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Europeanization,  
the protection of minorities and the long-term failure of Roma  
integration efforts in the EU

Master's Thesis

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I declare that I have prepared this thesis independently (under the supervision of the thesis supervisor) and I have listed all sources and literature used.

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## **Anotation**

The thesis deals with the analysis of minority protection in the framework of Europeanisation. This study focuses on the development of minority protection in the European Union. It examines the impact of European integration on the situation of the Roma in the EU. The Roma are one of the largest and most vulnerable minorities in the European community. Using the case of the Czech Republic and specific examples of discrimination, it analyses the situation of the Roma in this member state.

The theoretical part deals with the framework of European integration. In particular, the development of European policies to ensure the protection of national minorities. This part also looks at issues of pre-accession negotiations between states. It describes the barriers, but also the commitments in relation to minority rights to which states had to commit themselves. It also highlights the different approaches of states to common minority policies.

The practical part analyses European legislation on the protection of national minorities. It also analyses the European strategic framework for improving the situation of the Roma. A more specific analysis is then focused on the situation of the Roma in the Czech Republic. Based on research, surveys and regular reports by European institutions and other NGOs, it examines the impact of European integration on discrimination against Roma and segregation of Roma children in education.

## **Keywords**

Europeanisation, European Union, discrimination, minority protection, vulnerable groups, segregation of Roma children in education, anti-Roma sentiment

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## Introduction

Today, the European Union is one of the great global communities. The 27 member countries add up to a large population. It is the political will of states to set common goals, principles and values, reflected in all areas of social life. One of the most important values of the European Community should be the protection of human rights. The general objectives within the Community are freedom, security and justice. The EU is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and liberty and respect for human rights, including the rights of persons belonging to minorities.<sup>1</sup> Article 3 of the Lisbon Treaty defines a number of additional values and objectives to which the Member States have committed. These include respect for cultural and linguistic diversity. It also remembers the fight against discrimination and social exclusion. The protection of human rights is regulated by the EU Charter of Fundamental Rights. This includes the rights to: „not to be discriminated against on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, the right to protection of personal data and the right of access to justice”.<sup>2</sup>

The European community has attempted, with varying degrees of enthusiasm and success, to promote laws and policies to protect minority rights. After World War II, human rights provisions were introduced, but minority rights were largely neglected on the international agenda until 1989. It was only after the end of the Cold War and the subsequent ethnic tensions caused by the disintegration of the USSR and Yugoslavia that minority rights came to the forefront of Western democracies, particularly the EU.<sup>3</sup>

Although the European institutions, directly or indirectly, claim to protect minorities, some ethnic minorities in Europe continue to be marginalized and discriminated against. One of the minorities that has long been discriminated against is the „Roma”. According to the European Union administration, this minority continues to face discrimination, segregation and social exclusion.

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<sup>1</sup>BILGIN, A. *International Journal on Minority and Group Rights: Minority Protection in the European Union: To Protect or Not to Protect?* [online]. Vol 26, No. 1, Brill, Dec 2019, pp. 92-115. [viewed 30. July 2024]. Available from: <https://www.jstor.org/stable/27001394?seq=2>

<sup>2</sup>Charter of Fundamental Rights of the European union (2012/C 326/02), Article 21, 2012

<sup>3</sup>HOLZER, J. a kol. *Demokratizace a lidská práva: Středoevropské pohledy*. 1. vydání. Praha: Sociologické nakladatelství (SLON) v koedici s Masarykovou univerzitou Brno, 2013, 266 s. ISBN 978-80-7419-159-6, s. 12.

The Roma are the largest ethnic minority in Europe. Of the 10 to 12 million Roma living in Europe, around 6 million are citizens or residents of the EU.<sup>4</sup> Romani people live in different EU countries. The highest concentration of Roma in the EU Member States is recorded in Romania (30%), followed by Bulgaria, Hungary and Spain, where the proportion is 12.2%. In the Czech Republic, Roma make up 3.2% of the population, in Greece 2.8%, in Italy 2.4% and in Germany 1.7%. Most other EU countries have a Roma share of less than 1%.<sup>5</sup> The term „Roma” encompasses various groups, including Roma, Sinti, Kale, Romanichels, Boyash/Rudari, Ashkali, Egyptian, Yenish, Dom, Lom, Rom and Abdal, as well as the Traveller population (gens du voyage, Gypsies, Camminanti and others). This terminology is often used in EU policy documents and discussions.<sup>6</sup>

The key research question will be whether the process of European integration has improved the protection of minorities, especially the Roma minority. The reasons for this focus stem from their violent history and the continued stigmatization and discrimination that Roma face in the European Union to this day. In the pre-accession process, the leaders of the European institutions had the interest and the ambition to improve the situation of minorities and non-discrimination. In a way that would be consistent with the principles and values on which the Community was founded. One of the fundamental human rights is the one to education. The existence of segregated education for Roma children denies them this right. Finding an answer to the main question of my work will also be sought in the efforts made by European institutions and Member States to combat the desegregation of Roma children in the education system. Although this is a pan-European problem affecting several Member States, the case of education will focus on the situation in the Czech Republic.

