas, "Report on Measures to Combat Discrimination. Directives 2000/ 43/ EC and 2000/ 78/ EC. Country Report Hungary, 2005", p. 43.

<sup>727</sup> "Annual Report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 2006" [<http://www.obh.hu/nekh/en/reports/reports.htm>] (accessed: September 16, 2007).

<sup>728</sup> Ibid.

synonym for cultural diversity, a fact which explains the government's readiness to accommodate multiple visions of identity.

### **5.3.3.2. Government measures for Roma integration**

The Hungarian approach toward minority protection includes constitutional guarantees, group-based rights, and non-territorial autonomy or self-government. However, the emphasis that Hungary places on minority protection may be attributed to the state's efforts to secure special protection for the Hungarian minorities in other countries. To this end, Hungary has adopted two policy lines: interference in the domestic affairs of countries with Hungarian minorities and adoption of robust domestic protection with the aim to raise Hungary's diplomatic leverage and negotiate on the status of the Hungarian minorities abroad.

The country has adopted all relevant human rights instruments.<sup>729</sup> The present Constitution of Hungary contains provisions that protect the identity of domestic minorities as well as clauses that permit involvement in issues related to the treatment of ethnic Hungarians abroad. Article 6 (3), for example, stipulates that the state bears responsibility for 'Hungarians living outside of its borders and promotes the fostering of their relations with Hungary.'<sup>730</sup>

These Constitutional arrangements suggest that while Hungary develops legislation on ethnic Hungarians abroad, the authorities may disregard the FCNM's principle of 'sovereign equality, and ... political independence.'<sup>731</sup> In fact, the country has already disregarded this principle by introducing legislation that aims to protect the Hungarians outside the borders of Hungary. Two main approaches toward the protection of the Hungarian Diaspora stand out: institutionalized trans-border protectionism and the adoption of special protection, serving as a model for countries with Hungarian minorities.

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<sup>729</sup> Among those are: UNESCO Convention against Discrimination in Education, the ILO Convention No 111, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. See, for example: "Human Right Conventions Ratified by Candidate Countries, 15 September 2002".

<sup>730</sup> Constitution of the Republic of Hungary.

<sup>731</sup> See article 21 of the Framework Convention for the Protection of National Minorities.

In 2001, the government of Prime Minister Orbán attempted to institutionalize cross-border protectionism through the Status Law on Hungarians Living in Neighbouring States. According to its original provisions, all ethnic Hungarians and their families had access to educational facilities as Hungarian citizens (Article 4). They were entitled to social security benefits for contributions paid during work periods in the state (Article 7). Ethnic Hungarians had the right to temporary work permits under articles 15 and 16.

In response to the harsh criticism of the Romanian and Slovakian governments, the Venice Commission expressed the opinion that the role of Hungarian institutions abroad approached a *de facto* exercise of sovereign power over the affairs of neighbouring countries. In December 2001 and January 2002, Hungary revoked the Law in compliance with international human rights standards.<sup>732</sup>

With the introduction of group-based rights for minorities, the government adopted another approach – establishing a model of minority treatment for its neighbouring countries.<sup>733</sup> The willingness to adopt exemplary minority legislation reflects both concern for ethnic Hungarians abroad and trust in the loyalty of domestic minorities. The reason behind the high level of trust is the fact that Hungary accommodates a multitude of small, dispersed, and relatively assimilated ethnic communities and the large but dispersed and culturally diverse Romani minority.<sup>734</sup> The nature of the ethnic composition eliminates perceptions of threat to the state's territorial integrity and accounts for the extensive Constitutional protections of individual and collective identities. Article 68 (2) confirms that the Republic of Hungary grants protection to its ethnic and national minorities, ensuring their inclusion in public life and fostering the cultures of ethnic minorities.<sup>735</sup>

The 1993 Act LXXVII on the Rights of National and Ethnic Minorities builds upon the far-reaching Constitutional protections of minorities. Several provisions stress the importance of cultural and linguistic ties with the country of origin, a clear indication of the

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<sup>732</sup> Hoffmeister, Frank, "Monitoring Minority Rights in the Enlarged European Union", pp. 96-8 in Toggenburg, Gabriel, ed., *Minority Protection in the Enlarged European Union: the Way Forward*, (Budapest: Open Society Institute, 2004) [<http://lgi.osi.hu/publications/2004/261/Minority-Protection-and-the-Enlarged-EU.pdf>] (accessed: September 17, 2007).

<sup>733</sup> Kriza, Andrea, "The Hungarian Minority Protection System: a Flexible Approach to the Adjudication of Ethnic Claims", *Journal of Ethnic and Migration Studies*, 26:2 (2000), pp. 249-50.

<sup>734</sup> *Ibid*, pp. 249-50.

<sup>735</sup> Act XX of 1949. The Constitution of the Republic of Hungary.

intent to provide an example of minority protection.<sup>736</sup> The scope of the preferred collective guarantees extends to non-territorial autonomy rather than territorial autonomy. This choice is understandable in view of the contentious claims for succession among Hungarians abroad.<sup>737</sup> Therefore, the preference for non-territorial autonomy reflects the desire for the empowerment of the Hungarian minorities in neighbouring states.

