

ROMA IN THE CZECH REPUBLIC AND SPAIN:  
A STUDY OF THE INFLUENCE OF THE EUROPEAN UNION  
ON MINORITY RIGHTS

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## **ABSTRACT**

Alana Meek: Roma in the Czech Republic and Spain: A Study of the Influence of the European Union on Minority Rights  
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My thesis will focus on whether and how membership conditionality has improved minority rights in the recently acceded members of the European Union (EU), and what lessons one can draw from this for existing member states. Does the Copenhagen conditionality process provide additional, and more effective means, for the EU to compel its member states to respect minority rights? I examine this question by investigating the record of minority rights for the Roma in two EU member states, one subject to the Copenhagen Criteria (Czech Republic) and one not (Spain). I find that while the Criteria have provided the Roma in the Czech Republic with more legal rights, this has in practice led to limited change because persistent discrimination has impeded implementation. Hence, simply imposing the Criteria on Western member states, such as Spain, may not improve the fate of Roma much. Long-term change cannot be achieved via the implementation of laws; the change sought is attitudinal.

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ROMA POLICIES IN THE CZECH REPUBLIC.....	4
	Wandering Tsigani from Egypt: Origin and Misconceptions.....	4
	The Cycle of Marginalization and Discrimination.....	5
	Communism: Policies of Assimilation.....	6
	Before EU Conditionality (1989 to 1996).....	8
	From EU Conditionality to Membership (1997 to 2004): Policies of Social Inclusion.....	11
III.	THE POWER OF ACTIVE LEVERAGE.....	13
	The “Toolbox” of Active Leverage.....	14
	Effects of Socialization and Membership Conditionality-based Methods.....	15
	Citizenship Law.....	16
	Ústí Wall.....	19
IV.	ASSESSMENT OF ACTIVE LEVERAGE POST MEMBERSHIP.....	22
	The Copenhagen Criteria.....	22
	Education.....	24
	Housing.....	26
	Unemployment.....	29
	Assessment.....	30

V.	MINORITY “RIGHTS” POLICIES AND ROMA IN SPAIN.....	33
	Background.....	33
	Minority “Rights”.....	34
	Roma Development Program.....	37
	Education.....	38
	Housing.....	39
	Unemployment.....	41
VI.	ANALYSIS AND CONCLUSION.....	43
	BIBLIOGRAPHY.....	49

## I. INTRODUCTION

The fall of the Berlin Wall and dissolution of eight post-Soviet countries in East Central Europe (ECE) in 1989 ended the division between Eastern and Western Europe that had existed for nearly 40 years. It also produced a new era in the protection of minority rights. The 2004 enlargement was significant not only because of the geographical size and number of people admitted to the European Union (EU), but also because these former communist states demonstrated they could successfully transform their state-run economies and illiberal democracies into functioning market economies and democratic societies that protected its minorities within the span of only 15 years. Scholars today contribute this incredible transformation to the membership conditionality of the EU, or when the government of a candidate country adjusts its policies to conform to EU requirements to keep its chance of membership on track because it believes the benefits of exclusion are more costly than the required measures to join.

My thesis focuses on how membership conditionality has improved minority rights in the recently acceded members of the EU. Minority rights protections and the expansion of the EU cannot be separated one from another, and the effectiveness of the conditionality of the EU was manifest in the compliance of candidate countries to implement minority rights provisions as required by the Copenhagen Criteria, which were made apart of the EU pre-accession process in 1993 and provided an extra layer of

protection that Western European countries did not have to fulfill when joining the EU.

The power of membership conditionality was demonstrated in this statement to the CTK News Wire by former Czech Prime Minister Milos Zeman in 1996: “We shall not conceive our entry to the EU only as a foreign policy matter, but also as a domestic affair, because the impact of European norms on the Czech law is basically a matter of domestic policy” (as cited in Ram, 2003, p. 29).

In order to analyze the effectiveness of EU conditionality with respect to minority rights provisions, I focus my study on a minority group that the United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) has deemed “the disadvantaged and most subject to discrimination in the contemporary world,” the Roma (as cited in Farkus, 2007, p. 13). I limit my investigation to two countries, the Czech Republic and Spain, selected for different reasons. The Czech Republic has been cited by scholars to be one of the most democratic ECE countries prior to and after the fall of communism – a repressive regime was brought to its demise “with poetic attacks of jingling keys” and the Czechoslovak split was “velvet” in comparison to its Yugoslav neighbors (Fawn, 2001, p. 1194). Also, in her study on the trajectories followed by the ruling elites of six former communist countries seeking EU membership, Vachudova (2005) defined the Czech Republic as a liberal democracy because its former dissidents pursued the building of democratic institutions, fostered political competition, and promoted ethnic tolerance in contrast to illiberal leaders who used the fear of economic reform and ethnic minorities to stay in power after 1989. Thus, one would expect the treatment of Roma to fare better in the Czech Republic pre and post EU membership. Spain, on the other hand, was selected because it has the largest Roma

population of any Western European country, with approximately 500,000 to 800,000 Roma (Dietz, 2003). One may expect to find greater evidence of discrimination and socio-economic problems associated with Romani migration from East to West as a result of the 2004 and 2007 enlargements.

With the selection of these countries, I seek to determine if the implementation of the Copenhagen Criteria has significantly changed conditions for Roma in the Czech Republic post membership or if these changes were simply implemented on an instrumental level due to fear of exclusion from the EU. How does the situation of Roma in Spain compare to the Czech Republic, and if significant change has occurred in the Czech Republic, but not in Spain, should Western European countries be held accountable to the Criteria?

My discussion begins in Section 2 where I present challenges Roma faced in three periods: during communism, after the fall of communism and prior to EU conditionality, and during conditionality and prior to membership. Section 3 explains active leverage and socialization-based methods and I demonstrate in two Czech cases how domestic policy was transformed with their combination. Section 4 explores the active leverage of the EU after membership by analyzing changes in education, housing, and unemployment in the Czech Republic. Section 5 discusses Spanish minority rights policies and I compare three areas in which Roma discrimination differs from the Czech Republic as the result of negligent government planning. Section 6 concludes my study to determine if the Copenhagen Criteria have affected significant change in the Czech Republic and should be implemented in Western European countries, such as Spain.



## II. ROMA POLICIES IN THE CZECH REPUBLIC

This section will provide an elemental understanding of the origin of the Roma and dispel several misconceptions associated with their origin and terminology. An overview of the current challenges they face socially, economically, and politically will also be explored in three periods: during communism, after the fall of communism but prior to EU conditionality (1989-1996), and from EU conditionality to membership (1997-2004). These changes will be discussed within the context of the Czech Republic, a country that implemented the Copenhagen Criteria and is considered by scholars to be the most democratic ECE countries before and after communism.

### Wandering Tsigani from Egypt: Origin and Misconceptions

Europe has had a controversial relationship with its Roma population since their arrival nearly 700 years ago. No other group has been simultaneously “despised as incorrigible criminals and admired as musicians, dancers, and free spirits” as the Roma (Cooper, 2001, p. 69). While in some Czech towns they are blamed for 75 percent of crimes committed (Barany, 2000), in Spain they are credited with influencing Spanish culture, such as flamenco (Dietz, 2003). Perhaps no other group has also been as misunderstood; Roma are believed to be a nomadic peoples from Egypt, hence the origin of the term *Gypsy* (Patrin Web Journal, 1999). In reality, they migrated from India at the beginning of the 12<sup>th</sup> century, arrived to Europe in the 14<sup>th</sup> century, and have been settled

in Central Europe since the 15<sup>th</sup> century, according to the European Commission (2006). Adding to the confusion are the various regional names to which they are assigned by majority populations, such as Tsigani and Czigany in Eastern European countries (Gheorge, 1991) and Gitanos, Sinti, and Travelers in Western Europe (Goldston, 2002). They are also believed to be a homogenous group, when actually each migration produced different communities of Roma within the same country varying in occupation, language, dialect, culture, and geographic background (Barany, 1994). For simplicities sake, I will refer to this minority group in the Czech Republic and Spain as *Roma*, which is the politically correct term, as defined by the Council of Europe in official documentation and communications (Patrin Web Journal, 1999).