This thesis will focus on an analysis of the European Union's approaches to the protection of minorities and the rights of minority groups through a literature search of primary and secondary sources with a focus on the Roma minority. Attention will be paid to authors who describe the theoretical basis, course and impact of Europeanization on the protection of

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<sup>4</sup> European Commission. *Roma equality, inclusion and participation in the EU*. *commission.europa.eu* [online]. 2020 [viewed 20. July 2024]. Available from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu_en)

<sup>5</sup> LECERF, M. Understanding EU action on Roma inclusion. *europarl.europa.eu* [online]. March 2024 [viewed 20. July 2024]. Available from:

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690629/EPRS\\_BRI\(2021\)690629\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690629/EPRS_BRI(2021)690629_EN.pdf)

<sup>6</sup> European Commission. *Roma equality, inclusion and participation in the EU*. *commission.europa.eu* [online]. 2020 [viewed 20. July 2024]. Available from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu_en)

minorities (such as Nancheva. N, Sasse.G, Brosig.M). I will use the resources of European law to analyse the legal protection of minorities, especially Roma. Through portals for European legislation, I will examine the contents of directives and resolutions of European institutions that deal with the protection of minorities. The charters and conventions on human rights, which are also part of the EU legal framework, will not be overlooked. For the analysis concerning the position of Roma in society, I will use the official periodic reports of the European Commission, the Council of Europe, the European Agency for Fundamental Human Rights, the OSCE and other relevant sources monitoring the impact of Roma integration policies. Additional sources will be selected articles, public opinion polls, and the opinions of experts and Romani activists who can provide specific information about the situation of Romani people in the Czech Republic.

The aim of this work is to draw the attention of the professional and lay public to the ongoing problem of Roma integration. Based on the findings of the research, including the content of the recommendations of the European institutions, as well as my own long-standing personal and professional experience, I will try to find a conclusion that would outline the basic reasons why the EU's long-standing efforts to support Roma integration are failing.



# 1 Europeanisation

## 1.1 Theoretical definition

The process of Europeanisation affects the national interests of individual states.<sup>7</sup> Europeanisation refers to: „Processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies”.<sup>8</sup>

Ladrech, speaks of Europeanisation as a downstream process that changes policy and direction to the extent that the economic growth of the community becomes embedded in the organisational logic of national policies and legislation.<sup>9</sup>

It is a gradual process that influences the structure and direction of policy to the extent that the economic and economic spheres are part of national policy and their legislative development.<sup>10</sup>

## 1.2 European integration on minority policy

The enlargement of the EU and thus “Europeanisation“ has had a major impact on minority politics in the post-communist countries of Central and Eastern Europe. There is a large literature on the broader adaptation to European norms and practices towards minorities. It describes the emergence of EU documents in relation to minorities after 1990, the activities of actors and European institutions putting pressure on ruling elites to introduce more minority-friendly policies within the institutional regulations at the time of accession to the European Union.<sup>11</sup> Most sources have tended to focus on the context of 'triangular' relations between minorities, the states where they live and the states that are committed to change. In contrast,

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<sup>7</sup> DOBBERNACK, J and MODOOD, T. *Tolerance and cultural diversity in Europe: theoretical perspectives and contemporary developments.cadmus.eui.eu* [online]. 2011[viewed 10. May 2024]. Available from: <https://www.eui.eu/documents/rscas/research/mwg/201011/05-11-triandafyllidou.pdf>

<sup>8</sup> RADAELLI, C. The Europeanization of Public Policy. In Featherstone, K. and Radaelli, C. (eds.). *The Politics of Europeanization*. Oxford: Oxford University Press, 2003, pp. 27-56.

<sup>9</sup> LADRECH, R. Europeanization of Domestic Politics and Institutions: *The Case of France, Journal of Common Market Studies*, 1994, 32(1), pp. 69-8.

<sup>10</sup> LADRECH, R. Europeanization of Domestic Politics and Institutions: *The Case of France, Journal of Common Market Studies*, 1994, page 70

<sup>11</sup> SMITH, D. *Framing the National Question in Central and Eastern Europe: A Quadratic Nexus? The Global Review of Ethnopolitics*, 2002, 2 (1), pp. 3–16.

less attention has been paid to questions of how Europeanisation has affected the mobilisation of these minorities at the local level.<sup>12</sup>

The expansion of EU policies has had a deeper impact on political activities in favour of national minorities. The decades of post-communism have been important for political elites to make institutional changes as a commitment to integrate Central and Eastern European states into Western politics. The Council of Europe, NATO and other European institutions and organisations, had an extraordinary influence on state and local governments to decide on the terms of membership of candidate countries based on the fulfilment of objectives, requirements and demonstration of progress in individual policies. Indeed, despite the absence of a comprehensive minority acquis, minority rights have become a priority in the accession negotiations of post-communist countries.<sup>13</sup>

On the other hand, the aforementioned lack of policy in the EU acquis has caused the elites and certain constraints. Even though they had a free hand to propose minority policies, European organisations were more reticent and made minimalist demands which in this competitive environment also affected the retention of minority policy actors. Moreover, the creation of new government institutions from the top down, did not bring about adequate group participation of minorities. Thus, the topic of minorities remained a special piece of legislation for disputes about the meaning and purpose of their protection.<sup>14</sup>

Interestingly, minorities in the pre-accession period (based on European documents referring to the values of democratic inclusion and diversity) showed higher trust in European institutions than members of majority societies. However, the need to protect minorities was linked to security and possible threats by European actors to state sovereignty by minority rights.<sup>15</sup> These concerns were also based on the controversial perception of minority rights in established democracies. They saw minorities as problematic groups and sources of potential threat in an unstable region of Europe. Some even rejected minority protection outright.<sup>16</sup> This negative context of perception has placed the interests of minorities and their political

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<sup>12</sup> BRUBAKER, R. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press, 1996.