The chosen type of non-territorial autonomy entails cultural, personal, and functional decentralisation. Cultural autonomy involves the devolution of power over ‘identity issues’ such as education and language.<sup>738</sup> Personal autonomy allows the establishment of administrative structures to address identity-related concerns, for example, decision-making and representative bodies for minority groups. The last type of autonomy, functional decentralisation, entails the transfer of rights and state functions to minority decision-making structures.<sup>739</sup>

In line with this model of non-territorial autonomy, the Hungarian domestic minorities are entitled to cultural rights and their own institutions, referred to as national and local self-government in the Minority Act.<sup>740</sup> These local authorities have the right to possess and display their own insignia, run their own educational and cultural institutions, print newspapers and broadcast media. They also have the right to veto the appointments of school principals and veto municipal or council resolutions affecting minorities. National self-governments, on the other hand, have functional rights, i.e. they participate in legislative procedures where the respective laws affect minorities.<sup>741</sup>

The non-territorial character of the self-governments evokes the issue of group boundaries’ permeability. Strong ethnic boundaries would limit the liberal individual right to self-identification. However, weak boundaries might confirm the fear of multiculturalists that

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<sup>736</sup> See, for example, Article 3 (4) and Article 14 of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities [[http://www.minelres.lv/NationalLegislation/Hungary/Hungary\\_Minorities\\_English.htm](http://www.minelres.lv/NationalLegislation/Hungary/Hungary_Minorities_English.htm)] (accessed: February 7, 2008).

<sup>737</sup> Deets, Stephen, and Sherrill Stroschein, “Dilemmas of Autonomy and Liberal Pluralism: Examples Involving Hungarians in Central Europe”, *Nations and Nationalism*, 11:2 (2005), p. 296-8.

<sup>738</sup> *Ibid.*, p. 298

<sup>739</sup> *Ibid.*, p. 298.

<sup>740</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

[[www.szmm.gov.hu/download.php?ctag=download&docID=14123](http://www.szmm.gov.hu/download.php?ctag=download&docID=14123)] (accessed: 1 July, 2010).

<sup>741</sup> Kaltenbach, Jano, and Laszlo Forika, “The Hungarian Participation Model and Its Implementation for the Roma”, pp. 179-81 in Thelen, Peter, ed., *Roma in Europe. From Social Exclusion to Active Participation*, (Skopje: Friedrich Ebert Stiftung, 2005).

dominant groups overrun their minorities.<sup>742</sup> The second scenario is evidenced with the establishment of Roma self-government. Members of the dominant group can run for elections given that they are not required to declare their ethnic affiliation. Furthermore, there are no records of citizens' ethnic background, and every Hungarian has the right to vote in the elections.<sup>743</sup>

As a result, more than half a million votes were cast for minority candidates in the 1994 elections. The minorities' representatives ignored the danger of being outvoted by the dominant group and at first interpreted electoral activity as a sign that the dominant group sympathised with them. According to the post-election estimates, numerous representatives of the minority self-governments '[did] not belong to the community and [were] only interested in a certain "ethno business".'<sup>744</sup> The Minority Ombudsman repeatedly argued that a voluntary registration of voters of minority origin would be compatible with the freedom to self-identify as a member of an ethnic community.<sup>745</sup> The Hungarian parliament agreed with the Ombudsman and passed a law, which gave only registered citizens the right to vote.<sup>746</sup> In this way, the state preserved the individual right to self-ascription but limited the possibility to repeatedly alter one's ethnicity according to the perceived benefits.

A final but significant point of the discussion relates to the absence of economic protection within the system of self-governments. The Minority Act does not protect the right of minorities to a decent standard of living, and they cannot demand that the authorities improve their living standard when the issue is excluded from the minority political

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<sup>742</sup> Deets, Stephen, and Sherril Stroschein, "Dilemmas of Autonomy and Liberal Pluralism: Examples Involving Hungarians in Central Europe", p. 298.

<sup>743</sup> Kallai, Erno, "Legislation and Government Programs Relating to the Roma Population in Hungary since the Political Changes of 1989-90", p. 304 [http://www.mtaki.hu/docs/kemeny\_istvan\_ed\_roma\_of\_hungary/erno\_kallai\_legislation\_and\_government\_programs.pdf] (accessed: November 20, 2007).

<sup>744</sup> Kaltenbach, Jano and Laszlo Forika, "The Hungarian Participation Model and Its Implementation for the Roma", pp. 179-81 in Thelen, Peter, ed., *Roma in Europe. From Social Exclusion to Active Participation*, p. 183; A form of „ethno-business” is, for example, the inclusion of non-Germans in the German Councils because of foreign funding and trips to Germany. See, for example, Koncsek, Albert, German National Minority Self-Government, 2000, Interview in Deets, Stephen, and Sherrill Stroschein, "Dilemmas of Autonomy and Liberal Pluralism: Examples Involving Hungarians in Central Europe", p. 298.

<sup>745</sup> Personal Interview with Jenó Kaltenbach in Vermeersch, Peter, *The Romani Movement. Minority Politics and Ethnic Mobilization in Contemporary Central Europe*, (Oxford and New York: Braghahn Books, 2006), p. 74.