#### The Cycle of Marginalization and Discrimination

Many Roma today are culturally, socially, economically, and politically marginalized from the dominant populations of the countries in which they reside; however, the reason is two-fold. It has been the choice of the Roma for centuries to live a life of social exclusion in order to protect their traditional values and culture in conflict with and persecuted by *Gadze* or non-Roma. This has allowed them to pass their customs and language to successive generations. However, their resiliency to assimilate has hindered their advancement in education and employment and fostered negative stereotypes that provoke their marginalization and discrimination. For example, Roma equate the size of the family with wealth and happiness and many Romani women marry young. Obtaining an education is not as important as is working to support the family (Roma in the Czech Republic, 2005b). However, to the dominant population Roma are

lazy and dirty, uneducated and illiterate, and have many children and take advantage of the social welfare system (Cooper, 2001). Their inferior position in society appears justified by their distinct facial features, cultural values and behavior that differ from the majority (Gheorge, 1991). Hence, Roma have been caught in a “cycle of poverty, illiteracy, dependency, and petty crime” that has marginalized and perpetuated their discrimination (Cooper, 2001, p. 72).

#### Communism: Policies of Assimilation

Although political systems and their policies targeting the Roma have changed throughout history, different regimes and strategies have had little noticeable effect on their marginalization. The Czech lands did welcome the Roma – in 1423 when they arrived under a letter of protection from the Holy Roman Emperor and Czech King Zikmund – but their security was soon abandoned in favor of assimilatory policies by Maria Theresa in the 18<sup>th</sup> century that forbade the use of the Romani language and placed Roma children with non-Roma families. In 1927, the First Republic’s “Law on Wandering Gypsies” forced Roma traveling throughout Czechoslovakia to apply for identification and permission to spend the night, and the 1939 edict of the Ministry of the Interior by the Protectorate of Bohemia and Moravia demanded Roma denounce their migratory way of life or be sent to work camps. After World War II, only 583 Roma returned to the Czech lands out of the approximately 8,000 sent to camps (Roma in the Czech Republic, 2000a).

The communist regime continued to employ assimilatory policies, believing social problems were solved if Roma were transformed into productive members of

society (Cooper, 2001). According to Barany (1994), it appeared the communists believed a simple formula: “(Gypsy) + (Socialist wage-labor) = ([Czech] worker) + (Gypsy folklore)” (p. 326). Initially many Roma supported the communists because they believed socialism would improve their socio-economic standing; however, even socialist ideals could not change the socio-economic inequalities in Czech society and policies often increased their marginalization (Crowe, 2003; Barany, 1994). For example, even though Roma had compulsory work, they were employed in low-skilled professions in factories and agricultural cooperatives. Although it was mandatory to attend school and lunch and textbooks were provided, little effort was made to improve their educational level, as classes were not conducted in the Romani language. In the 1950s and 1960s, teachers resolved this “problem” by putting Roma into classes for the mentally challenged in remedial schools (Barany, 1994). While Roma enjoyed free health care, many women were sterilized against their will by the government in the 1960s to control the high birth rate (Malan & Shreedhar, 2007), told they were being given a caesarean section or an abortion, or were bribed by social workers with cash and readily available goods (Lucero & Collum, 2007).

While the assimilatory policies of the communist regime did raise the education level of the Roma, provided guaranteed employment, and improved living standards with free medical care, many believed the costs of integration too high and in conflict with their values (Barany, 1994). As so, many Roma welcomed revolution of 1989, only to later realize the transition to a liberal democracy and market economy would yield mixed opportunities.

## Before EU Conditionality (1989 to 1996)

The transition to democracy resulted in positive and negative changes socially, economically, and politically for the Roma. While the transition ended their political marginalization because they now could participate in politics and many international organizations (IOs) brought worldwide awareness to their issues, they became even more socially and economically marginalized. The majority of Roma lived under the official poverty line in shanty-like dwellings with unpaved streets, limited water and electricity, and poor medical facilities and schools. These unhygienic conditions caused more Roma than non-Roma to be afflicted with various types of cancers, and more prone to alcoholism or tobacco abuse because of ignorance or carelessness. Their high birth-rate also contributed to their impoverishment because they did not have the education or skills valued in a democratic society to provide for their families (Barany, 1994; Cooper, 2001).

At the end of 1989, many Roma had surpassed the education level of their parents and completed up to eighth grade. Under the new regime, education was not mandatory, social benefits were cut, and kindergartens charged for their services. As a result, the Roma dropout rate increased because parents lacked the incentive to send their children to school and could not afford the costs. Roma who did attend usually did poorly because parents could not help with homework (many were illiterate) and classes were not taught in the Romani language. Only 2.5 percent of Czech-Roma attended high school in the 1990s, compared to 40 percent of non-Roma, and only 1 percent graduated (Barany, 2000).

Perhaps more alarming was the increase in the number of Roma children enrolled in special schools, which appeared as a “school system to educate the Roma” (Barany,

2000, p. 75). In the early 1990s, Czech-Roma children were 20 times more likely to be enrolled in remedial schools and were 28 percent more likely to be sent to these schools than non-Roma peers (Barany, 2000). By 1996, more than 40 percent of Roma children were in special schools (Commission, 2006). The reason for enrollment was based upon intelligence and psychological tests; however, discriminatory because they were conducted in the majority language and did not take into account culture or behavioral differences. Usually, the children who presented a classroom problem or could not understand the language of instruction were sent to these schools, even if they did not exhibit signs of mental retardation. Teachers, however, insisted these children were not socially prepared to be in the classroom because they did not attend kindergarten and were more aggressive. Roma parents were unaware these schools were discriminatory because they attended and only the bare minimum of curriculum was taught, ensuring Roma children would not catch up with their non-Roma peers (Barany, 2000).

The transition to a market economy marginalized the Roma economically. They were the first to be unemployed when factories were shut down and agricultural cooperatives dissolved. Work was no longer mandatory and many quit (Barany, 1994; Cooper, 2001). Hence, the unemployment rate among the Roma skyrocketed after communism and was much higher than the general population. For example, in 1996 the unemployment rate was 2.9 percent, but among the Roma in urban areas was 30 to 50 percent. In rural areas, unemployment was nearly 100 percent (Barany, 2000). Unemployment benefits, mainly per-child subsidies, began to replace wages (Barany, 2000).

The early to mid-1990s also witnessed a rise in discrimination and violent skinhead crimes committed against Roma because they were blamed for problems associated with the transition to democracy, such as crime. According to Green, when a 17-year old Czech beauty contest finalist stated in 1993 her goal was to become a prosecutor in order to rid her hometown of Gypsies, the moderator said, “We need that sort of lawyer” (as cited in Barany, 2000, p. 101). This same year, a citizenship requirement was enacted by the national government that left more than 20,000 Roma ineligible for citizenship in the newly established Czech Republic. According to Smith, a survey conducted in 1994 found that more than 33 percent of Czechs aged 15 to 29 supported skinhead attacks and 30 percent believed Roma should live in ghettos or be deported (as cited in Barany, 2000). After 1993, the number of violent crimes declined across ECE except in the Czech Republic. As demonstrated by the European Roma Rights Center (ERRC), between 1990 and 1997 there were 1,250 racially motivated attacks against the Roma, and 29 Roma were killed in attacks from 1989 to 1998, according to the Roma Civic Initiative (Barany, 2000).