<sup>13</sup> KELLEY, J.G. *Ethnic Politics in Europe: The Power of Norms and Incentives*. Princeton, NJ: Princeton University Press, 2006.

<sup>14</sup> VRÁBLÍKOVÁ, K. *How Context Matters? Mobilization, Political Opportunity Structures, and Nonelectoral Political Participation in Old and New Democracies*. *Comparative Political Studies*, 2014, 47 (2), pp. 203–29.

<sup>15</sup> GALBREATH, J. and McEVOY, J. *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness*. Basingstoke: Palgrave Macmillan, 2012.

<sup>16</sup> DEETS, S. and STROSCHEIN, S. *Dilemmas of Autonomy and Liberal Pluralism: Examples Involving Hungarians in Central Europe*. *Nations and Nationalism*, 2005, 11 (2), pp. 285–305.

representation in doubt. However, the actors' idea of a strong transnational European protection of minorities in Europe remained unfulfilled in the actual process.<sup>17</sup>

Instead of full-fledged adaptation to minorities, policy actors have focused more on broadly defined European norms setting common goals for states to meet through democratic individualism and thus limiting adaptation to minorities.<sup>18</sup> In fact, this made the issue of ethnic minorities irrelevant in the accession process.<sup>19</sup> In the short term, on the other hand, a significant part of the elites saw the issue of minority acceptance (e.g. resistance to nationalism) as an adequate option in exchange for other economic security or economic guarantees.<sup>20</sup> This strategy has also been confirmed in bilateral negotiations with governments to accommodate minorities. It can be considered incomprehensible when experts dedicated to the extension of the European framework included minority actors as political actors in their analyses, while European actors, on the contrary, relied on nationalist elites to implement changes. Thus, by legitimizing nationalist discourse, European organizations essentially promoted majority ethnic interests at the expense of ethnic groups.<sup>21</sup>

Europeanisation is an interactive process of domestic and European elites to improve European policies and social integration. Minorities should be involved in this process, which has rarely happened.<sup>22</sup> Despite these shortcomings and limitations, however, the literature could be more positive. European integration has created space for minority demands, furthermore, the structural limit of minorities has been strengthened at national levels and thus the ability to assert the demands formulated. In addition to the impact of the process on cross-border interaction and minority policy advocacy, some publications focus on transnational Roma activism. They have long been perceived as a minority group, one of the most vulnerable groups among European citizens. The situation of the Roma has not improved at national level. Institutional transformation has not shifted this state of affairs throughout its region. For Roma

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<sup>17</sup> NANCHEVA, N. *Imagining Policies: European Integration and the European Minority Rights Regime*. *Journal of Contemporary European Studies*, 2016, 24 (1), pp.132–48.

<sup>18</sup> BROSIG, M. *The Challenge of Implementing Minority Rights in Eastern Europe*. *Journal of European Integration*, 2010, 32 (4), pp. 283–301.

<sup>19</sup> BROSIG, M. *No Space for Constructivism? A Critical Appraisal of European Compliance Research*. *Perspectives on European Politics and Society* [online], 2012, 13 (4), pp. 390–407 [viewed 30. July 2024]. Available from: <https://doi.org/10.1080/15705854.2012.73193>

<sup>20</sup> SCHIMMELFENNIG, F. and SEDELMEIER, U. *Introduction: Conceptualizing the Europeanization of Central and Eastern Europe*. In *The Europeanization of Central and Eastern Europe*, edited by Frank Schimmelfennig and Ulrich Sedelmeier. Ithaca, NY: Cornell University Press, 2005, pp. 1–28.

<sup>21</sup> NANCHEVA, N. *Imagining Policies: European Integration and the European Minority Rights Regime*. *Journal of Contemporary European Studies*, 2016, 24 (1), pp.132–48.

<sup>22</sup> SEDELMEIER, U. *Europeanisation in New Member and Candidate States*. *Living Reviews in European Governance*, 2011, 6 (1), pp.1–52.

activists, the EU has become the only available environment where they can lobby. They perceived it as an important source to gain support for changes in domestic policies perpetuating the marginalisation of Roma. The European Commission responded positively to the expectations of Roma activists. It has progressively allocated substantial funding for this work and developed its own strategic frameworks for monitoring state practices and consulting with Roma. The introduction of this agenda has indeed provided space for cross-border activism and mobilisation to promote measures to combat the marginalisation of Roma. However, this activism has had a small impact on the local lives of Roma. In many cases, marginalisation and hatred of Roma has grown year on year. While European institutions such as the European Parliament may provide opportunities for Roma activists to some extent, they can equally provide space for anti-Roma politics by nationalists. Moreover, lobbying by activists can create a discourse of the Roma as a 'European minority' with European citizenship, thereby neglecting the fact that measures in favour of the Roma should be implemented primarily by nation states.<sup>23</sup>

Despite the above findings about the declining trust of minorities in European institutions or their unchanged and structurally disadvantaged position in society, some positive aspects can be seen in the context of integration. The enlargement of the EU framework has strengthened the EU's position on minority policies. New institutions have been created, which have provided opportunities for the demands of minorities to be asserted at the local level. Beyond legislation, minority actors have also been involved in the argument about the meaning of democratic integration.<sup>24</sup>

The reasons for legal protection of minorities are based on fundamental values such as respect, tolerance, but also solidarity and support for weaker groups are characteristics for the smooth, fair functioning of a democratic society. Minority rights have a collective purpose. Their protection gives them the conditions to express, develop, maintain and preserve their specific values and characteristics. Inequality between minorities and majorities hinders cultural integrity. In addition to general human rights, there are also political freedom and civil rights that these groups can use. What is important is an institutional and political framework