<sup>746</sup> Vermeersch, Peter, *The Romani Movement. Minority Politics and Ethnic Mobilization in Contemporary Central Europe*, p. 74.

agenda.<sup>747</sup> The absence of legal guarantees reduces the work of many Roma self-governments to lobbying on behalf of their destitute constituencies and negotiating future solutions. The Roma self-governments are unable to attend to the economic problems of the minority, and their legitimacy becomes questionable for the electorate.<sup>748</sup>

It can be argued that the work of the self-governments cannot replace the forces of the functioning market. However, this statement contradicts the fact that these institutions have rights related to their economic interests and activities. Notably, they are granted the right to establish their own business enterprises and use the profits in support of their constituencies. One possible answer lies in the fact that the transitional period put enormous budgetary strain on the government at a time when the Roma needed substantial support from the state.<sup>749</sup> The erosion of public institutions created a ‘recession transformation’ that affected the retired, large families, unskilled workers, and other disadvantaged groups.<sup>750</sup> Hence, Hungary has been under pressure to integrate the Roma minority while reintegrating large social segments within the framework of the post-industrial capitalist model.<sup>751</sup>

While the absence of collective socio-economic guarantees brings disillusionment among the Roma, the establishment of self-government represents a considerable gain in the struggle for social equality. The Minority Act grants formal recognition of ethnic identities and ‘a framework to articulate [their] needs in an organized form.’ The right to self-government has given the Roma the chance to gain experience in institution building. The lobbying and opinion-forming functions of Roma representatives have become the path to political education and a channel for upward social mobility. Representation has become a ‘profession’ that brings material rewards and respect to Roma leaders. In addition, the election of several thousand representatives has resulted in the rise of Hungarian organisations that support local initiatives, training programs, and professional activities. This development has led to the growth of a capable and informed Roma elite. Finally, Julia Szalai notes that ‘participation in the political discourse assists the coupling of majority and

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<sup>747</sup> Kovats, Martin, “Minority Rights and Roma Politics in Hungary” in Cordell, Karl, ed., *Ethnicity and Democratisation in the New Europe*, (London: Routledge, 1999), p. 150.

<sup>748</sup> Ibid, pp. 190-4.

<sup>749</sup> Kovats, Martin, “Minority Rights and Roma Politics in Hungary” in Cordell, Karl, ed., *Ethnicity and Democratisation in the New Europe*, pp. 150-1.

<sup>750</sup> Attila, Agh, “Politics of Recognition and Eastern Enlargement: A Hungarian View”, *Anachronia*, 7 (2005), pp. 3-8.

<sup>751</sup> Ibid, pp. 3-8.

minority argumentations, and helps to put together the first building blocks of ... a local policy on majority-minority coexistence.<sup>752</sup>

Parallel to the development of the self-government system is the formulation of measures and structures that introduce the social equality principle. Until 1998, the Office for National and Ethnic Minorities functioned as the main government agency in charge of minority issues. According to official information, the Office operated as an independent administrative body with national authority. In line with Article 15 of the ECHR, the Office evaluated the enforcement of minority rights, prepared policy concepts for government resolutions, and facilitated communication between the national government and organisations run by ethnic minorities.<sup>753</sup> The Council was also in charge of the preparation and subsequent monitoring of a National Action Plan on Social Inclusion of Roma. The first Medium-Term Action plan enforced under Government Resolution No. 1093/1997 aimed to preserve the Roma's cultural identity and raise their socio-economic status. The Plan contained measures in terms of education, employment, anti-discrimination, and other aspects.<sup>754</sup> However, the resolution focused more on planning and researching than on actual implementation.<sup>755</sup>

The new government of Prime Minister Orbán decided to revise the Mid-Term Action Plan in 1998. The content of the program confirmed the principles of the previous document but prioritised tasks in the fields of culture and education. The Action Plan focused on regular attendance in primary school. Another goal was to reduce the dropout rate for high school and university students. The program also envisaged developing a system of cultural institutions, which offered further training to professionals. The government considered that

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<sup>752</sup> Szalai, Julia, "Conflicting Struggles for Recognition: Clashing Interests of Gender and Ethnicity in Contemporary Hungary" in Hobson, Barbara, ed., *Recognition Struggles and Social Movements. Contested Identities, Agency and Power*, (Cambridge: Cambridge University Press, 2003), pp. 204-5.

<sup>753</sup> Office for Ethnic and National Minorities, "Selection of News on National and Ethnic Minorities in Hungary, 2005".

<sup>754</sup> In brief, the educational component of the Plan envisioned developing and rationalizing the school fee and child welfare system, creating regional programs for talented children, and eliminating educational segregation. In the employment sector, the Action Plan aimed to eradicate segregated Roma settlements, to develop employment programs and refine existing ones, to integrate students of Roma origin in vocational training, and to implement agricultural programs. In relation to anti-discrimination, the Plan recommended evaluation of existing legislation in view of the possible need to enforce additional measures in Kallai, Erno "Legislation and Government Programs Relating to the Roma Population in Hungary since the Political Changes of 1989-90", pp. 311-3.

<sup>755</sup> Vermeersch, Peter, *The Romani Movement. Minority Politics and Ethnic Mobilization in Contemporary Central Europe*, p. 77.

a different type of management body would implement the program more efficiently and proceeded to replace the Coordination Council with an Interdepartmental Committee on Roma Affairs.<sup>756</sup> The new body was tasked with coordinating the work of various ministries in relation to the Action Plan. Each of the respective ministries was required to present an annual action plan for the implementation of the package measures and to allocate the necessary resources.<sup>757</sup>

Despite the more autonomous nature of the coordination body, the implementation brought mixed results. In 2000, the Ministry of Economic Affairs spent the largest share of government funding for measures under the midterm package. The ministry allocated HUF 2 billion (EUR 7.7 million) to retraining programs, public work labour projects, and subsidies for the long-term unemployed. However, these programs were open to all citizens, and the participants' ethnic origin was not recorded. Roma-related spending was calculated on the assumption that 8 to 10 percent of the participants were Roma, and this 'creative accounting' was used to determine the actual spending allocated to the Action Plan.<sup>758</sup>