Unfortunately, the EU did not perceive the Roma a significant concern during this time and the only Roma policy enacted was the Federal Resolution 691/1991 in October 1991 that intended to equalize their socio-economic standing to the majority by supporting the idea of a Roma identity, according to Sulitka (as cited in Vermeersch, 2003). The Charter of Fundamental Rights and Freedoms, incorporated into national law in 1992, gave minorities the right to develop their culture and education in their native language and use in public. It appears Roma gained a barrage of rights in this moment, but in actuality the protection of minorities in Czechoslovakia was subsumed under basic

individual rights. In other words, all citizens had these rights; these were not special (Vermeersch, 2003). Roma also gained political representation in 1994 when the Council of Minorities was established that brought together national minorities who worked with governmental institutions on Roma issues (Minority Rights Group International [MRGI], 2005b). The turning point was in the latter 1990s when Roma sought asylum in Western European member countries and became a distinct element in the conditionality policy of the EU (Vermeersch, 2003). This is demonstrated in the numerous Roma policies enacted by the Czech government in the immediate years prior membership in the EU.

#### From EU Conditionality to Membership (1997 to 2004): Policies of Social Inclusion

In August 1997, the international community was made aware of deep Czech prejudice when nearly 700 Roma fled to Canada after a Czech television program broadcast Canada had a special asylum program and described it as their utopia. Canada had made no such claims and was not prepared economically or socially to handle the “exodus” of Roma (Fawn, 2002, p. 71). The mayor of the Czech town of Ostrava even offered to pay \$600 of the airfare of each Rom if they gave their house to the city. Canada responded by imposing visa restrictions on all Czechs and Czechs accused the Roma of keeping them from EU membership. Skinhead attacks followed (Perlez, 1997). It quickly became clear the discriminatory policies of this “model post-Communist state” were jeopardizing its image at home and abroad (Crowe, 2003, p. 89).

Noteworthy, however, three months later in October 1997 the government created the Government Council for the Roma Community, an advisory body of 28 members, half Roma, who advise regional authorities on Roma policies (MRGI, 2005a). In



December 1997, the Czech government also recognized the Roma as a national minority under the Framework Convention for the Protection of National Minorities (MRGI, 2005b). However, in 1998, the number of skinheads doubled to 10,000 and 133 racially motivated crimes were committed, the majority against Roma (Commission, 1999).

In October 1999, international criticism was drawn to the Czech town of Ústí nad Labem when city officials built a wall to separate a non-Roma community from its Roma neighbors deemed noisy and dangerous, and authorities in Plzen contemplated moving their Roma population to makeshift huts outside of the city to be manned by a 24-hour police force. The wall was torn down in exchange for EU subsidies and the plans in Plzen never came to fruition, but skinhead attacks ensued in the city of Most (Crowe, 2003). However, during this same year, the Czech government adopted a long-term policy on the Roma. In July 2001, the national government enacted the National Minorities Act, which allowed the Roma the right of their language in official documentation, discourse, and court hearings, and the Czech Ministry of Foreign Affairs signed a Memorandum of Understanding and Cooperation with the International Romani Union and appointed a new Romani affairs advisor (Ram, 2003).

Despite minority rights provisions enacted by the government, when the Czech Republic entered the EU in 2004 Roma continued to encounter prejudice even though they had more rights. Roma legislature was also enacted during or following cases of severe discrimination. Why were these policies enacted if the Czech people (and also governmental officials) believed their actions toward the Roma were justified? The passage of legislation during a time when support is very low can be attributed to the power of the active leverage of the EU.

### III. THE POWER OF ACTIVE LEVERAGE

The purpose of this section is to define and demonstrate the active leverage of the EU. This term has been coined by Vachudova (2005) and used to describe the deliberate policies the EU employs towards countries seeking membership. The tools of active leverage are asymmetric interdependence, enforcement, and meritocracy and when combined with socialization-based methods, such as shame and persuasion, the conditionality of the EU is increased because candidate countries view its promise of membership and the threat of exclusion as credible. In this manner, active leverage helped to bring about the aforementioned changes enacted in minority rights policies and institutions in the Czech Republic in the immediate years prior to EU membership. I will begin with a discussion of the methods the EU uses to influence the domestic policies of candidate countries. I will present studies by Kelley in which active leverage, when combined with socialization-based methods, was proven to increase the credible conditionality of the EU. I will conclude with two examples from the Czech Republic in which the aforementioned methods caused the national and local government to change their position on two key issues that resulted in a positive outcome for the Roma: the amendment of the citizenship law and the demolition of a wall separating a Roma community from its non-Roma neighbors.

## The “Toolbox” of Active Leverage

As defined by Vachudova (2005), “Active leverage is the deliberate policies the EU employs towards countries seeking membership to make compliance with its entry requirements attractive and being excluded too costly” (rational cost-benefit analysis), and this increases the conditionality of the EU (p. 4). Conditionality was used in the 2004 and 2007 pre-accession processes and is “widely credited with having brought about an alignment of the 10 postcommunist countries’ systems of governance, economies and legal structures with the West European member states and the EU’s *acquis communautaire*” (Epstein and Sedelmeier, 2008, p. 795-796). According to Vachudova (2005), active leverage of the EU is powerful because it builds upon the benefits of membership and because three elements of the pre-accession process are present (i.e. the “toolbox”): asymmetric interdependence, enforcement, and meritocracy. These elements make the promise of EU membership and the threat of exclusion believable and increase the likelihood that candidate countries will comply with its strict entry requirements because: 1) the EU does not have to force candidate countries to comply with its requirements – it does not need additional countries for its economic or political sustenance, 2) the candidate country knows it has to comply with the unchangeable entry requirements and allow its domestic policy process to be evaluated – confirming its commitment to EU policies prior to membership, and 3) the candidate country knows, upon receipt of a poor evaluation, it can only return to the good graces of the EU if it implements the reforms under a future government (Vachudova, 2005).

These three elements working together may have the power to transform the domestic policies of candidate countries. It has also been found in two studies by Kelley (2008; 2003) the membership-based conditionality methods mentioned above, when coupled with socialization-based methods, can be effective at changing domestic policies in candidate countries, even those ruled by authoritarian or illiberal leaders.

#### Effects of Socialization and Membership Conditionality-based Methods

Socialization-based methods involve a broader set of socialization processes, such as persuasion or social influence. These softer methods are used by IOs to persuade, shame, or praise candidate countries into changing their behavior through ad-hoc visits, letters, reports, and declarations that promote their legislative goals. According to Johnston (as cited in Kelley, 2008), social influence can cause states to change their behavior due to shame in the absence of material incentives, but the change will most likely be minimal and opposition low (Kelley, 2008; Kelley, 2003).

It is important the EU combine socialization and membership conditionality methods so it may have a range of options at its disposal. As Kelley's studies revealed, the promise of membership was the catalyst that caused governments of candidate countries to enact more minority rights legislation, but the power of domestic opposition was overcome because conditionality methods were employed together with socialization. This is because membership conditionality produces the most significant behavior changes and socialization methods help guide the process (Kelley, 2008). Moreover, when policy changes are linked to membership, the likelihood a candidate country will

revert to its former ways of governing diminishes (Vachudova, 2005; Kelley, 2003).

However, to make its promise of membership credible, the EU must reward candidate countries in a timely fashion for implementing membership requirements and make clear the threat of exclusion if they do not (Schimmelfennig, 2008). I will now highlight two case studies in the Czech Republic to examine the relative effect of conditionality and socialization at the national and local levels.

### Citizenship Law

The first case is the citizenship law. A new citizenship law took effect when the Czech Republic became an independent country on January 1, 1993. As per Article 18, to be a citizen one had to demonstrate for the previous five years a clean police record and two years of permanent and continuous residence in the Czech territory. According to the Commission on Security and Cooperation in Europe of the United States Congress (U.S. CSCE), the law was discriminatory against the majority of Roma because many did not have documents to prove residence or a clean criminal record, and it violated international law by imposing retroactive penalties on a crime (as cited in Ram, 2003). About 20,000 or one tenth of the Roma population was excluded from citizenship (Crowe, 2003).