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<sup>23</sup>VEMEERSCH, P. *How Does the EU Matter for the Roma? Transnational Roma activism and EU social policy formation. Problems of Post-Communism* [online]. September – October 2017, 64 (5), pp. 219-227 [viewed 30. July 2024]. Available from: <https://www.tandfonline.com/doi/full/10.1080/10758216.2016.1268925>

<sup>24</sup>ZSUZSA, C. and REGELMANN, A. *Europeanization and Minority Political Agency. Europeanization and Minority Political Action in Central and Eastern Europe*, 2019.

for the protection of minorities that is workable and that both majority and minority groups abide by.<sup>25</sup>

To improve the situation, the EU calls on member states to implement measures and fund mechanisms to ensure the protection of minorities, which was one of the conditions for EU enlargement. The Copenhagen criteria (1993) must be met by each candidate country. They include „respect for and protection of minorities“ Other conditions are contained in the accession documents that form the framework of the pre-accession process for each applicant country. At the level of political dialogues, candidate countries also address minority issues under the negotiating chapter „judiciary and the judicial system“.

### **1.3 Barriers and limits of minority policies**

Minority performance is assessed annually for the candidate countries. At the same time, the principle of „minorities“ has no basis in EU law and cannot be incorporated into the *acquis communautaire*. This barrier of clear standards has led to difficulties for Member States in determining the importance, the priority of this deficit. Although the treaties (Maastricht and Amsterdam) include almost all the values set out by the EU in the Copenhagen Treaty, they lack any mention of minority protection.<sup>26</sup> The Treaty on the Functioning of the EU and subsequently the EU Treaties brought changes to the status of minorities. (For more details, see subsection 2.1.)

The first view relates to top-up policies of European integration in relation to minorities cannot bring about the necessary changes without adequate internalisation, including the social climate. This is the state of development of problem areas at EU level concerning standards, rules, procedures and regulations affecting domestic policies. However, in the absence of an institutional framework for the protection of minorities, domestic states adapt to some extent, but there is no positive integration.<sup>27</sup> The accession process as it stands does oblige governments to take action, but without the need to follow an institutional template that clearly defines 'minority protection', it gives states room to manoeuvre.

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<sup>25</sup> CORDELL, K. and Wolff, S.2007. *Germany as a Kin-State: The Development and Implementation of a Norm-Consistent External Minority Policy towards Central and Eastern Europe*. Nationalities Papers, 2007, 35 (2), pp. 289–315

<sup>26</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2010/C 83/0, 2010

<sup>27</sup> SASSE, G. *The Politics of EU conditionality: the norm of minority protection during and beyond EU accession*. 6 *Journal of European Public Policy*, 2008, p. 15.

Another perspective relates to social perceptions. Specifically, the extent to which Europeanization affects the „construction of systems and collective relations”, the understanding of social identities and the importance on beliefs, collective understandings and values of social groups and individuals on minority rights.<sup>28</sup> International socialisation involves the behaviour of actors and the way they perceive themselves. At the same time, the internal constitutive beliefs of states, including the practices of institutions in the international environment, become a kind of guide to the adoption of social beliefs to the extent that those concerned regard them as their own and autonomously follow them. Still, it may not be enough. Legislative changes and pressure from the EU to adapt to these changes does not mean that they will bring about a change in the mainstream opinion of a given society. The history in states that have included nationalist currents or economic crises may have certain limits in creating democratic values in social perceptions, for example in relation to minorities.

Persistent stereotypes and prejudices against minorities represent a relatively large barrier to mutual coexistence. They create dominant narratives that are strongly rooted in societies and have an impact on people's values, as confirmed by long-standing and recent surveys. In 2017, the European Agency for Fundamental Rights provided interesting data on the coexistence of the Czech majority with Roma. According to them, more than half of Czechs do not wish to have a Roma as a neighbour.<sup>29</sup> Activist Karel Holomek, a Romani activist with a university education who came from an intellectual family of Moravian Roma,<sup>30</sup> captured the long-standing social discourse against Romani people very aptly in an interview (idnes, 2016), in which he states „They tell me I am not Romani. Czechs consider them just troublemakers”.

As already mentioned in the text, the Roma represent one of the most vulnerable minorities in the European Union, who still face segregation, discrimination, social exclusion and poverty. The European Court of Human Rights itself has pointed out the 'vulnerability' of this minority, including the need for special protection in view of its violent history.<sup>31</sup> The position of the Roma in society concerns the entire community. The will of the European

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<sup>28</sup> RADELLI, C. The Europeanization of Public Policy. In FEATHERSTONE, K. and RADELLI, C. (eds.). *The Politics of Europeanization*. Oxford: Oxford University Press, 2003, p.4

<sup>29</sup> NERAD, F. *V Česku žije nejvíc lidí v unii, kteří nechtějí vedle Romů pracovat ani bydlet, uvádí evropská agentura*. [online]. iROZHLAS, 6. dubna 2018 [cit. 30. června 2024]. Dostupné z: [https://www.irozhlas.cz/zpravy-svet/romove-evropska-unie-ceska-republika-diskriminace\\_1804060700\\_pj](https://www.irozhlas.cz/zpravy-svet/romove-evropska-unie-ceska-republika-diskriminace_1804060700_pj)