If economic measures were tailored inappropriately, the Roma housing program was close to non-existent. The government invested HUF 300 million in the construction of housing for Roma families who were employed and sent their children to school. However, a flat for 5 people costs between HUF 5 and 6 million, and the available funding covered the construction of 50 to 60 flats. This small-scale project could hardly represent a Governmental National Gypsy Housing Program.<sup>759</sup> Measures related to the redevelopment of Roma neighbourhoods were not implemented. In 2001, the Ministry of Agriculture and Rural Development produced a bill, which called for the expenditure of HUF 43 billion over a five-year period to abolish 'areas of colony-like slum housing.'<sup>760</sup> The proposal featured two options: demolition or redevelopment by building infrastructure. The Interdepartmental

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<sup>756</sup> Kallai, Erno, "Legislation and Government Programs Relating to the Roma Population in Hungary since the Political Changes of 1989-90", p. 311-3.

<sup>757</sup> Kosztolányi, Gustav, "All Roads Lead to Roma. The Roma of Hungary and the EU Enlargement Debate (Part 1)", *Journal of Central and East European Politics, Society and Culture*, 2:35 (2000) [<http://www.ce-review.org/00/35/csardas35.html>] (accessed: September 17, 2007).

<sup>758</sup> Kadét, Erno "Creative Accounting: State Spending on Programmes for Roma in Hungary", *Roma Rights*, 2001 [[http://lists.errc.org/rr\\_nr2-3\\_2001/noteb3.shtml](http://lists.errc.org/rr_nr2-3_2001/noteb3.shtml)] (accessed: September 17, 2007).

<sup>759</sup> ERRC, "Roma Civil Rights Foundation: Open Letter to Prime Minister Viktor Orbán in „Foundation for Romani Civil Rights Letter to Hungarian Prime Minister" [<http://www.errc.org/cikk.php?cikk=247>] (accessed: September 18, 2007).

<sup>760</sup> Kállai, Erno, and Erika Törzsök, *A Roma's Life in Hungary. Report 2003: Illusory Politics and Standing Still*, p. 66.

Committee on Roma Affairs rejected the bill on the grounds that the costs of the project were excessive. The Committee stated that the money would be drained into ‘pet redevelopment schemes’ instead of alleviating the housing situation of the Roma.<sup>761</sup>

Achievements in the education sector seem more promising. The government started a program that aimed to reduce segregation and decrease the number of Roma dropouts. The government invested EUR 12.5 million to strengthen the schools’ engagement in integration and to encourage talented Roma pupils, along with a PHARE contribution of EUR 6.9 million.<sup>762</sup> The program of integrated education included 8,800 students in 2003 and 16,000 in 2004. The integration of disadvantaged students was required in all schools participating in the program, with the aim of eliminating segregation. Regional inspectors of the National Network of Educational Integration assisted the schools in the process of integration. The subsidy to schools from the state budget amounted to HUF 60,000 (226 EUR) in 2004. The government also expanded the scholarship system and distributed grants to 20,045 students and 7,739 mentoring teachers. Finally, the government aimed at reducing the number of students, the majority being of Roma origin, who were misdiagnosed as intellectually disabled. Independent experts examined 2,100 children and returned 212 of them to mainstream schools.<sup>763</sup>

A brief glance at this overview reveals similarities between the multidimensional character of the Action Plans and the program of the Bulgarian government. The attempt to cover many fields has resulted in the inadequate distribution of resources. As in Bulgaria, different structures participated simultaneously in implementation and came up with contradictory opinions. For example, the Ministry of Agriculture and Rural Development and the Interdepartmental Committee on Roma Affairs are two parties that could not reach an agreement on infrastructural development. The ambitious labour and retraining program secured substantial funding, but the project suffered from inadequate planning and lacked transparent implementation. It is commendable that the government pinpointed measures in one priority area, integrated education.

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<sup>761</sup> Ibid, p. 66.

<sup>762</sup> Marushiakova, Elena, and Vesselin Popov, “Hungary” [<http://www.dzeno.cz/docs/Hungary.doc>] (accessed: September 18, 2007).

<sup>763</sup> *Equal Access to Quality Education for Roma*. Volume 1, (Budapest: Open Society Institute, 2007), p. 229.

Efforts in the education sector have produced visible results because of substantial foreign and domestic investments and cooperation on state and regional levels. Moreover, the government did not merely encourage but mandated integration in the participating institutions, while local experts assisted the process. Prioritising education and devolution of implementation to the local level has made room for sensitive and appropriately tailored measures for improving the situation of the Roma.

#### **5.4. Conclusion**

This chapter explored the level of minority protection in Bulgaria, Hungary, and Romania and the underlying reasons for the adoption of agenda and legislation, based either on the liberal principles of equality or on the multicultural approach of accommodating the culture of ethnic minorities.

The first section of the chapter examined the low socio-economic status of the Roma in the three states. The majority of present-day communities live in impoverished areas with substandard infrastructure and limited access to healthcare services. Many Roma attend segregated educational establishments with outdated and substandard facilities, where low quality of education is provided. With limited educational backgrounds, the majority of Roma people hold unskilled jobs or rely on the state for social assistance. Roma suffer from discrimination and remain on the fringes of socio-economic life.

In the transitional period to democracy and market economy, the governments in the three states faced a difficult dilemma. They had to either adopt the liberal principles of equality and individual rights or the multicultural model of special protection for ethnic minorities.