Despite disapproval from the EU, Council of Europe (CE), the U.S. CSCE, the United Nations High Commission for Refugees (UNHCR), and various non-governmental organizations (NGOs), the Czech government refused to amend the law because it was considered a matter of state sovereignty. In September 1994, the Czech Constitutional Court ruled the law was “in no way discriminatory” and in November 1994 a CE

commission visited Prague to review the law and offered recommendations, but was not successful. According to Lyman, even former President Václav Havel, known for his pro-EU stance, supported the law because it “genuinely does correspond to analogous laws in other states. I do not think amending it somehow is at present a burning question” (as cited in Ram, 2003, p. 41). Moreover, as stated by Lyman, the head of the Council for Minorities best summarized the situation in December 1994: “The political will to amend this law does not exist” (as cited in Ram, 2003, p. 41).

The law was left unchanged until April 1996 when the CE issued its report stating the retroactive penalties imposed were discriminatory in cases where a person had been a long-term resident. Thus, the law was slightly amended to make eligible those individuals who had lived in Czech territory since December 31, 1992 and waived the criminal clause, although many Roma were not aware at the time and were still penalized for crimes retroactively committed. The timing is interesting. The amendment occurred one year before the Commission was to publish its Agenda 2000 Opinions and open accession agreements with the Czech Republic. It is plausible the law was amended so that the Czech Republic could keep open its membership chances (Ram, 2003).

However, the 1996 amendment was not adequate. The July 1997 Opinion found the criminal record requirement “was inconsistent with the rule that state succession cannot result in people who have lived continuously in the territory becoming aliens or stateless persons” (Commission, 1997, p. 14). The Commission acknowledged the amendment, but stated: “There is still a discrimination of the Roma, most notably through the operation of the citizenship law” (Commission, 1997, p. 16). In response, Milan

Kriz, the official in the Press Office of the Ministry of the Interior, stated to Radio Praha, “No such discrimination takes places in our republic” (as cited in Linde, 2006, p. 354).

The November 1998 Regular Report again criticized the law, stating the 1996 amendment “has not had much effect” (Commission, 1998, p. 10). Furthermore the Commission stated, “The situation of the Roma has not really improved since July 1997” because of “[b]ureaucratic obstacles, administrative fees and the lack of a concerted approach by the relevant Ministries....” (Commission, 1998, p. 10). The Commission urged the new government to find a solution, i.e. pass another amendment, so that those previously living in the Czech Republic at the time of the Czechoslovak split “may now acquire Czech citizenship” (Commission, 1998, p. 10).

Two factors at this time were working in the favor of the Roma. First, Roma were winning asylum cases in the United Kingdom (UK). The government feared visa restrictions would be imposed, like those in Canada, and this would surely harm membership chances. Second, national elections were held in June 1998 and Havel became president. According to Potucek, Havel differed from former President Václav Klaus because he wanted a European civil society and criticized Klaus’ isolationist policies (as cited in Linde, 2006).

These two changes helped bring about the new amendment signed into law in August 1999 allowing persons who had lived in the Czech territory since December 31, 1992 to apply for citizenship. The criminal record clause was removed altogether and the Czech Republic was in compliance with international norms. The October 1999 Regular

Report lauded this achievement, as now “large numbers of Roma [can] regain Czech citizenship” (Commission, 1999, p. 16). The Czech Republic joined the EU in May 2004.

### Ústí Wall

In May 1998, city officials in the town of Ústí nad Labem announced plans to build a wall to separate a Roma housing project from its non-Roma neighbors due to complaints Roma were using their stairwells as toilets and throwing garbage out of the windows. Originally planned was a 12-foot high “sound barrier” (Lucian, 1999; Crowe, 2003). This provoked outcry from the international community, who declared such segregation violated international law and asked the Czech government to annul the resolution. In March 1999, members of the UN Committee on the Elimination of Racial Discrimination criticized the Czech government for not taking proactive legal measures to halt the building of the wall, and the EU Envoy to the Czech Republic said that if the wall were to be constructed, the Czech Republic would not be considered for EU membership (ERRC, 1999).

Nevertheless, in October 1999 municipal authorities arrived with bulldozers and an eighty-person strong police force in the early morning hours to complete a nearly seven-foot high wall by evening. Immediately following, the European Commissioner for EU Expansion visited the city and said the wall violated international and Czech domestic law on the grounds of racial discrimination and segregation, and the wall would hurt the reputation of the Czech Republic as a democratic country. The EU ordered the Czech government to quickly resolve the matter (EERC, 1999; Ram, 2003). Members of the



Czech government, including then President Havel, responded this was “foreign” interference in local affairs unrelated to the national government (Lucian, 1999). The wall was a “symbol of law and order” (Crowe, 2003, p. 90). Even 72 percent of Czechs said in a 1994 survey that the building of the wall was not based upon racist sentiments (Barany, 2000). However, after former Prime Minister Milos Zeman stated, “The wall in Ústí divides the Czech Republic from the European Union,” (EERC, 1999, para. 5) the wall was dismantled within 11 days, but in exchange for 3 million CZK provided by the national government (Crowe, 2003). Thus, “money – rather than a change of attitudes or approaches at the local level – ultimately resolved the situation” (Ram, 2003, p. 50).

In both cases the policies of active leverage (credible threat of exclusion) and socialization methods (official visits, shame, reports) proved effective in changing legislation and social conditions for the Roma. In the citizenship case, additional external events such as fear of imposed visa restrictions and government regime change also helped change legislation. As pointed out by Sasse (2008), the socialization effects of conditionality are nearly impossible to trace in the short run, unless a candidate country clearly engages in policy-making outside the bounds of the *acquis*. This was demonstrated in both cases when Czech national and local governments violated domestic and international human rights laws on the basis of racial discrimination. The effects of these methods are best evidenced in the medium term; however, while rational cost-benefit analysis may cause candidate countries to make legislative changes during the pre-accession period, it does not mean necessarily that these changes are successfully transposed into European norms that promote a normative and behavioral change (Sasse,

2008). This is crucial because the foundation of minority rights legislature ECE countries transposed into domestic law in order to join the EU, the Copenhagen Criteria, were largely implemented due to the active leverage of the EU, as evidenced in the aforementioned examples.

However, post accession have the Copenhagen Criteria affected much change for minorities, specifically Roma, in ECE countries? Granted, Roma now have national minority status as per the Framework Convention and can use their language in official documentation, discourse, and court hearings as per National Minorities Act, but has true change been effected or were laws implemented on an instrumental level to gain EU membership? Perhaps this can never be truly gauged, but an effective conclusion would be if substantial changes have continued to be made post membership without the influence of the EU. This will be examined in the following section by looking changes in education, unemployment, and housing in the Czech Republic post membership.

#### IV. ASSESSMENT OF ACTIVE LEVERAGE POST MEMBERSHIP

The goal of this section is to assess the effectiveness of the active leverage of the EU once a candidate gains membership. This can be accomplished by looking at reports provided by governments and various NGOs that have evaluated the progress post membership of a country in areas such as education, unemployment, housing, and health. I have selected to review the areas of education, housing, and unemployment in the Czech Republic after EU membership, or from 2004 to present day. These areas were chosen because Roma encountered much discrimination prior to and during the EU conditionality phases. One would hope with membership that discrimination in these areas has lessened, for example the number of children enrolled in remedial schools has decreased. I will begin with a brief overview of the Copenhagen Criteria and then assess the progress in the aforementioned areas by evaluating reports provided by the Czech and U.S. governments and various NGOs.

##### The Copenhagen Criteria

As briefly stated in the introduction, minority rights became a salient topic for the EU in the early 1990s. Old member states feared ethnic tensions and conflict believed significant of Eastern Europe would infiltrate their countries. When ethnic conflict broke

out between ethnic Hungarians and Romanians in Romania and the war commenced in the former Yugoslavia in 1992, this seemed to justify their concerns (Vermeersch, 2003).

