

However, this dichotomy is misleading, because there are numerous possible intermediate positions, in which although the members of a given community are not fully committed to the same basic normative framework, they might consider staying together valuable not only from a narrow self-interested point of view. They all might actually be motivated by *different ideals of the common good*, and believe that cooperation with the other members of the society is their best chance to realize their own ideals.

All societies may rely on myths for the purposes of social mobilization and integration. One should not expect Europe to be the great exception from this rule. Yet, an account of the costs of the myths should be kept as well. This is not the place to explore all the costs of the grand myth of Europe as a community of principle. One of them should be at least indicated, however. This myth seems to lead to an excessive emphasis in the integration process on *normative harmonization* rather than on *political invention* of new normative solutions. The former requires the following of existing common normative frameworks, while the latter is centred on the notion of trust in the capacity of members having different normative agendas to understand each other, and resolve their disputes in a just, equitable and creative manner. Probably the *normative harmonization* view was sufficient for the accession process; it would hardly be sufficient for the further consolidation of European constitutionalism, however, in the circumstances of growing disagreement about the ultimate goals of the Union.

6. CONCLUSION

In this chapter, the issue of judicial independence in the accession process was examined, and it was argued that any claim that the Commission assessment of the legal systems of the accession countries has been based on a coherent theory of judicial independence is deeply problematic. Despite the lack of such a theory, factors diverse as the dominant intellectual understanding of the nature of the Union and pragmatic considerations in the negotiations process, have presupposed the construction of a certain myth of such a coherent theory. The chapter examined some of the uses of this myth and the costs related to these uses.

The issue of judicial independence was a tiny aspect of the accession process. Therefore, one should be careful in generalizing on the basis of the finding of this study. Yet, it seems what has been said for the issue of judicial independence might have some relevance for the assessment of the accession process in general.

15. Post-Communist Legal Orders and the Roma: Some Implications for EU Enlargement

István Pogány*

1. INTRODUCTION

The ousting of communist regimes across Central and Eastern Europe (CEE), in 1989–1990, is frequently portrayed as the triumph of popular democracy, human rights and market economics.¹ However, for the bulk of an estimated six million Roma, or Gypsies, constituting by far the largest ethnic minority in the region, the post-communist era has brought neither improved living standards nor the genuine enjoyment of democracy or basic freedoms. On the contrary, Roma poverty has worsened dramatically during the transition from communism. As a recent World Bank report notes: “[w]hile Roma have historically been among the poorest people in Europe, the extent of the collapse of their living conditions in the former socialist countries is unprecedented.”² At the same time, the incidence of anti-Roma assaults (and of Roma stereotyping by opportunistic politicians and by elements in the media) has risen sharply, particularly in the early to mid 1990s.³ According to a

* I should like to acknowledge the generous financial support of the Nuffield Foundation. This enabled me to interview officials, NGO spokesmen and scholars concerned with minority affairs in Hungary and Romania, to work in specialist libraries and to carry out fieldwork in several Romanian towns and villages with significant Roma communities. The Office for National and Ethnic Minorities, in Budapest, Hungary, supplied me with numerous materials and were very helpful in responding to my queries. Finally, I should like to thank my colleague at the University of Warwick, Dr. Andy Williams, for his perceptive and helpful comments on an earlier draft of this paper.

¹ See, e.g. Timothy Garton Ash, *We the People* (London: Granta Books 1990).

² Dena Ringold, Mitchell A. Orenstein and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (Washington, DC: International Bank for Reconstruction and Development 2003), p. 1. See, generally, *ibid.*, at pp. 1–2, 13, Chapt. 2.