The second section explored the reasons behind the adoption of particular approaches toward minority protection in each state. In chapter four, it was suggested that Bulgaria, Hungary, and Romania participated in imperial formations on different terms. The dominant group in Bulgaria was under Ottoman rule and at present claims to be a victim of historic oppression. Bulgarians question the loyalty of the former dominant group – the present Turkish minority – and mistrust its commitment to social cohesion and the fulfilment of common citizenship duties. Due to fear that the Turkish minority may attempt to resume its

dominant status, the dominant group shows a preference for a strong state and disempowered minorities. Mistrust of the former oppressor also explains why the liberal approach based on human rights was adopted.

The argument of historic injustice works differently in the Hungarian context. The Habsburg Empire, of which Hungary was a part, led a robust policy toward the assimilation of its ethnic minorities. After attaining independence Hungary pursued an effective policy of assimilation, which suppressed the minorities' capacity for effective political mobilization. These factors explain Hungary's readiness to adopt a multicultural approach of group-based rights and policies. Another factor that explains the strong emphasis on minority protection is the existence of large Hungarian minorities in neighbouring states. Due to the restructuring of borders after World War I, the incorporation of Hungarian-populated regions in other states is perceived as historic injustice. Hungary has adopted two approaches to deal with this historic injustice – trans-border protectionism and domestic multicultural policies, intended to serve as a model for the treatment of Hungarians abroad.

In Romania, the annexation of Transylvania served to remedy a perceived historic injustice – Hungary's control over Transylvania. However, the presence of the sizeable and politically active Hungarian minority and Hungary's attempts to interfere in the domestic minority affairs of other states resulted in shifting the focus from minority protection to social cohesion and national security. Due to concerns over the sovereignty and indivisibility of the state, Romania took the liberal understanding that the members of ethnic minorities be treated in the same way as the members of the dominant group.

An examination of the three states' legislation and policies followed the discussion of why states opted for liberal or multicultural approaches to accommodating their ethnic minorities. Bulgaria has adopted all the international instruments for human rights protection, which take priority over domestic legislation. However, the state's preference for the liberal approach is evident in recognising only persons belonging to minorities. The new Law on the Protection from Discrimination is in line with the EU anti-discrimination standards. A special administrative structure has the authority to examine cases and impose sanctions if discrimination has occurred. The legislative framework complies with and even goes beyond the minimum reading of international norms, which require effective participation through non-discrimination. Despite its administrative limitation (e.g. overload of cases), the anti-

discrimination structure has actual executive powers to implement decisions where discrimination has occurred.

The Framework Program for the Equal Integration of Roma envisages specific measures in terms of housing, healthcare, professional development, and education. The National Council on Ethnic and Demographic Issues is tasked with the program's implementation. Although the structure has coordinating and consultative functions, vesting of delaying and blocking powers would have been a sign of the state's commitment to the multicultural model of minority protection. Its small budget and limited focus on cultural initiatives also indicates the government's preference for the liberal approach. The program covers a comprehensive set of measures, but its scope is overambitious in view of the human and financial resources. In-depth analyses of each area and prioritisation of some fields over others might contribute more to the improvement of the socio-economic status of the Roma. Moreover, the implementation of this large-scale program requires more direct participation of the authorities on all levels of government. Stronger stances on minority protection, however, risk intensifying the impression of undue minority empowerment at the expense of the dominant group's chances to lead a better life. In view of the dominant group's mistrust of ethnic minorities and their loyalty to the state, group-based measures may also intensify the securitisation of ethnicity. In this sense, the multicultural model may become the norm only after mutual trust and tolerance have become characteristic features of dominant group – minority relations. Measures and policies that are conducive to building trust would facilitate the establishment of a country-specific approach toward minority protection.

Romania has adopted the body of human rights treaties that accords citizenship rights. At the same time, Romania places strong emphasis on national unity and territorial integrity, and its approach to accommodating multiple identities is in line with the minimal reading of effective participation. Law 48/2002 on the protection against discrimination is more limited in scope compared to the provisions of the EU anti-discrimination directives. The structure that evaluates cases of discrimination – the National Council for Combating Discrimination – has limited competencies and insufficient human and financial resources.

The Government Strategy for Improving the Situation of Roma is extensive and encompasses measures in ten priority areas, such as housing, healthcare, education, and civic involvement. The National Agency for Roma is responsible for the coordination of policies

on the regional and national levels. In line with the liberal approach, the agency is tasked with strategic planning rather than implementation of the package measures for Roma integration. The Ministerial Commissions are in charge of the strategy, but their approach is limited to inconsistent and under-funded measures which, as the measures for employment suggest, target the general population rather than members of the Roma population.

Similar to Bulgaria, the Romanian large-scale program requires substantial funding and direct involvement of the authorities on all levels of government. The implementation of policies in each area necessitates considerable planning, coordination, and financial and human resources. Careful reassessment of the planned measures, as with Hungary, and prioritisation of some policy areas could lead to policies that are better-suited to improve the socio-economic situation of the Roma. On the other hand, substantial investment of resources in the strategy, in its current form, runs the risk of provoking discontent among ethnic Romanians. The members of the dominant group may come to believe that these measures are being carried out to their disadvantage. Tolerance and trust building strategies may contribute to the acceptance of multiculturalism.

Hungary has adopted anti-discrimination legislation that transposes the EU Racial Equality and Labor Equality Directive and provides sound safeguards against discrimination. In line with the multicultural model, the Equal Treatment Authority has large competencies in evaluating cases of discrimination and imposing fines upon offenders. The fact that the structure has independent funding is sound proof of Hungary's commitment to the multicultural model.