<sup>30</sup> TRACHTOVÁ, Z. *Aktivistka: Říkají mi, že nejsem Rom. Češi za ně považují jen potížisty*. [online]. iDNES.cz, 28. května 2016 [cit. 30. června 2024]. Dostupné z: [https://www.idnes.cz/zpravy/domaci/rozhovor-s-karlem-holomkem-romove.A160521\\_152254\\_domaci\\_zt](https://www.idnes.cz/zpravy/domaci/rozhovor-s-karlem-holomkem-romove.A160521_152254_domaci_zt)

<sup>31</sup> Case of D.H. and Others v. the Czech Republic, Application no. 57325/00, European Court on human rights, 13. November 2007

institutions to improve this situation as part of the process of pan-European integration was undoubtedly correct. Indeed, the marginalisation and discrimination mentioned above affects the lives of all Roma living on the territory of the European Union. Nevertheless, it is also important to know the local/national context, which in many respects may be the same, but in part also different because of the geographical location, the presence of Roma sub-groups that are not homogeneous but different, and the political approach towards the Roma.

## 2 Protection of minorities in the context of European integration

The topic of minorities is highly pertinent as migration is increasing worldwide and so are the numbers of people and groups that are identified as minorities. As confirmed in a report by McKinsey & Company (2024), minorities make up a significant proportion of the national population in Europe. In Western European countries, for example, minorities make up between 5 and 18% of the population, with the average figure being 10%. The regions of origin of minorities vary considerably. The protection of minorities should therefore be in the interest of all, given their growth in the Member States.

An interesting trend concerning the protection of minorities was brought about by quantitative-qualitative research. It followed the development of minority attitudes towards European institutions in Latvia and Estonia before EU accession. The results show that at the time minority activists attached importance to European institutions for improving minority protection. However, the quantitative part suggests a decline in minority trust in the EU. There has been a decline in minority involvement, which the authors explain by a decline in EU interest in minority protection.

Interviews with minorities.

In interviews, minority activists revealed that they no longer naively trust European intervention on behalf of minorities, but critically rely on European institutions to uphold the principles of minority rights.<sup>32</sup>

The development of minority protection in Europe has been determined by the international situation and international law. The protection of minorities in other regions was the result of international treaties and agreements. In addition, these are obligations of a higher legal force which are part of the legal order of the EU and the Member States. Protection of minorities in international law, came only with the advent of democracy after World War I. In 1919, the Paris Peace Conference included documents to ensure peaceful post-war functioning, considering large minorities that had been oppressed before World War I.<sup>33</sup> Minority issues were further addressed by the League of Nations, Geneva and later the United Nations, UN. In the post-war era, the UN General Assembly adopted a resolution to prohibit discrimination

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<sup>32</sup> CIANETTI, L. and NAKAI, R. Europeanization and Minority Political Agency. Critical trust in European institutions: The case of the Russian-speaking minorities in Estonia and Latvia *[online]* 9. November 2018 *[viewed 30. July 2024]*, p.5-10. Available from: [http://scholar.google.co.uk/citations?view\\_op=view\\_citation&hl=en&user=JYlj2AEAAAAAJ&citation\\_for\\_view=JYlj2AEAAAAAJ:W7OEmFMy1HYC](http://scholar.google.co.uk/citations?view_op=view_citation&hl=en&user=JYlj2AEAAAAAJ&citation_for_view=JYlj2AEAAAAAJ:W7OEmFMy1HYC)

<sup>33</sup> MALÝ, K. Dějiny českého a československého práva do roku 1945. 1. Vydání. Praha: Leges, 2010, 328 s. ISBN 978-80-87212-39-4.



(1965). However, there was a prohibition of discrimination based on the principle of equality of population. There was therefore no need to grant special rights to minorities.<sup>34</sup>

As already mentioned, the European Communities were originally created mainly to merge economic policies and subsequently to create a single internal market. Human rights and minority policies have long been overlooked by the actors. Changes in European law were brought about by the Maastricht Treaty (1993), which included the creation of European citizenship. This was a status that was granted to every national of a Member State. The Treaty of Amsterdam (1999), established a new contractual basis of non-discrimination. Prohibited discrimination included race, sex, ethnic origin, religion, belief, disability, age or sexual orientation (TFEU, Treaty on the Functioning of the EU, Article 13).<sup>35</sup>

The validity of the Treaty of Amsterdam and the obligation to develop the right of Euro citizens, opened the way for the adoption of three directives which (according to the Commission's classification) are to give effect to these rights. These are Directives - 2000/78/EC150 establishing a general framework for equal treatment in employment and occupation (hereafter referred to as the Equal Treatment Directive), 2004/38/EC151 on citizens' rights (hereafter referred to as the Citizens' Rights Directive). These Directives are relevant notwithstanding the fact that they set out the rights of EU citizens, the right to move and reside in another Member State on the basis of EU citizenship can be an important mechanism for the exercise of minority rights that are not recognised in the home State or where the home State has failed to protect minority rights, and 2000/43/EC149 (hereafter referred to as the Racial Equality Directive) establishing the principle of equal treatment of persons irrespective of racial or ethnic origin. It is thus the only international legal framework that addresses national minorities at the level of European standards. The signatories to the document undertake to promote equality, association, freedom of language, development of culture, religion, language and traditions, freedom of assembly, access to the media, participation in cultural, social and public life, education, prohibition of discrimination and forced assimilation.<sup>36</sup>

A major development was the legal force given to the EU Charter of Fundamental Rights by the Lisbon Treaty in 2009. The prohibition of national discrimination was never presented