³ For details of the pattern of violence directed against Roma in the CEE states and of anti-Roma stereotyping see, e.g. OSCE High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area* (The Hague: OSCE 2000), Chapt. 2. The Report is available at <http://www.osce.org/hcnm/documents/reports/> (accessed September 3, 2003). See, also, the Country Reports series issued by the Budapest-based European Roma Rights Center. See, in addition, the entries on various post-communist states in the annual World Report published by Human Rights Watch. The World Reports are available at: <http://www.hrw.org/reports/world/reports/> (accessed March 28, 2003).

broad range of inter-governmental organisations and human rights NGOs, the new era of democracy and of supposed economic opportunity in the CEE states has been characterised by the partial exclusion—economic, social and political—of the mass of the region’s Roma.⁴

The European Union has an obvious interest in the predicament of the Roma people of Central and Eastern Europe. The process of eastward enlargement of the EU means that the Roma ‘problem’ has ceased to be a largely external affair.⁵ If transitional arrangements had not been introduced by existing EU members, severely limiting the potential flow of job seekers from the accession states for an interim period, the chronic economic and social marginalization of the Roma in the CEE region might have triggered waves of Roma migration, particularly from the Czech Republic, Slovakia and Hungary, to more prosperous and apparently liberal countries in Western Europe.⁶ The eventual admission of a further tier of CEE states to the EU, Romania and Bulgaria—each of which has a substantial and mostly impoverished Roma minority—will result in an enormous additional pool of potential Romani migrants to the West.⁷ At the very least, as emphasised in a recent World Bank report, the failure to address the economic, social and political exclusion of the Roma in the CEE countries will pose a serious challenge to sustained economic growth and to the consolidation of democracy and respect for human rights in the region.⁸ Put simply, a large and expanding ‘underclass’ of semi-destitute, poorly educated and alienated Roma is likely to prove a massive

⁴ In addition to the sources cited above, n. 2–3, see, e.g. the relevant sections of the European Commission’s 2002 Regular Reports on Progress Towards Accession of the then candidate states from the CEE region. These are available at: <http://europa.eu.int/comm/enlargement/report2002/> (accessed January 12, 2004).

⁵ Even before the accession of a sizeable group of post-communist states to the European Union, on May 1, 2004, EU member states were confronted with the problem of Roma asylum seekers fleeing Central and Eastern Europe. See, e.g. Mít’a Castle-Canerová, “Romani Refugees: The EU Dimension,” in Will Guy (ed.), *Between Past and Future* (Hertfordshire: Hertfordshire University Press 2001), Chapt. 6. See also Dallal Stevens, “The Migration of the Romanian Roma to the UK: A Contextual Study,” *European Journal of Migration and Law*, 5 (2004), pp. 439–461.

⁶ At the time of writing, severe restrictions have been introduced by most EU members on the numbers of job seekers from accession states who will be admitted during a transitional period. In some cases, EU members have chosen to restrict access to welfare benefits by job seekers from accession states, rather than actual entry. The size of Roma populations in the CEE states cannot be given with any degree of precision for a variety of reasons. For an estimate see, e.g. Ringold, Orenstein, Wilkens, above n. 2, p. 12. In Bulgaria, FYR Macedonia, Romania and Slovakia, Roma are thought to comprise between 6 and 11% of the population of the respective countries.

⁷ It is currently envisaged that Bulgaria and Romania will accede to the European Union in 2007.

⁸ Ringold, Orenstein, Wilkens, above n. 2, p. 1.

economic burden on the CEE states, while also straining inter-communal tensions in these societies. These are important and obvious concerns for the EU, whether in terms of its economic objectives or its more recent commitment to the recognition and protection of human rights.⁹

Beginning with a case-study of a Transylvanian village which has a mixed population of ethnic Romanians, ethnic Hungarians and Roma, this chapter goes on to examine the nature and extent of the problems confronting the Roma of the CEE region in the transition from communism. The chapter further considers some of the causes of the chronic difficulties experienced by the Roma since the collapse of state socialism. It should not be assumed that the plight of this minority can be ascribed solely to racism and to anti-Roma discrimination in the countries concerned, even though the continuing importance of these factors should not be discounted. In Part IV of this chapter, I review the efforts of the EU to monitor the situation of the Roma in post-communist states and to address some of the underlying problems.