The government's approach to minority protection includes group-based measures and non-territorial autonomy with the aim of personal, cultural, and functional decentralisation. Group-based economic guarantees, such as the right to a decent standard of living, are excluded from the political agenda. This fact has been attributed partly to the budgetary strain on successive governments to accommodate multiple demands by social groups affected by the transitional period. Despite the absence of socio-economic guarantees, the right to establish self-governments is a step toward the empowerment of ethnic minorities. Lobbying, opinion forming, and representation have given Roma the chance to gather experience in and experiment with institution building.

As part of the government program for minority protection, the Hungarian authorities developed a large-scale program for the inclusion of Roma through measures in education, housing, healthcare, and more. The program was re-evaluated in 1998 and revised to prioritise measures in culture and education. Prioritisation has brought visible results in education. The government secured financing and mandated the integration of disadvantaged Roma students in the education system. At the same time, these efforts at integration were assisted by regional inspectors from the National Network of Educational Integration. The program's success can be attributed to the allocation of considerable foreign and domestic funding and the close cooperation on and between state and regional levels.

Arguably, the Hungarian approach represents a model for improving the socio-economic situation of the Roma. The Hungarian state has gone beyond the minimum reading of effective participation, which only requires protection from discrimination, the right to vote in elections, run for office, and engage in advocacy. However, the ethnic minorities in Hungary are small, dispersed, and assimilated to a large extent. The Roma minority is sizeable but also dispersed and culturally diverse. The character of the ethnic composition in Hungary eliminates perceptions that ethnic minorities pose a security threat to the country. Multiple visions of identity are safeguarded and celebrated with the adoption of the multicultural approach to minority protection. At the same time, the state seeks extensive guarantees for the rights of the Hungarian minorities in neighbouring countries. The Hungarian approach to minority protection aims to establish a model for the protection of ethnic minorities and to strengthen the state's case for negotiating the status of Hungarians abroad.

In general, the response of the three governments entails a number of positive steps to empower the minority. The benefits of improving the socio-economic status of the Roma, even to the dominant group, are evident. For example, calculations show that the cost of integrating the Roma is BGN 1 billion while the returns, in terms of the Roma's productivity, would be BGN 22 billion in the next 10 years.<sup>764</sup> The most promising approach is applied in Hungary – choosing one or two priority areas and involving state as well as regional actors.

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<sup>764</sup> Богданов, Лъчезар, Ангелов, Георги „Интеграцията на ромите-икономически поглед, *Политики*, 05 (2007) (Bogradnov, Lutchezar, and Georgi Angelov, “The Integration of Roma-Economic View) [[http://politiki.bg/?cy=75&lang=1&a0i=222915&a0m=readInternal&a0p\\_id=238](http://politiki.bg/?cy=75&lang=1&a0i=222915&a0m=readInternal&a0p_id=238)] (accessed: January, 25 2008).

A general mismatch between the formulation and implementation of policies and the poor coordination between the local and state levels is evident in many of the states' policies, suggesting that monitoring is weak or absent. In chapter three, it was suggested that the involvement of international monitoring structures has been mostly in the form of advisors, information gathering thinktanks, or lobbying mechanisms. The principle of state sovereignty tends to discourage large-scale monitoring when the stakes are not as high as in regions of acute human rights violations. The answer may lie, in part, in the implementation of local projects by NGOs, the government, local authorities, and international authorities on human rights.

## **Conclusion**

After an overview of the contents and theoretical findings of this thesis, the conclusion turns to an outline of how the research done here can be taken forward. The thesis has exposed the reasons for the failure of the governments of Bulgaria and Romania, and for the relative success of the Hungarian government, to protect Roma minority rights. I will review a number of ways the identified problems could start to be addressed.

The thesis has examined the situation of the Roma in Bulgaria, Hungary, and Romania as well as the policies and rights, devised to improve the socio-economic status of this minority. I have looked into the nature of minority protection and the international and domestic institutions engaged in enforcing minority-related rights and measures.

By exploring these issues, I have concluded that in Eastern Europe, as represented by Bulgaria and Romania, the authorities have failed to deal with the unequal position of the Roma. To help explain this fact, the thesis has examined different theories of multiculturalism and nationality and their relevance to the unique position of the minority. The thesis also looked at the functioning of the international regime of human rights and the geo-political situation of the states in Eastern Europe.

My hypothesis was that a key factor in the failure of Eastern European states to improve the situation of their Roma minorities is that the ‘the dominant group – ethnic minority’ relations in these countries are based on a liberal model as opposed to a multicultural model.

The academic literature on ethnic minority rights has provided two main models that deal with the rights of minority cultures. The liberal model focuses on universal human rights and advances the standpoint that the way to improve the socio-economic situation of ethnic minorities is to ensure that their members are treated in the same way as the members of the dominant groups. The multicultural model focuses on special protection of ethnic minorities as the way to improve their quality of life.

The thesis has shown that the international system of human rights, which sets standards for minority rights’ legislation, is almost fully based on the liberal model. In line with this model, the governments of Eastern European states have chosen to adopt the liberal

model, thus according citizenship rights to their ethnic minorities. The multicultural model, which is based on the protection of minority cultures, has received little attention from the authorities in Bulgaria and Romania. Two explanations have emerged for the preference of states for the liberal model when setting the global human rights agenda as well as in their domestic affairs. Firstly, territorial integrity is still a major concern of these states, and they perceive stronger forms of multicultural rights such as secession and territorial autonomy as a threat. The focus of human rights standards and international monitoring organisations fits well with the security concerns of the states in Eastern Europe.