The CE enacted the Copenhagen Criteria in June 1993. According to the Commission (1993), the Criteria state that in order for a candidate country to gain membership, it must fulfill the “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy...” (Relations with the Countries of Central and Eastern Europe, para. 4). Moreover, the Criteria provided an extra layer of minority rights protections Western European countries did not have to fulfill when joining the EU.

In the latter 1990s, the Roma played a pivotal role in the conditionality policy of the EU when they sought asylum in Western member states (as demonstrated in the case of Czech-Roma fleeing to the UK). Some scholars, such as Hughes and Sasse (2003), use this to indicate the EU did not have the intentions of the Roma in mind when forming the Criteria – they were created for territorialized minorities given the number of inter-ethnic conflicts occurring at the time. They argue the EU was thus in pursuit of its own soft security interests (Hughes & Sasse, 2003). Nevertheless, from 1997 the Roma played an important role in the active leverage of the EU, as demonstrated in the annual Regular Reports in which countries were threatened to be excluded from membership if they did not change criticized areas (as evidenced in the citizenship and wall cases). With this in mind, I now turn to developments in the areas of education, housing, and unemployment in the Czech Republic post membership.

## Education

In January 2005, the Schools Act was enacted in that introduced educational reforms, one of them the abolishment of the category of special schools and provisions to integrate children with special needs into mainstream education. However, ERRC research indicated in 2006 even though these schools ceased to exist in the legal sense, there was still “no discernable effort to reduce segregation in the field of education” (ERRC, 2007, p. 42). In fact, in 2004 the number of Roma children in remedial schools had increased by 35 percent from 1996, with 27 percent of children enrolled (Commission, 2006). Non-official estimates in 2005 placed enrollment at 70 to 90 percent (MRGI, 2005b).

This is because the Act does not guarantee remedial schools will be arranged in such a way to promote desegregation or ensure Roma children in special schools will have access to mainstream education. There are no safeguards to prevent the abuse of segregation of Roma children in mainstream education. For example, school directors are allowed to create separate classes for students with learning disabilities. This means Roma children can still be segregated in regular schools. Field research conducted by the ERRC in 2006 indicated two remedial classes were established for elementary school children in the town of Ivanovice na Hané. The first class was created in January 2001 for children who could not keep pace, and the next in September 2005 when children from grades 1-4 had to continue schooling into grades 5-9. At the time of research, there was no non-Roma students enrolled in the two remedial classes (Roma only), and only three Roma children attended regular classes (ERRC, 2007). According to the U.S. Department of State (2008), this is a “rebranding” of the former system (National/Racial/Ethnic Minorities,

para. 12). The EERC (2007) also cites, government policies to reduce the number of Roma children taught in special classes “is still not visible” and factors leading to the incorrect placement of Roma in special needs classes “have not been eliminated” (p. 50).

The Act has also led to the establishment of special educational programs designed to help the Roma with barriers to education, for instance the appointment of educational assistants (mainly Roma) and the organization of preparatory pre-school classes with language of instruction in Romani (MRGI, 2005b; Commission, 2006). In general, preparatory classes have been successful, but on a limited scale. There has been an increase in the number of classes offered and Roma attendance. For example, in 2005 there were 123 preparatory classes and 1,1441 Roma students. In 2006, there were 146 classes and 1,713 students, according to a study conducted by Gabal Analysis & Consulting (GAC) for the Czech Ministry of Labor and Social Affairs (Government of the Czech Republic, 2007). However, MGRI (2005b) notes these changes “have produced few improvements, and local authorities do not systematically implement the government’s school support scheme” (Current issues, para. 3). Moreover, the Commission (2006) noted classroom instruction in Romani is “virtually non-existent” with the exception of the preparatory classes and the study of the language as a subject at the university level (Presence and use of the language in various fields, para. 1).

Membership in the EU has also afforded Roma the opportunity to take the issue of school segregation to the European Court of Human Rights (ECHR) and win in the case of *D.H. and Others v. the Czech Republic*. In November 2007, the ECHR reversed its earlier ruling upon appeal (which stated the enrollment of Roma children in remedial

schools was not discriminatory because these schools were not specifically established for Roma children) and found the Czech government had indirectly discriminated against 18 Roma children from the region of Ostrava. The children had claimed more Roma were enrolled in special schools when compared to primary schools. According to the U.S. Department of State (2008), the ECHR later found this “practice disproportionately affected Romani children” because nearly 90 percent of the student body was Roma and this violated the anti-discrimination provisions of the European Convention on Human Rights (National/Racial/Ethnic Minorities, para. 13).

## Housing

The Czech Ministry of Labor and Social Affairs has recently documented the majority of Roma live in substandard housing and racially segregated ghettos (EERC, 2006). A 2006 study conducted by GAC found the majority of Roma live in high-rent apartments without electricity and hot water with toilet facilities outside the buildings. The buildings are deteriorating, pose health risks, and are located in areas deemed unattractive by the majority population. In fact, the number of Roma living in ghettos has only increased since the 1990s due to the end of the state system of apartment allocation and the privatization of housing (Government of the Czech Republic, 2007). The study found more than 330 ghettos exist, primarily inhabited by Roma, with a population of 80,000, or more than 33 percent of the total Roma population (U.S. State Department, 2008), which was estimated at 150,000 to 200,000 according to non-governmental sources in 2001 (MRGI, 2005b).

Further exacerbating the situation were amendments to rental laws in March 2006 that drastically changed rental procedures and caused a number of Roma to be evicted. Law 107/2006 now requires renters to inform landlords in writing of any changes in the number of persons in the accommodation and this letter must be accompanied with full name, birth date, and citizenship of the additional persons. According to the ERRC (2006), this violates international personal privacy laws. If the information is not provided within a month, the tenant can be evicted without court approval. Prior to Law 107/2006, the court decided if the landlord had to provide the evicted tenant with an alternate accommodation. Now this matter is brought to the court only if the renter files a petition within 60 days of the notice. Socially disadvantaged persons usually cannot afford legal counsel and thus have to appeal to the Czech Bar Association or an NGO. Hence, these new changes “open the way for racial prejudice and/or other arbitrary considerations to play a heightened role in such decisions” (ERRC, 2006, p. 13). I will now highlight an eviction case that resulted in the ghettoization of a group of Roma in the town of Vsetin and the creation of extremely substandard housing in the Olomouc region. Unfortunately, this case is not an anomaly.

In August 2004, Mayor Jiri Cunek announced his plan to expel a group of Roma living in the city center in city housing. His plan was to build flats and place only the most “adaptable” Roma because “[w]e have to separate those who are inadaptable so they do not bother decent citizens” (ERRC, 2006, p. 16). This statement was met with disapproval from former Human Rights Commissioner Jan Jarab, as the plan would result in the “creation of a real socioethnic ghetto” (ERRC, 2006, p. 16).



Despite criticism, housing was completed in October 2006 outside of the city, which the ERRC (2006) likened to two metal “containers” (p. 16). Moreover, Czech media reported these buildings were designed “especially for inadapted citizens” and praised the “grand opening” of the “new Roma ghetto,” which 40 representatives from municipalities around the Czech Republic attended (ERRC, 2006, p. 16). According to the mayor, only tenants who paid their rent on time and did not support their children’s criminal behavior could live there and those who did not would be removed from the city or placed on the street.

Perhaps more appalling was the transport of the most “problematic” Roma families, about 100 people, during the middle of the night to the nearby region of Olomouc (ERRC, 2006, p. 17). The city of Vsetin had purchased several properties in the Olomouc region, which they were re-selling to these families to be purchased with city loans. According to the mayor, these families had agreed to leave. However, according to one Romani NGO the families were “dropped off in front of various dilapidated buildings in isolated areas, some of which were actually barns or stables” (ERRC, 2006, p. 17). Olomouc officials were also not aware these families would be transported to isolated areas, a region already suffering from 32 percent unemployment (ERRC, 2006). Furthermore, previous property owners were also unaware and stated they would not have sold their property – “buildings not fit for human habitation” – to the city had they known of the plan (ERRC, 2006, p. 17). In total, Mayor Cunek evicted 360 Roma from their homes (U.S. Department of State, 2008) and the Czech Parliament is now investigating the matter.