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<sup>34</sup> Mezinárodní úmluva o odstranění všech forem rasové diskriminace. [online]. New York, 1965. Dostupné z: <https://osn.cz/wp-content/uploads/2022/08/umluva-ras.diskriminace.pdf>

<sup>35</sup> European Parliament. *Amsterdam Treaty. Prospects for an anti-discrimination policy (Social Affairs Series SOCI 105 EN* [online]. 1999 [viewed 18 June 2024] Available from: [https://www.europarl.europa.eu/workingpapers/soci/105\\_en.htm#chap4](https://www.europarl.europa.eu/workingpapers/soci/105_en.htm#chap4)

<sup>36</sup>The Race Directive 2000/43/EC und the Framework Directive 2000/78/EC, Academy of European law, ERA, 2000

as a minority rights issue. The prospect of EU enlargement to include Central and Eastern European countries has raised the profile of minority rights. Until then, minority rights were seen as a matter for each Member State with a different approach according to the cultural perspective of the country. The inclusion of a new provision prohibiting discrimination on grounds including ethnic or racial origin in the Treaty of Amsterdam was an innovative approach triggered by pressure from civil society, which led the EU to launch a wider range of activities to promote non-discrimination.<sup>37</sup>

## 2.1 Non-discrimination and equality

According to Article 3(3) TFEU, non-discrimination is the EU's first and traditional approach to the protection of minorities. It defines the fight against discrimination, social exclusion and the promotion of social justice and protection, gender equality, the protection of children's rights and intergenerational solidarity. Representative democracy is referred to in Article 10, where every citizen has the right to participate in the democratic life of the Union. The Charter of Fundamental Rights defines the right to non-discrimination (including on ethnic, racial or linguistic grounds) and equality before the law.<sup>38</sup>

The EU Charter also regulates the treatment of minorities. Article 22 requires respect for linguistic, cultural and religious diversity. The competence of this obligation extends to the EU. Member States can thus reject this approach. Respect for diversity only arises in situations where EU competence is involved, e.g. in the area of working conditions or consumer protection.<sup>39</sup> In the Treaty on the Functioning of the EU, Article 3(3) refers to combating social exclusion and discrimination, promoting social justice and protection, gender equality or protecting the rights of the child. Article 10 TFEU refers to the right to participate in the democratic life of the Union. It further provides that the Union is based on representative democracy.<sup>40</sup> The Lisbon Treaty (the legal force of the EU Charter of Fundamental Rights) and Article 21 of the EU Charter, which again defines the prohibition of discrimination but includes membership of a national minority as a basis, have made a significant contribution to promoting

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<sup>37</sup> Treaty of Lisbon 2007/C 306/01 amending the Treaty on European Union and the Treaty Establishing the European Community

<sup>38</sup> Consolidated Version of the Treaty on the functioning of the European Union 2016/C 202/01

<sup>39</sup> Evropská agentura pro základní práva. Listina základních práv EU [online]. [cit. 30.června 2024]. Dostupné z: <https://fra.europa.eu/cs/eu-charter/article/22-kulturni-nabozenska-jazykova-rozmanitost>.

<sup>40</sup> Smlouva o evropské unii (konsolidované znění). [online]. 26. 10. 2012 [cit. 30.června 2024]. s. 5 Dostupné z: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0008.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0008.02/DOC_1&format=PDF)

minority inclusion. Article 22 of the Charter promotes cultural, linguistic and religious diversity. The emergence of other group rights, such as social rights, into the realm of 'hard core' EU law has paved the way for a rethinking of how minority rights can be more than a 'soft' guide, but also take an enforceable legal form accessible to groups and individuals. This development has been accompanied by a very substantial change in the ECRH's orientation towards minority rights, particularly in relation to the Roma, which began to take shape in the mid-20th century. The association of EU law through the EU Charter with ECRH and its case law has made this development particularly important for the EU.<sup>41</sup>

## **2.2 Protection of ethnic minorities with emphasis on the Roma people**

Recognition of the Romani minority precedes the efforts of Romani initiatives and individuals. In various parts of Europe, efforts have been made to draw attention to the existence of this group. The Roma first received legal recognition in the countries of Southeastern Europe. The countries of the former Yugoslav federation - Serbia and Montenegro (1974) - also granted minority status to the Roma in Hungary in the mid-1980s. Partly also Bulgaria, which allowed active cooperation with Roma representatives. Most of these countries focused on the forced assimilation of Roma, including Czechoslovakia from the 1950s to the 1980s. In Western European countries, the Roma were recognized later during the 1990s. To this day, collective minority rights are still not recognized, for example - France, Spain, Greece. (State Department study, Legal Status of Roma in EU Member States, 2004). The 1st Congress of the International Romani Union (IRU) can be considered a historical milestone. This initiative of the Roma came together in London in 1971 to declare their self-determination, history, culture, language, identity and romipen (Roma identity).<sup>42</sup>

The characteristics of minorities are regulated by Article 27 of the International Covenant on Civil and Political Rights - ethnic, religious and linguistic minorities. The Council of Europe has introduced a definition of 'Roma', which has been commonly adopted by the EU institutions. It applies to Roma, Sinti, Kale and related groups in Europe such as the Doms and Loms.<sup>43</sup>

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<sup>41</sup> MINISTERSTVO ZAHRANIČNÍCH VĚCÍ ČR. *Evropská charta regionálních či menšinových jazyků, publikovaná jako sdělení Ministerstva zahraničních věcí č. 15/2007 Sb. m. s.* In: ASPI (právní informační system). Wolters Kluwer ČR [cit. 4. dubna 2024], s. 54.