Secondly, the fact that Bulgaria and Romania have been reluctant to adopt multicultural policies has been attributed to the negative attitude of the dominant groups towards their ethnic minorities. The hostile attitude of the dominant groups emerges from historic developments, which are unique to these countries. For example, the Bulgarian dominant group has been mistreated by its Turkish minority in the past. At present, the Turkish minority is sizeable and active, while Turkey is its external national homeland. This is why, demands for stronger forms of protection are perceived as a threat to the state's territorial integrity. Unlike Bulgaria and Romania, Hungary does not have territorial and/or security concerns. Small, fairly integrated, and dispersed minorities with no external national homelands live on its territory. This explains why Hungary has been willing to adopt the multicultural model, which benefits the Roma minority.

The first chapter has employed theories of multiculturalism and nationality to provide a theoretical underpinning for the analysis of policies and institutions that can improve the socio-economic status of the Roma. The investigation has focused on the main features of nationality in Eastern Europe. The analysis of these features has helped explain why the dominant groups believe that their ethnic minorities pose a security threat to the territorial integrity of the state. Due to this perceived security threat, the states in the region show preference for the liberal model over the multicultural model. The chapter has examined the two models within the liberal – multicultural debate in order to identify whether a focus on human rights or special protection of the cultures of minority groups would bring a significant improvement of the problematic situation of the Roma.

The second chapter has looked at human rights legislation developed by the international community. The fact that the focus of most standards is on human rights as

opposed to cultural rights has helped explain why these standards have failed to contribute to improving the socio-economic situation of the Roma.

The international community has been reluctant to endorse stronger forms of minority protection such as territorial and non-territorial autonomy or cultural rights. Human rights documents that deal with the socio-economic situation of the Roma are in the form of guiding principles and non-binding recommendations only. The reluctance of states to develop standards that deal with the situation of Roma has been attributed to the fact that Roma-related issues are unpopular with the domestic electorates of these states. When an issue is politically sensitive, states are likely to drop it from their domestic political agendas. They will not call for more attention at the international level because their own domestic policies may come into the spotlight.

Taking into consideration the reluctance of states to commit to a more vigorous approach to improving the situation of the Roma, the third chapter has examined the application of monitoring mechanisms and their effectiveness in enforcing human rights and minority-related standards with respect to the Roma. The organisations that received detailed attention were the Office of the United Nations High Commissioner on Human Rights, the OSCE Office for Democratic Institutions and Human Rights, and the European Monitoring Centre on Racism and Xenophobia. An analysis of their involvement in Bulgaria, Hungary, and Romania has revealed that they are only engaged in the implementation of small-scale projects and initiatives for the integration of Roma. Monitoring has been absent from the work of these bodies, hinting at the low motivation of states to grant the monitoring organisations a more formidable presence in the field of minority protection.

In examining the particular developments and factors influencing the identity and situation of the Roma in Eastern Europe, the fourth chapter has looked at the historic treatment of Roma by the Bulgarian, Hungarian, and Romanian dominant groups. For historic reasons, the Roma minority is in a different and worse position than other ethnic minorities and therefore deserves a more focused enquiry. The focus of the chapter has been on historic marginalisation, proving that the process is not a recent development, but has transpired over many centuries. The long-lasting marginalisation of the Roma poses significant obstacles to the current government's efforts to improve their socio-economic status. The historic treatment of Roma in Bulgaria, Hungary, and Romania followed a

different course, with the general approaches of the dominant groups being marginalisation, assimilation, enslavement, and indifference. However, all these approaches have led to the present marginalised and unequal position of the Roma in the three countries, which require special protection in order to improve their quality of life.

The fifth chapter has examined the efforts of the Bulgarian, Hungarian, and Romanian governments to integrate their Roma minorities after the fall of Communism. The governments of Bulgaria and Romania have developed policies based on the liberal model and have ultimately failed to deal with the poor socio-economic situation of the Roma. Their strategies for Roma integration are comprehensive, but the implementation of the planned measures has not been consistent. The Hungarian authorities achieved considerably better results due to the fact that they developed policies based on the multicultural model, such as non-territorial autonomy. In addition, the government's efforts to improve the socio-economic situation of the Roma were more successful due to better planning, coordination, monitoring, and availability of resources, compared to Bulgaria and Romania.

The fifth chapter has also examined the historic geo-political situation of the Bulgarian, Hungarian, and Romanian states as to explain their preference for the liberal model, focused on citizenship, over the multicultural model, focused on the protection of minority cultures. The dominant groups in Bulgaria and Romania believe that their ethnic minorities are irredentist and pose a security threat. These territorial and/or security concerns are linked to historic developments unique to these countries. The dominant group in Bulgaria, for example, believes that the Turkish minority in the country cooperated with the Ottoman Empire, Bulgaria's former subjugator. The Bulgarian state is therefore reluctant to adopt special measures for the protection of minority cultures based on the multicultural model. The abovementioned security concerns are not an issue in Hungary. Its ethnic minorities are largely assimilated and dispersed and do not pose a threat to the territorial integrity of the state.

In view of the tense ethnic relations in Bulgaria and Romania, the first question to ask before even looking at minority protection for the Roma is how to approach the territorial and/or security concerns of these states. How to convince them that responding to minority claims, even claims to territorial autonomy (e.g. the ethnic Hungarians in Romania), will not result in secessionist violence?