2. VOICES FROM A TRANSYLVANIAN VILLAGE: THE ROMA OF *SOMEȘ* IN THE TRANSITION FROM COMMUNISM¹⁰

Someș (not its real name) is a fairly typical village in north western Transylvania, in Romania. Like many of the villages in this region it has a mixed population. The residents of *Someș* comprise over 800 ethnic Romanians, more than 300 ethnic Hungarians and approximately 265 Roma, or Gypsies. In terms of religious affiliation, the ethnic Romanians are Orthodox, the Hungarians belong to the Reformed, or Presbyterian, Church, while the Roma adhere to one or the other of these religious denominations.

The Roma of *Someș*, as elsewhere in Romania and in the CEE region as a whole, insist that they were comparatively well off during the communist era. In particular, they were freed from material insecurity as the state provided them with jobs that assured them a regular income. Many of the Roma in the village, who had had little

⁹ Article 6(2) of the consolidated text of the Treaty of European Union, dated December 24, 2002, declares that: '[t]he Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms . . . and as they result from the constitutional traditions common to the Member States'. For the text of the treaty see, e.g. http://europa.eu.int/eurlx/en/treaties/dat/EU_consol.pdf (accessed January 12, 2004). Note, also, the Charter of Fundamental Rights of the European Union, dated December 18, 2000. For the text of the Charter see, e.g. http://europa.eu.int/eurlx/pri/en/oj/dat/2000/c_364/c_36420001218en00010022.pdf (accessed January 12, 2004).

¹⁰ This case study of the Roma living in the Transylvanian village of *Someș* is based on semi-structured interviews that I conducted with Roma families and community leaders in the village, in April 2003.

schooling, moved to towns and cities with their families where they were given work, frequently in newly constructed factories. Rapid and often ill-considered industrialisation was a key feature of the post-war sovietization of the region.¹¹ Other Roma from *Someș* found work locally, whether as labourers on recently established cooperative farms or at a nearby quarry. Traditionally, a large number of Roma in the village, as many as 47 at one time, had been popular and successful semi-professional musicians. At weekends, in groups of three to six, they played at wedding feasts and at other celebrations in the surrounding villages. In such a multicultural environment, Gypsy musicians learnt to be flexible and to maintain an extensive repertoire. Each of the principal ethnic communities in this part of Transylvania—Romanians, Hungarians and Roma—had their favourite songs and dances that they expected the Gypsy musicians to perform.

Miklós, a Romani resident of *Someș*, has spent his whole life in the village. Now in his late sixties he is retired and living on a small pension. For 30 years he worked as a stonemason at the local quarry, supplementing his wages with his earnings as a musician. In the single downstairs room of his tiny but immaculate wooden house he keeps the accordion that is his pride and joy, although now he is too frail to play the cumbersome instrument. Like most of the Roma in the village, Miklós recalls the communist years with undisguised nostalgia:

When the communists were around, life was good! Back then, poor people, peasants, everyone had something. Whether you wanted to or not, you had to go [to work]. You got what you got, but it was enough to live on! It wasn't a lot of money, maybe fifteen hundred or two thousand Lei. I earned two thousand Lei. I never managed to earn more than that.

For most of his adult life, Miklós was in great demand as a musician. At weekends, along with his father, well known locally for his skills as a violinist, and his wife, who accompanied them on the drums, they performed at weddings and other festivities. Frequently, other instruments were added to the line-up: a second accordion, a double bass and a *kontra*.¹²

Since the end of communist rule and the gradual introduction of a market economy under successive governments, most of the Roma of *Someș*, as in other parts of Romania and within the CEE region as a whole, have experienced economic dislocation and plummeting living standards. As factories closed down or shed

¹¹ See, e.g. Ivan Berend, *Central and Eastern Europe 1944–1993* (Cambridge: Cambridge University Press 1996), pp. 190–192.