## Unemployment

According to the U.S. Department of State (2008), Roma continue to face widespread discrimination in employment. Exact figures are not available, but the unemployment rate among the Roma is estimated at 75 percent in urban areas (U.S. Department of State, 2008) and up to 90 percent in rural areas (MRGI, 2005b). In fact, the vast majority of Roma have not held a job since 1989 due to “very high levels of discrimination” and are nearly 100 percent excluded from the mainstream labor force (ERRC, 2006, p. 23). If employed, Roma occupy positions such as advisors or journalists on Romani issues – “glass-box” type jobs – or in dangerous or short-term professions (ERRC, 2006, p. 23). According to a 2005 study conducted by the European Monitoring Center on Racism and Xenophobia (EUMC), only 26 percent of Roma active in the labor market have not experienced discrimination (2006).

Entering the labor market is also difficult because employers continue to request labor offices not send Roma applicants and some outright refuse to hire Roma, even though the law prohibits racial discrimination (U.S. Department of State, 2008). A 2005 report on the situation of Roma communities stated some employers hire illegal foreigners without work permits over Roma because costs are lower and also due to prejudice (EUMC, 2006). Moreover, field research conducted by the ERRC in 2006 revealed more Roma are unemployed in Prague, the capital city with the lowest unemployment rate in the country, than in any other Czech city (ERRC, 2006).

In 2004, the Employment Act was put into effect that introduced a comprehensive active employment strategy, but unfortunately did not address socially

excluded groups. Research conducted by GAC in 2006 has shown, however, that if the policy had included socially disadvantaged groups, the likelihood of Roma participation would have been low (Government of the Czech Republic, 2007). Also, there is still no Anti-discrimination Act in place to transpose the EU's Racial Equality Directive. The Czech government should have implemented this when it joined the EU in 2004, but the Senate vetoed the bill in 2006 and the Chamber of Deputies did not vote on it before elections in June 2006, so the process must begin again (MRGI, 2005b). Hence, "Czech policies in the area of securing dignified and gainful employment for pariah minorities, where they exist at all, are currently not succeeding to any noteworthy extent" (ERRC, 2006, p. 24).

## Assessment

According to Epstein and Sedelmeier (2008), "If the incentive based-explanation were correct in predicting the circumstances under which non-member states comply with the demands of international institutions, we would expect their influence on postcommunist domestic politics to deteriorate after the 2004/07 enlargements" (p. 796). It can be concluded from the changes in education, housing, and employment that discrimination of Roma in these areas has not deteriorated, but has not improved significantly either since the Czech Republic gained EU membership. Segregation still occurs, only now within regular schools, as teachers have the discretion to create special classes for slower learners. While the 2005 Schools Act did result in positive changes, such as preparatory classes and the increase of Roma children enrolled, these changes are

minor in light of the continuing segregation since Act implementation. The housing situation also has not improved. The number of ghettos has grown and amendments to tenant policies now allow Roma to be evicted without court approval. Moreover, unemployment has increased slightly and the Employment Act of 2004 failed to introduce active labor policies for socially disadvantaged groups.

It appears with each law passed another loophole of discrimination is created. According to Barany (1994), the problem is “not at policy-making but at policy implementation levels,” as anti-Romani attitudes of those in power at municipal and local governmental levels have changed little over time (p. 336). The most evident change has occurred in the political arena, as Roma have taken their (educational) grievances to the ECHR and won, although these cases are few and do not change societal discrimination. The Copenhagen Criteria, however, cannot be discredited because its implementation did completely overhaul civil society and install democratic principles and institutions. Positive effects are manifested when Roma exercise their rights, such as the case of *D.H. and Others v. the Czech Republic*. In this light, the Criteria owe to the power of membership conditionality. More than likely domestic changes have been implemented on an instrumental level and the long-term change we seek cannot be achieved by implementation of laws and norms. Perhaps the change we seek is attitudinal, and if so society has a long way to go before laws are implemented on a moral basis. As shown in Kelley’s studies (2008; 2003), leaders owed the changes in domestic policies due to the promise of EU membership, not a change in heart.

I turn now to minority rights policies in Spain, a country that did not implement the Copenhagen Criteria, to assess how Roma fare in comparison to the Czech Republic. What provisions does the Spanish government provide for their Roma population and what incentives does it have to promote Roma policies given EU conditionality is not at work?

## V. MINORITY RIGHTS POLICIES AND ROMA IN SPAIN

My discussion now shifts to Spain, a Western European country with the largest population of Roma and in which the Criteria were not implemented. I begin with a brief background of the Roma in Spain, as elements differ from the Czech case. After laying the foundation, I focus on minority rights and the Spanish government's national policy responsible for overseeing Roma issues and funding projects to promote social inclusion and anti-discrimination, the Roma Development Program (RDP). I conclude with the results of a study conducted by the Open Society Institute (OSI), which analyzed three areas of RDP-funded projects: education, housing, and unemployment. These cases are highlighted because Roma discrimination and segregation is owed to lack of planning and coordination by national and regional governments, not the fault of the Roma, in contrast to the Czech case. These three examples should serve as a lesson to ECE countries the consequences of implementing policies without a foreseeable long-term vision.

### Background

Roma made Spain their homeland 600 years ago and population numbers are estimated at 500,000 to 800,000, with the largest communities in the provinces of Andalusia (more than 40 percent), Valencia, and Murcia, and in the cities of Madrid, Barcelona, Sevilla, Granada, Valencia, and Zaragoza. An influx of Roma from Romania

arrived after 2002 (OSI, 2002). As similar to the Czech Republic, highly heterogeneous communities of Spanish-Roma exist, but in contrast, two main groups have made an impression on Spanish society: the gitanos and the hungaros. It can be said the gitanos were the first Roma community to arrive to Spain in 1425 in Zaragoza and Barcelona in 1447. They have since integrated into Spanish society and their traditions and music have contributed to Spanish culture today, most notably flamenco. The hungaros, on the other hand, arrived from Hungary and other ECE countries in the mid 1950s and 1960s. They settled in the northern regions of Spain, as these regions were the most prosperous after the Spanish Civil War due to the economic restructuring plans under the Francoist dictatorship. They lived a nomadic lifestyle until housing re-settlement programs of the 1980s forced them to settle (Dietz, 2003). The gitanos who first settled Spain consider themselves of a different class and culture than the hungaros (MRGI, 2005c); however, both groups have suffered from social exclusion and assimilatory policies that penalized “the gitano way of life” (i.e. the banning of dress, language, and customs) to exile or even death (OSI, 2002, p. 286).

### Minority “Rights”

The Spanish Constitution of 1978 grants rights and responsibilities to the “peoples” or “nations” of Spain. It does not recognize or define the term “ethnic minority.” There is no need because the only minority groups nationally recognized are its territorialized minorities, such as the Basques, Catalans, and Galicians, and within their respective regions they constitute the majority. Other ethnic groups who lack a

territorialized region, like the Roma, are non-accounted. This is because blanketing Article 14 guarantees all citizens the right to equality and full citizenship, and prohibits discrimination of race, origin, religion, and gender. In theory, Roma – who are citizens – have equal status to Spanish citizens. However, as pointed out by Villarreal (2001), there exists a large discrepancy between “the formal rights proclaimed by the Constitution and the exercise of those rights by Roma,” and the political will to address the issue of historic discrimination in society does not exist (para. 1).

Roma in Spain encounter discrimination in similar areas as Roma in the Czech Republic, but Czech-Roma are legally covered by minority rights provisions that, in theory, protect their culture and identity, provide the right to education in their language and use in the courts if they so wish. The Roma in Spain are not afforded these provisions (there is no legal protection of their culture, identity, or language) because they are not a nationally recognized minority and because Spain did not have to adhere to the Copenhagen Criteria (it was not in existence) when joining the EU.