<sup>42</sup> MINISTERSTVO ZAHRANIČNÍCH VĚCÍ ČR. Studie, shrnující výsledky výzkumného projektu RB 10/2/03 Ministerstva zahraničních věcí České republiky, Právní postavení Romů v jednotlivých členských zemích EU [online]. 2004 [cit. 15. května 2024]. s. 3-5. Dostupné z: [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmzv.gov.cz%2Ffile%2F16376%2FRB\\_10\\_2\\_03.doc](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmzv.gov.cz%2Ffile%2F16376%2FRB_10_2_03.doc)

<sup>43</sup> Framework Convention for the Protection of National Minorities (ETS No.157).

The Copenhagen Document is the main standard-setting instrument of the Organisation for Security and Cooperation in Europe on minority rights. The Document on the Human Dimension (OSCE) of June 1990, commits states to protect the cultural, linguistic, ethnic and religious identities of national minorities on their territory conform to the principles of non-discrimination and equality. The principles are clarified by the Venice Commission, which in its explanatory report on the draft European Convention for the Protection of Minorities highlights the adoption of special measures in favour of minorities.<sup>44</sup>

The European Convention on Human Rights (ECHR) provides protection for members of minorities in its Article 14, which guarantees the enjoyment of the rights and freedoms contained in the ECHR without discrimination on an inexhaustible list of grounds, including: race, colour and relationship to a national minority, among others.

Rather than formal equality, the point of the proposal was substantive equality. These principles were given legally binding force by the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), which was subsequently adopted. Article 4(1) obliges Parties to take additional and proportionate measures to promote full and effective equality between persons belonging to minorities and members of the majority, including taking into account the specific needs of persons belonging to minorities. The European Convention on Human Rights provides for the protection of minorities in Article 14, which guarantees the enjoyment of the rights and freedoms set out in the ECHR without discrimination on grounds including, inter alia, race, colour and association with a national minority. Although the scope of Article 14 can only be applied to another substantive provision of the ECHR, Protocol No. 12 gives autonomous application of the principle of non-discrimination to all rights provided by law. The European Convention was complemented by the European Social Charter (signed, 1961) on human rights in the field of social and economic rights. In relation to the right to work, it provides in Article 1(2) for protection against discrimination in employment.<sup>45</sup>

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<sup>44</sup> DUNBAR, R. *The Council of Europe's Charter for Regional or Minority Languages*. In: HENRAD, K. and DUNBAR, R. (ed.). *Synergies in Minority Protection* (pp. 155-186). Cambridge: Cambridge University Press, 2017, p. 157.

<sup>45</sup> EIDE, A. *The Council of Europe's Framework Convention for the Protection of National Minorities – Roma Question*. In: HENRAD, K. and DUNBAR, R. (ed.). *Synergies in Minority Protection* (pp. 119-154). Cambridge: Cambridge University Press, 2017, p. 121.

International law on the protection of minorities consists of two levels. Protection from discrimination in general and specific minority rights. This study describes the practices of how Member States comply with international and European standards for the protection of minorities, focusing on the Roma minority. Monitoring is carried out by: monitoring bodies, judgments of the European Court of Human Rights and collective complaints decisions of the European Committee of Social Rights.

Compliance assessments by monitoring bodies and decisions of the European Court of Human Rights and the European Committee of Social Rights on collective complaints.<sup>46</sup> Compliance with the Convention is contained in the concluding observations on the periodic reports that States submit to UN bodies. In addition, the opinions of the Advisory Committee on the Framework Convention for the Protection of Minorities (ACFC), the resolutions of the Committee of Ministers and the Council of Europe, and the evaluation carried out by the European Commission against Racism and Intolerance (ECRI).

Monitoring also includes reports by the Commissioner for Human Rights after a country visit, reports by the European Commission and the Fundamental Rights Agency (FRA), including the EU Network of Legal Experts on Gender Equality and Non-Discrimination.<sup>47</sup>

Significant changes in minority attitudes came gradually within Europe. The manifested efforts of the European institutions towards minorities, which had been neglected in the past, were reflected in the adoption of specific commitments and documents.

The Copenhagen Document on the Human Dimension (June 1990) is the main instrument for standardising minority rights within the Organisation for Security and Cooperation. The document commits states to protect the ethnic, linguistic, cultural and religious identity of national minorities in their territory. This is in accordance with the principles of equality and non-discrimination. The principles are explained in detail in the report of the Venice Commission in its report on the draft European Convention for the Protection of Minorities, emphasising the adoption of special measures in favour of minorities.<sup>48</sup>

The draft of the European Convention for the Protection of Minorities, which points out that „the very nature of minorities makes it necessary to introduce special measures for their

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<sup>46</sup> Framework Convention for the Protection of National Minorities (ETS No.157).

<sup>47</sup> Framework Convention for the Protection of National Minorities (ETS No.157).