¹² The *kontra*, a stringed instrument, was developed in Transylvania, quite possibly by Gypsies. It can be adapted from either a violin or a viola, and has a flat bridge instead of the rounded bridge that is characteristic of string instruments that are bowed rather than plucked. Consequently, a bow can be drawn across three strings of the *kontra* at once, producing a complete chord. I am grateful to the Cluj-based folk musician and musicologist, Kálmán Urszui, for this information.

much of their surplus workforce—measures that impacted disproportionately on the Roma—many newly redundant Gypsies opted to return with their families to villages, such as *Someş*, in which they had spent their childhood. They imagined that it would be easier to survive in a rural environment. Other Roma, who had remained in the countryside during the socialist era and who had worked as labourers on collective farms, lost their jobs as the land was returned to the peasants from whom it had been taken in accordance with communist policies of collectivisation. As in other countries in the region, very few Roma had owned agricultural land in the inter-war period. Therefore, they were excluded from the process of land reprivatization that was implemented in Romania, in the 1990s, in an effort to correct some of the worst ‘injustices’ perpetrated by the communists. New employment opportunities in or around villages such as *Someş* remain scarce, particularly for Roma. In addition to the general shortage of regular work, Roma job applicants have to contend with pervasive anti-Roma prejudice. The Roma are also disadvantaged by their generally low level of formal education. The fate of the two adult sons of Miklós, the retired stonemason and former accordionist, is instructive. Referring to his elder son, Miklós told me indignantly:

He worked, he worked on the roads for twenty years! Now he doesn’t work anywhere, because where could he [find a job]? He and his family are here with me. Then there’s my younger son. He worked for ten years. He learnt to be a stonemason [like me]. He has three children. Now he can’t earn anything, anywhere. He went to the authorities and asked them for money. Once they gave him some after three months. After three months they gave him something.

Even music has ceased to be a source of ready income for the Roma in the village. Musical tastes have changed and the availability of cassette and CD players offers a much cheaper means of entertainment than hiring a Gypsy band. Many younger Roma, including Miklós’ sons and grandchildren, have even lost the desire to learn to play a musical instrument. Miklós told me, with evident sadness, about one of his grandsons:

Here’s my younger son’s son. I thought to myself, he’ll be like my father, he’ll be a good musician! He made a good start [on the violin]. Then he got bored of it. There are no longer Gypsies coming into the world who’ll grow into musicians.

A Romani community leader in *Someş* explained to me how most of the Roma in the village earn a living since the end of communism. Some hire themselves out as labourers to *gadje* (i.e. non-Roma) smallholders, although such work is seasonal, at best, and very poorly remunerated. Sometimes, the Roma are paid in kind, i.e. with flour, *szalona* (a fatty bacon), or other foodstuffs. Many Roma, like Miklós’ younger son, rely on occasional handouts from the local administration. Gathering mushrooms and medicinal plants that grow in hedgerows near the village constitutes another, albeit irregular, source of income. Virtually identical modes

of subsistence have been identified by a Hungarian ethnographer, Péter Szuhay, amongst a community of *Vlach* Roma in a village in south eastern Hungary.¹³

Paradoxically, the end of communism has partially reversed the slow process of social and economic integration on which many Roma had embarked under state socialism, or sometimes significantly earlier. For many Roma in the CEE states, the post-communist transition has become synonymous with abject poverty, insecurity and heightened social marginalisation.

Ironically, two or three *Kalderara* Romani families in *Someş*, who resisted the communist authorities' efforts to integrate them within Romanian society, have experienced far fewer problems of adjustment since 1990 than the numerous Roma in the village who readily accepted jobs. Preferring the freedom of self-employment to a more regulated life as factory workers, or as laborers on agricultural cooperatives, the *Kalderara* worked as rag and bone men during much of the socialist era. Over time, they found a new niche for themselves, trading in 'antiques' such as XIX century jugs and vases, for which there was a growing market. Although entrepreneurial activity was generally frowned upon by communist ideologues, a minority of Romania's Gypsies, often belonging to Roma subgroups such as the *Kalderara* or the *Gabori*, were permitted to work as self-employed traders or as craftsmen during much of the socialist era.