Perhaps the Spanish-Roma are at the greatest disadvantage in the political sphere. In addition to enacting minority rights legislation, the Czech government also established and appointed Roma to national minority councils and Roma occupy seats on the municipal and local levels. In essence, Roma problems and issues are on the political agenda in the Czech Republic. Not so in Spain. The government has not responded to Romani requests for political recognition and their involvement in mainstream politics and in the policies that affect them has been very limited. There does exist a Romani political party, the Caló Nationalist Party, but its representation on other party lists is virtually non-existent. However, while Spanish-Roma organizations have been active in



the international, national, and local arenas within the last twenty years, they have usually played a consultative role. For example, Roma have been represented internationally in the European Parliament and CE, nationally on the Consultative Commission of the RDP, and locally on the advisory body created by the Roma City Council in Barcelona in 1998 (OSI, 2002).

The Czech government has also adopted long-term policy strategies to fight social exclusion, poverty, and discrimination in education and the workplace. In other words, the Czech Republic appears to be working more actively to support and improve conditions for its Roma population than Spain. In Spain, issues of racism and discrimination are addressed within the broad scope of immigration (OSI, 2002). Roma who are citizens of Spain are looked upon as foreigners, as according to Llopis I Llor, "...the time has come [for Roma] to take care of themselves, as do all other citizens. The concept of ethnic and cultural difference among the marginalized and the poor is disappearing. From now on, cultural and ethnic differences come from abroad" (as cited in OSI, 2002, p. 291).

The Roma in Spain are clearly afforded less provisions and protections than the Roma in the Czech Republic, which is why I now turn my attention to the Spanish government's national policy directed towards the Roma, the Roma Development Program (RDP), which has as its main goal to tackle the historic discrimination of the Roma in Spain.

## Roma Development Program

The Roma Development Program (RDP) was created in October 1985 when the government realized it needed a comprehensive Roma policy, the first strategic policy to help the Roma in Spain. Originally launched under the auspices of the National Action Plan, it was tasked to oversee challenges faced by the Roma in housing, education, health, labor, and culture by working together with central, regional, and local governments and ministries, various administrative departments, Romani organizations, and NGOs. In 1989, 500 million pesetas (roughly 3 million euros) were targeted to what became known as the Roma Development Program. This amount was a yearly item in the national budget and regions and its locales were to finance 40 percent of the costs of the projects, at times national funding matching this amount (Villarreal, 2001).

In November 2000, the most recent report was made available, assessing the year of 1998. This is the most current report because the Consultative Commission, which was established in 1990 to ensure program implementation between governmental officials and Romani organizations and to provide feedback of the Program, has not met since 1999. According to data, there was an increase in the number of projects created annually from 100 in 1995 to 120 in 1998. The program helped approximately 12,000 families or 50,000 Roma per year through projects of education, social assistance, housing, health education, vocational training courses, and cultural activities. Undoubtedly the program has realized promising results; however, there are challenges. The main obstacle is funding because the amount for projects has not changed since 1989 despite inflation (Villarreal, 2001). It is often difficult to transfer funds to the regions due to

bureaucracy and sometimes it takes over a year (Villarreal, 2001). The European Commission against Racism and Intolerance (ECRI) also noted this in its 2005 analysis of racism and intolerance in each of the member state belonging to the CE (MRGI, 2005c). There has also been poor coordination with NGOs at the institutional level, and a lack of political attention by the national government has been cited as a problem according to Fundacion Secretariado Gitano (FSG) (Villarreal, 2001).

I will now highlight the results of a study conducted by the OSI that reveal the widespread segregation in education, housing, and unemployment. While characteristics are similar to Roma in the Czech Republic, much of the discrimination and segregation in these areas can be attributed to the mismanagement of national and local government and reverse gentrification in certain areas of Spanish cities.

## Education

The situation of the Roma differs from the Czech Republic because Spain has seen a substantial increase in Romani school enrollment over the last few years. In 2001, 91 percent of Roma children began primary school at the same age as their non-Roma peers, who were enrolled at 100 percent. However, inequalities surfaced at the kindergarten level because only 59 percent of Roma children attended pre-school compared to 93.9 percent of non-Roma children, thus gaining a learning edge over Romani students. Discrimination is the reason because non-Roma parents do not want to enroll their children in pre-school classes with Roma, so pre-schools are reluctant to accept Roma children (OSI, 2002). The

ECRI noted in 2003 that Spanish authorities should be concerned about this issue (ERRC, 2003).

The OSI study also found that Spanish-Roma parents want their children to complete compulsory education and to continue their studies, at 77 and 36 percent respectively. It appears that the traditional value of working to support the family or leaving school early for marriage does not play as a large a role in Spain as in the Czech Republic. Also interestingly, the result of school segregation is due to the movement of a large number of Roma into a once affluent neighborhoods, not discriminatory psychological tests or because parents attended these schools. In other words, “it is on account of institutional failures that Roma are underachievers in... Spain” (Farkas, 2007, p. 12).

In the 1990s, neighborhoods in which 50 percent or more of Roma lived began to take over the public schools. Non-Roma parents did not want their children in schools where the majority of children were Roma (80 to 90 percent) because they believed students from lower socio-economic backgrounds lowered scholastic standards. Thus, non-Roma children were removed, resulting in the ghettoization of these areas. With the removal of non-Roma children, it became harder to retain a quality teaching staff and this led to the closures of some schools (Commission, 2004).

## Housing

The segregation that exists in housing can be attributed to the resettlement programs of the 1980s and 1990s that moved Roma to temporary dwellings in order to

improve their living conditions and clear the land for further development. These flats were modest, sometimes substandard, and on the outskirts of cities. They were an improvement in living conditions, as the Roma now had running water and electricity; however, the program was not conceived with a long-term policy in mind, as the national government devolved the resolution of these programs to its regions. While this gave local authorities more policy leverage, it also meant there was little exchange between Roma and non-Roma communities over the years when waiting for their next ‘permanent’ resettlement. As of 2002, thousands of Roma were still living in transitional housing and there had not been any attempts to increase the number of housing blocks despite the increase in residents. The result: “...severely overcrowded ghettos, which segregate Roma and reinforce and exacerbate prejudices about them” (OSI, 2002, p. 316). Many international organizations state that housing policies were discriminatory and the government chased families from their homes in the cities without plans to re-settle them, e.g. a quick solution to a problem rooted in racism because non-Roma do not want to live in the same neighborhood as Roma. This lack of planning has produced a policy of segregation, which “... not only did it not eradicate ghettos and end marginalization, it has perpetuated them” (OSI, 2002, p. 317) and contributed to “spatial segregation” (EUMC, 2006, p. 66). Funding has been made available for housing projects through the RDP, but efforts are stymied due to lack of strategy. The situation in 2002 at the time of this report was the majority of the Roma lived in flats (40.9 percent), as compared to houses (38.2 percent), as compared to shantytowns (20.6 percent). The negligence of the national government to devolve a resettlement plan to regional governments without a

strategy has resulted in the increase of the number of Roma living in substandard housing from 55 percent in 1975 to 90 percent in 1999 (OSI, 2002). The ECRI has strongly urged the Spanish authorities to devote attention to this problem in its 2003 analysis, but so far conditions remain the same (EERC, 2003).

## Unemployment

While this area finds similar characteristics in both countries (e.g. higher rate of unemployment among the Roma than non-Roma and stereotypes), the study revealed the existence of deep-rooted employer prejudices towards the Roma. For example, many public companies simply refuse to interview or even hire Roma, preferring instead to hire private companies to screen applicants. In this manner, Roma applicants can be dismissed without the company fearing it will be accused of racial profiling. Roma are also denied jobs without explanation (OSI, 2002). The FSG detected 29 clear cases of discrimination in employment in 2004 (EUMC, 2006). According to SOS Racismo, a Roma youth wanted to set up a concession stand at a public swimming pool and was repeatedly denied a license by the mayor without cause. The owner of a dry cleaning company reported he wants to employ Roma, but only when they do not look like Roma because hotels and restaurants will not want gitanos to enter their establishments. However, Roma women face the severest discrimination. Oftentimes to obtain unemployment, they must pretend they are from South American countries because South American women can find work easily in Spain by caring for children or the elderly (OSI, 2002).