The dominant groups in Eastern Europe oppose even modest claims such as those to mother-tongue secondary education and formal language rights.<sup>765</sup> Secessionist violence and mobilization for democratic secession are at the opposite end of the spectrum.<sup>766</sup>

One way to move from the ‘security-based debate’ to a ‘justice-based debate’ is to draw a line between secession and autonomy, persuading states that territorial autonomy is not the first step to secession.<sup>767</sup> International organisations can take steps to guarantee the territorial integrity and borders of countries in Eastern and Central Europe. This can be done if the international community insists that national minorities agree to a ‘loyalty clause’ and accept the current state borders. Yet, such steps have been taken and despite that the states in the region do not trust the guarantees of international organisations.<sup>768</sup>

Alternatively, Eastern European states should make room for debates on secessionist mobilization.<sup>769</sup> It is important that states take to heart human rights, justice, and the interests of their citizens rather than insist that state borders are inviolable. Non-territorial autonomy is a good solution in many cases, but debates about secession should be brought to the public space.<sup>770</sup> When debates on stronger forms of minority protection become part of the democratic discourse, other forms, such as non-territorial autonomy and cultural rights, will enter the public space as well.

If the Eastern European states move away from the security-based debate, they will make room for policies that can improve the situation of their Roma minorities. Kymlicka has suggested two approaches to the cultural accommodation of Roma. The minority has to either qualify for a national minority status or Roma-specific policies and institutions should be in place to improve its socio-economic situation.

Possible approaches involve including Roma representatives in the electoral lists, encouraging Roma to run for visible public offices, and including them in institutions engaged in decision-making. First, it is important that governments encourage political

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<sup>765</sup> Ibid, p. 140.

<sup>766</sup> Ibid, p. 141.

<sup>767</sup> Ibid, p. 140.

<sup>768</sup> Ibid, p. 143.

<sup>769</sup> Ibid, p. 146

<sup>770</sup> Ibid, p. 148.

parties to include Roma in their electoral lists during national and EU elections.<sup>771</sup> Thus, Roma representatives will gain greater exposure and lobbying power at the level of the European Parliament. Given the low priority of Roma issues on the agendas of international organisations, this development may become an additional incentive for joint state efforts at the European, regional, or international level.

It is important that successful community members run for visible public offices, e.g. mayors of the larger cities. Regardless of the chances to win elections, running for office has the potential to enhance the image of Roma. Leaders can show that the improved socio-economic position of Roma will benefit the whole nation. Roma candidates may come from the academia, the cultural and literary circles, the non-government sector, a political party, or any institution that is held in high esteem by Roma and the dominant group. At the same time, being aware of the Roma's problems, more members of the dominant groups may begin to empathize with them.

It would be of great help if the government institutions provided technical assistance and professional advice on campaigning methods to Roma leaders. Government officials may assist Roma candidates in developing platforms that promote a positive image of the Roma minority. The improved public and self-image of the Roma will 'restore their sense of pride, dignity, and identity.'<sup>772</sup> At the same time, platforms that intertwine Roma concerns with national interests may act to increase the trust of dominant groups in minorities as a whole.

Finally, it is essential that Roma leaders are given the opportunity to participate in national and local decision-making structures. Justice requires a balanced political process through counter-majoritarian rules in the form of power-sharing.<sup>773</sup> One possible form of political organisation is the establishment of non-territorial self-governments by the example of Hungary. Local governments can help promote a positive image of the minority, facilitate the provision of rights to the Roma, contribute to political mobilization, and stem attempts at assimilation. However, these self-governments may suffer from insufficient competencies and power, inadequate funding, and overdependence on the support of the local

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<sup>771</sup> Council of Europe: Commissioner for Human Rights, "Roma Representatives Must Be Welcomed into Political Decision Making", 1 September, 2008  
[<http://www.unhcr.org/refworld/category,POLICY,COECHR,,,48e372762,0.html>] (accessed: June 18, 2009).

<sup>772</sup> Ibid.

<sup>773</sup> Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, p. 241.

governments.<sup>774</sup> Another option for the greater inclusion of Roma in the political process is to hold regular town meetings that aim to facilitate open and bilateral communication between the Roma community and the elected and non-elected leaders of the minority and the dominant group.<sup>775</sup>

As a third option, special institutions with veto powers can be established to protect the interests of the Roma. Drawing on the ideas of Allan Buchanan of vesting nullification and/or veto powers in minority institutions and representatives, Levy notes that institutions and posts with such powers can act in place of or complement self-government institutions. For example, it may not be Quebec's provincial government that has veto powers over language policies in Canada; a special national institution can be established to defend francophone interests.<sup>776</sup> In the same way, special national institutions with veto powers, in which the Roma will have a voice, can function to protect the interests of the minority.

Special institutions have been established in Bulgaria and Romania, but it is important that they get more authority and resources. Structures at both local and national levels can contribute to improving the socio-economic position of the Roma.

The greater inclusion of Roma politicians is an essential step toward enhancing the image of this minority. The agendas of Roma leaders may have an instrumental role in reducing the dominant groups' mistrust of ethnic minorities. The growing involvement of Roma in the political process can contribute to the development of regionally functional policies. The establishment of special institutions with real authority, in which the Roma have a voice, can contribute to the socially just protection of this minority.

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<sup>774</sup> Fact Sheet 32: Political Participation of Roma, Traveller and Sinti Communities, p. 4.

<sup>775</sup> Brown, Michael et al, "Roma Political Participation in Bulgaria", p. 12.

<sup>776</sup> Levy, Jacob, 'National Minorities without Nationalism', in Alain Dieckhoff, *The Politics of Belonging*, p.163.

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