The commercial flair and spirit of self-reliance of the *Kalderara* Romani families of *Someş* has proved a major asset in the new market oriented, post-communist environment. The former rag and bone men of the village—who at one time were looked down upon by the other Roma in *Someş* as backward, semi-nomadic and unwilling to integrate—have transformed themselves into successful businessmen. Acquiring nineteenth century hand-painted wooden chests and other family heirlooms from a younger generation of peasants, who frequently prefer modern, factory-made furniture, they sell the assorted antiques to dealers from abroad who find a ready market for them in Western Europe. The Romani traders of *Someş* have become adept at identifying the provenance of these sturdy, hand-painted chests, each of which was built to accommodate a bride's trousseau.

However, for the vast majority of Roma in *Someş*, life has become increasingly bleak. Like Miklós' adult sons, most of the Roma in the village lack marketable skills or land on which to produce food for themselves and their families. And, as a result of their experiences under communism, they have become dangerously dependent on the state, whether as a source of employment or of social assistance. One of the village's handful of *Kalderara* Romani entrepreneurs told me that as many as 80% of the men in the village are currently unemployed, Roma and non-Roma alike. However, he insisted that, apart from the *Kalderara* Roma who have their own businesses, the local Gypsies are in a much worse position than either

¹³ Péter Szuhay, "Foglalkozási és megélhetési stratégiák a magyarországi cigányok körében," in Ferenc Glácz (ed.), *A Cigányok Magyarországon* (Budapest: Magyar Tudományos Akadémia 1999), p. 139.

the Romanians or the Hungarians: “[t]hey [Romanians and Hungarians] can still get by, because they have land, everything. But round here the Roma don’t own any land, horses, cows, pigs, or sheep. They have nothing.”

3. THE PLIGHT OF THE ROMA OF CENTRAL AND EASTERN EUROPE IN THE TRANSITION FROM COMMUNISM

The plight of most of the Roma in the Transylvanian village of *Somes* offers a stark insight into the difficulties experienced by the bulk of the Roma of Central and Eastern Europe in the transition from Communism. These problems are different in character, scope and in sheer intractability from those encountered by most other national or ethnic minorities, of any size, in the region. Thus, there are few, if any, analogies that can be drawn between the predicament of the Roma in the CEE states and problems faced by national minorities such as ethnic Serbs in Croatia or ethnic Hungarians in Slovakia, the Ukraine, Serbia or Romania. National and ethnic minorities in the post-Communist states, other than the Roma, frequently complain about the lack of educational provision in minority languages or the need for greater cultural and political recognition by the authorities. By contrast, the Roma have experienced an acute economic crisis, since 1990, as well as heightened social marginalisation. In many areas, increased antipathy towards the Roma has resulted in vicious, racially motivated physical assaults.

3.1. *The Economic Crisis Affecting the Roma in the Transition from Communism*

In the shift from command to market economies, the Roma have suffered disproportionately, experiencing mass unemployment and growing poverty throughout the CEE region.¹⁴ In Hungary it has been estimated that 70% of Romani men of working age are currently unemployed as against less than 10% of the non-Romani population.¹⁵ The extent of Romani unemployment in other CEE states with significant Romani minorities,¹⁶ including the Czech Republic, Slovakia, Bulgaria

¹⁴ On the worsening poverty experienced by the bulk of the Roma since the end of communism see, e.g. Ringold, Orenstein, Wilkens, above n. 2, Chapt. 2. See, also, Zoltan Barany, *The East European Gypsies* (Cambridge: Cambridge University Press 2002), pp. 157–183; István Pogány, *The Roma Café* (London: Pluto 2004), especially Chaps. 1, 6, 9. On the economic gains experienced by many Roma during the socialist era see, e.g. Barany, above n. 14, pp. 125–143; Pogány, above n. 14, Chapt. 4.

¹⁵ European Union’s 2002 Regular Report on Hungary, p. 31. This is available at <http://europa.eu.int/comm/enlargement/report2002/> (accessed March 28, 2003).