The Spanish government has downplayed the role of discrimination in the workplace. For this reason, few strategic policies addressing racial discrimination exist (OSI, 2002). In its 2003 analysis, the ECRI confirmed there exists discrimination at the point of recruitment and the severity of discrimination against Roma women. It urged the Spanish government to address the issue of labor discrimination by making use of research, awareness raising measures, and legislative provisions to affect change (ERRC, 2003). This may prove challenging, as the Commission noted in 2004 that comprehensive Roma specific-policies and data have existed in Spain since the 1980s, but nothing has been done with them because concern is not present.

## VI. ANALYSIS AND CONCLUSION

I have comprehensively outlined the conditions of the Roma within the context of the Czech and Spanish cases. As regards the Czech Republic, I have provided an in-depth analysis of minority rights provisions enacted by the government during communism and before and after EU conditionality. I have also demonstrated how membership conditionality changed Czech domestic policy. The aforementioned minority rights provisions and institutions were enacted per the Copenhagen Criteria and its implementation is undoubtedly owed to the active leverage of the EU. The Czech government believed credible the threat of exclusion if membership requirements were not transposed. Furthermore, I analyzed changes post membership in education, housing, and unemployment, three areas Roma faced much discrimination pre membership. I found when progress was made, it was minimal, e.g. the increase in Roma children enrolled in preparatory classes, and cases of Roma exercising legal rights and winning, e.g. *D.H. and Others v. the Czech Republic*, are few and far between. Thus, it can be stated and observed that EU conditionality post membership has declined. Granted, this was expected. However, there is cause for alarm. Policies enacted pre membership are not achieving significant results post membership because those in power at all governmental levels still harbor deep-rooted prejudices that cannot easily be changed by the implementation of laws.



As evidenced in the many examples I have provided, Czech society is discriminatory. According to Fawn (2001), this is because Czechs feel Roma were provided opportunities under communism, but squandered them, and the socio-economic inequalities they now face are their own fault. Surveys also attest to this discrimination. A recent poll conducted in 2007 by the Median agency found that 92 percent of Czechs believe Roma should start solving their own problems, and 66 percent believe it will take several generations for the Roma to integrate into society (Romea.cz, 2008). Other public opinion polls have shown 45 percent of Czechs support the departure of the Roma from the Czech Republic and 90 percent have an “aversion” to the Roma and do not want to live next to them (Fawn, 2001, p. 1196).

As regards the Spanish case, under current circumstances, Roma in Spain are not recognized as an official minority group, because the definition of being a minority in Spain is restricted to territorialized groups. The political will to enact legislation to improve conditions for the Roma also appears to be wanting. The Spanish government has collected twenty years of data on Roma problems, but its few policy initiatives, e.g. the housing sector, have actually further marginalized the Roma and exacerbated tensions. Roma children continue to face barriers in education; it is harder to maintain a quality teaching staff in Roma neighborhoods. This certainly does not prepare Roma to enter the highly discriminatory job market.

Would it help to impose the Copenhagen Criteria on Western European member countries, like Spain? I do not think so. As observed, Czech-Roma are afforded more minority rights protections than Spanish-Roma, however, it appears these rights are

primarily formal and rarely translated in practical policies. Thus, requiring Spain to adopt the Copenhagen Criteria, while in theory will provide Roma with more protections, in practice they may continue to suffer the same discrimination.

As the Czech case demonstrated, even the granting of legal rights does not abate the discrimination in society that throws up barriers in education, housing, and unemployment. Such provisions may not make a lot of difference in a society that has a history of discrimination. To change attitudes of prejudice in a society, it may take a new generation. For this reason, as stated by Sasse, “EU influence is only tied to legal change; it is not effective in bringing about behavioral and attitudinal changes either pre or post accession” (as cited in Epstein & Sedelmeier, 2008, p. 802).

It is difficult in the Czech Republic and other ECE countries to continue the upkeep of minority rights provisions post membership. Judicial systems are weak in comparison to that in old member states, and the number of lawyers and judges skilled in international human rights or anti-discrimination law is few (Goldston, 2003). Also, now that the Czech Republic is a full-fledged member of the EU, the EU finds it more difficult to impose its political will because the most formidable stick – threaten to block accession – is gone. Domestic structures, such as adoption costs and the ability to veto legislation, resurface as the carrot of membership has been gained (Schimmelfennig & Sedelmeier, 2004). Double standards between East and West further stymie efforts because minority practices vary greatly between old and new member states. There are no universal practices. Why should important minority rights provisions continue to be implemented when national minorities are denied status in Greece, but enjoy autonomy in

Spain? Case in point is the Anti-discrimination Act, which the Czech government should have enacted prior to EU membership, but still has not and most likely will not. The incentive is not there.

International bodies must continue to actively monitor and protect the international human rights of Roma in ECE countries if change is going to happen post membership. This is especially crucial given the history of discrimination Roma have encountered in the Czech Republic. I have demonstrated that it took the threat of exclusion from the EU to cause a national government (citizenship case) and local government (Ústí wall case) to change course pre membership. The same argument applies post membership – courts on all levels except for the international level cannot be relied upon to adhere to international human rights standards because of discrimination and ignorance. For example, even though Article 10 of the Czech Constitution makes signed international charters superior to domestic law, there is no guarantee these provisions will be upheld by national, regional, or local courts (Banach, 2002).

Banach (2002) compares the situation of Roma in ECE to Roma in the U.S. The U.S. does have a Roma population – about one million from Southern and Eastern European countries who immigrated in the 19<sup>th</sup> and 20<sup>th</sup> centuries. They too face discrimination; until about 20 years ago, Roma living in Pennsylvania had to present an identification card in order to live in its counties. Roma communities are often overlooked in American society. As such they have their own courts and laws that govern on the basis of kinship (rather than individual-based system) and do not view themselves as belonging to the larger constitutional order. Herein arises the problem – when American

law prevails. For this reason, Banach (2002) argues that Roma in the U.S. should be subject immediately to international courts.

The same applies to Roma in ECE countries, who also believe that their own laws should be allowed to differ from those of the majority. This was illustrated in case of *Assenov and Others v Bulgaria*. Assenov, a fourteen year-old Romani boy, was gambling in the market square. When police saw him, they arrested and began to beat him. Assenov's father heard word and arrived at the scene with a wooden board to discipline his son (e.g. private Romani law in play). However, authorities interpreted the incident differently and began to beat the father. Assenov's parents appealed to Bulgarian authorities to investigate the unjust beatings, but to no avail. In October 1998, the case reached the ECHR. It was found that the Bulgarian police violated Article 3 of the European Convention on Human Rights, which protects against inhuman treatment, because they did not properly investigate the claim of police brutality (e.g. Bulgarian law versus international law) (Banach, 2002).

Because the Roma in the U.S. and Europe “maintain a separate order, uphold distinct laws, and live on a different plane from the dominant [American] society” Banach (2002) argues they should be viewed as sovereign nations existing inside a larger international regime (p. 371). This will allow them to demand that international human rights laws be upheld. In the case of ECE countries, this will help resolve discrepancies in the interpretation of national versus international law, as demonstrated in the aforementioned case. Banach (2002) believes the key to combating discrimination is for the transformation to “begin at the international level (the highest level of law), and

subsequently to permeate the constitutional structures of all nations” (p. 393). Perhaps in this manner, in ECE countries Roma rights can continue to be upheld and discrimination countered, and Roma in the U.S. can demand international standards apply as well. Then a true revolution in the era of Romani rights can begin on both continents.

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