¹⁶ For the reasons given above, the size of Romani minorities in the CEE states cannot be given with any degree of precision. However, according to figures cited by the European Commission, there are up to 800,000 Roma in Bulgaria, 300,000 in the Czech Republic, 600,000 in Hungary, 2,500,000 in Romania, and 520,000 in Slovakia. In Poland, where the bulk of the Roma were killed during World War II, it is estimated that there are up to

and Romania, is comparable.¹⁷ Soaring levels of Romani unemployment in the post-communist states, together with the rising cost of rents, utilities and basic foodstuffs, have contributed to worsening poverty and deprivation amongst a significant proportion of the Roma people. As noted in a recent World Bank Report:¹⁸

Roma are the most prominent poverty risk group in many of the countries of Central and Eastern Europe. They are poorer than other groups, more likely to fall into poverty, and more likely to remain poor. In some cases poverty rates for Roma are more than 10 times that of non-Roma. A recent survey found that nearly 80 percent of Roma in Romania and Bulgaria were living on less than \$4.30 per day . . . Even in Hungary, one of the most prosperous accession countries, 40 percent of Roma live below the poverty line.

The root causes of the current high levels of Romani unemployment in the CEE states, a prime cause of Romani poverty, cannot be reduced to a single factor. In some instances, Roma may have a culturally informed preference for informal entrepreneurial activity of various kinds, or even subsistence occupations, over wage labour with its inevitable and far-reaching restrictions on individual freedom and autonomy.¹⁹ However, Roma frequently have little or no choice in such matters due to the scarcity of secure, full-time employment of the kind that was readily available under communism.

In part, the scale of Romani unemployment can be explained by the fact that, during the communist era, the authorities encouraged (sometimes even coerced) the Roma to take semi-skilled or unskilled jobs in sectors of the economy, such as heavy industry, that were to prove uncompetitive. Many of these former state-owned enterprises, employing large numbers of Roma, were closed down during the hasty transition to a market economy, or shed much of their workforce.

Thus, it can be argued that the communist policy of integrating the Roma in the general economy, while providing them with limited training or opportunities for professional advancement, amounted to little more than proletarianization. Such policies conspicuously failed to equip the bulk of the Roma with the skills or outlook needed to obtain regular employment in increasingly modern, competitive societies. Michael Stewart has referred dismissively to the “creation of phantasmagorical “socialist” jobs for the Gypsies which disappeared as soon as consumers had any choice over what they purchased.”²⁰ In fact, there is a case for saying that, by

60,000 Gypsies. See European Union Support for Roma Communities in Central and Eastern Europe, p. 4. The text is available at http://europa.eu.int/comm/enlargement/docs/pdf/brochure_roma_oct2003_en.pdf (accessed February 23, 2004).

¹⁷ See, e.g. Ringold, Orenstein, Wilkens, above n. 2, pp. 35–37.

¹⁸ *Ibid.*, at 1–2.

¹⁹ *Ibid.*, at 36.

²⁰ Michael Stewart, “Communist Roma Policy 1945–89 as Seen Through the Hungarian Case,” in Will Guy (ed.), above n. 5, p. 87.

generally discouraging the Roma from pursuing traditional trades or crafts, or from engaging in commerce, the communists in Central and Eastern Europe may have unwittingly rendered the Roma *less capable* of adjusting to modern economic conditions than they would have been if the authorities had been less dogmatic in their approach to the Gypsy “question.”

However, blatantly discriminatory practices by employers are also to blame for the current unacceptably high levels of Romani unemployment in the region. There is a widespread disinclination on the part of employers in the CEE countries to hire Gypsies, other than as casual labourers. The virulence of anti-Roma prejudice has led some lighter skinned Roma to try to pass themselves off as *gadje*, or non-Roma, in an effort to gain social and professional acceptance.²¹

As emphasized above, in the case study of the Roma living in the village of *Someş* in Transylvania, a comparative lack of marketable skills and of educational qualifications also helps to account for the difficulties experienced by Roma in finding regular employment. The statistics of Romani educational under-performance are alarming. According to research done in Hungary, in the mid 1990s, only 2% of Roma aged 25–29 had completed secondary school.²² Levels of educational achievement amongst Roma in other Central and Eastern Europe states are broadly comparable. A Romanian study, carried out in 1998, found that 18.3% of Romani children aged 7–16 had not even attended elementary school.²³ In the mid 1990s, 2.5% of Czech Roma and 2.8% of Slovak Roma attended (but did not necessarily complete) secondary school.²⁴ Only 0.2% of Hungarian Roma, 0.7% of Romanian Roma and 0.9% of Bulgarian Roma undertook tertiary education of any kind.²⁵

The chronic educational underperformance of the Roma in the CEE countries is a product, to some degree, of cultural insensitivity. Not infrequently teachers have low expectations of their Romani pupils as they simply do not understand the cultural context that may shape some Romani childrens’ behaviour in class.²⁶ In other instances, there is compelling evidence of institutionalised discrimination. For example, human rights experts assert that Romani children in the Czech Republic have been systematically allocated to ‘special’ schools intended for the educationally subnormal without regard to their individual abilities.²⁷ A detailed

²¹ For a discussion of this phenomenon see Pogány, above n. 14, Chapt. 5.

²² István Kemény, “Tennivalók a cigányok/romák ügyében,” in Glatz, above n. 13, p. 230.

²³ Barany, above n. 14, pp. 169–170. See, generally, *ibid*, at 164–172.

²⁴ *Ibid*, p. 170.

²⁵ *Ibid*, p. 171.

²⁶ The educational ‘ghettoization’ of Romani pupils in parts of Central and Eastern Europe and related problems are discussed in Pogány, above n. 14, Chapt. 1.

²⁷ See, generally, European Roma Rights Center, *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic* (Budapest: ERRC Country Report Series No. 8, June 1999).

report issued by an influential NGO, the Budapest-based European Roma Rights Center, notes that:²⁸

According to reasonable estimates, Roma are at least fifteen times more likely to be placed in remedial special schools than non-Roma. A student who has completed remedial special school has greatly restricted choices in secondary education compared to a student who has completed mainstream primary school. Romani children are thereby effectively condemned from an early age to a lifetime of diminished opportunity and self-respect. In addition, the segregation of Roma in inferior schools is used as constant legitimation for discriminatory attitudes and actions by members of the majority society.

These alleged practices in the Czech Republic are currently the subject of a complaint to the European Court of Human Rights. In Hungary, a recent study of elementary schools found that pressure from non-Romani parents had resulted in the allocation of large numbers of Gypsy pupils to “special classes.”²⁹ Researchers, who examined 192 Hungarian elementary schools, concluded that almost 85% of the children in “special classes” are of Roma extraction.³⁰ The standard of instruction provided to the mostly Romani pupils in the “special classes” is often unsatisfactory, while the teachers assigned to these classes are frequently poorly qualified.

However, the educational under-performance of significant numbers of Roma pupils can also be ascribed to the residual effects of deep-seated Romani cultural norms. Traditionally, the Roma generally viewed ‘education’ as the inter-generational transfer of skills, usually within families or communities, rather than as passing exams or attendance at schools. A failure to appreciate the growing importance of formal qualifications as the most reliable route to secure and well paid work remains a widespread problem, particularly in poorer or more traditional Romani communities. In the view of social workers and numerous Romani community leaders, many Romani parents continue to attach insufficient importance to their childrens’ schooling.

Not infrequently, Romani children are expected to play a part in generating income for the family from an early age, whether by hawking goods, begging or, in rural areas, helping to collect medicinal plants, nuts and other commodities that can be sold to wholesalers. For example, children from the Romani settlement of *Pata Rât*, on the outskirts of the city of *Cluj* in Romania, worked alongside their parents at the municipal rubbish dump until a few years ago, combing through the

²⁸ *Ibid*, p. 11.

²⁹ Gábor Havas, “A cigány tanulók elkülönítése az általános iskolában,” in Terézia Reisz and Mihály Andor (eds.), *A Cigánység Társadalomismerete* (Pécs: Iskolakultúra 2002), p. 152, at pp. 166–172.

³⁰ *Ibid*, p. 170.