<sup>48</sup> DUNBAR, R. *The Council of Europe's Charter for Regional or Minority Languages*. In HENRAD, K. and DUNBAR, R. (ed.). *Synergies in Minority Protection* (pp. 155-186). Cambridge: Cambridge University Press, 2017, p. 157.

members“.<sup>49</sup> In this respect, therefore, non-discrimination does not refer to formal equality between individuals belonging to a minority and the rest of the population, but to substantive equality. The subsequent adoption of the Council of Europe Framework Convention for the Protection of National Minorities gave these principles legally binding force. Article 4 prohibits discrimination on the grounds of membership of a minority. The first paragraph obliges the Parties to take additional and proportionate measures to ensure equality for persons belonging to minorities and the second paragraph obliges the majority to take into account the specific needs of persons belonging to minorities. Paragraph 3 of the same article explains that any measures taken to promote effective equality are not to be regarded as discrimination. The European Convention on Human Rights provides protection for members of minorities in Article 14. This guarantees the enjoyment of the rights and freedoms contained in the ECHR without discrimination on an extensive list of grounds, including race, colour and relationship to a national minority. Although the applicability of this article is limited to its applicability only in relation to another substantive provision of the Convention, Protocol 12 provides for the automatic application of the principle of non-discrimination „to any right established by law“. The European Social Charter (1961) complements the ECHR in the area of economic and social rights. For example, Article 1(2) provides for protection against discrimination in employment under the right to work.<sup>50</sup>

Protection outside the field of employment is ensured by the general non-discrimination clause under Article E of the Revised European Social Charter of 1996. The European Court of Human Rights has recognised the vulnerable position of Roma and the need for special consideration of their situation in several cases concerning them, highlighting a number of concerns and recommendations by international bodies. These cases have set important standards, such as:<sup>51</sup> Obligation of the state to investigate racial motives in cases of violence against Roma (regardless of the nationality of the perpetrator), vigilance and strong state response in cases of racial discrimination that constitutes serious inhuman and degrading

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<sup>49</sup> DUNBAR, R. *Council of Europe Charter for Regional or Minority Languages*. In HENRAD, K. and DUNBAR, R. (eds.). *Synergies in the protection of minorities* (pp. 155-186). Cambridge: Cambridge University Press, 2017, p. 157.

<sup>50</sup> EIDE, A. *The Council of Europe's Framework Convention for the Protection of National Minorities – Roma Question*. In HENRAD, K. and DUNBAR, R. (ed.). *Synergies in Minority Protection* (pp. 119-154). Cambridge: Cambridge University Press, 2017, p. 121.

<sup>51</sup> EIDE, A. *The Council of Europe's Framework Convention for the Protection of National Minorities – Roma Question*. In HENRAD, K. and DUNBAR, R. (ed.). *Synergies in Minority Protection* (pp. 119-154). Cambridge: Cambridge University Press, 2017, p. 121.

treatment as well as segregation of Roma in education or the obligation to address structural discrimination.

The case law of the European Committee of Social Rights has also provided important interpretations of the principle of non-discrimination. These include the obligation to collect data and equality data in order to monitor the extent of the discrimination problem, as well as the obligation to introduce positive measures to promote equality. States have ultimate responsibility for implementing policies, including promoting citizen participation.<sup>52</sup>

European standards provide further protection for ethnic minorities, including Roma, who are protected in primary law in Member States through the EU Charter of Fundamental Rights and in secondary EU law by Council Directive 2000/43/EC (2000), providing for the principle of equal treatment of persons irrespective of ethnic or racial origin. Furthermore, the Framework Decision on combating certain forms and expressions of racism, xenophobia by means of criminal law, 2008/913/SVV.<sup>53</sup>

Specific recommendations for Roma by the UN, the Council of Europe, the UN and the European Commission are additional protection tools referred to by the monitoring bodies.

Focus on measures to combat discrimination and segregation of Romani people in education, to promote Romani identity and culture, to implement affirmative action to ensure functioning and full equality for Romani people, to address multiple discrimination against women and children, to combat racist violence against Romani people (including by law enforcement officials), and to combat hate speech, including racist political discourse.<sup>54</sup>

In previous and current programming periods, the European Roma Framework included some initiatives and a focus on improving. In the previous framework period 2011-2020, the EU focused on the socio-economic exclusion of Roma. States were invited to develop national strategies and targets. National contact points for Roma were also established. Two years later, the Council of Europe adopted a recommendation on effective measures for Roma integration in each country to strengthen the implementation of their strategies.

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<sup>52</sup> HEINTZE, H. J. *Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities. International Journal on Minority and Group Rights*, 7, pp. 381-392, 2016, p. 389.

<sup>53</sup> HEINTZE, H. J. *Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities. International Journal on Minority and Group Rights*, 7, pp. 381-392, 2016, p. 389.

<sup>54</sup> DUMAS. *On the need for a clearer focus on fighting antigypsyism and discrimination in the post-2020 EU framework, Anti-Gypsyism in a post 2020 EU Roma Framework. International Journal on Minority and Group Rights*, 2108, pp. 236.

The Decade of Roma Inclusion 2005-2015 is a joint initiative of 8 Central and Eastern European countries to improve the situation of Roma in Europe. The aim was to reduce the impact of poverty and social exclusion on Roma, including the elimination of discrimination.<sup>55</sup>

The 2020-2030 programming period has brought a new strategic framework for equality, inclusion and participation of Roma in the EU. However, the EU Action Plan against Racism for the period 2020-2025 states that discrimination based on racial or ethnic origin (especially against Roma) persists. As the largest minority in Europe, Roma continue to face discrimination on a daily basis.

It is primarily up to the Member States to bring about real change in the lives of the Roma. The EU can help ensure an effective approach and tools in implementing national strategies. Cooperation at national and European level is crucial.

The position of Romani people in the European Union is similar in many respects. However, because of the previously mentioned diversity of the Roma and the geographical location where they live, there are some specific differences that can be pointed out in the case of a particular Member State.<sup>56</sup>

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<sup>55</sup> Decade of Roma inclusion. Ministry of Youth, Family, Social Affairs and Equal Opportunities. Hungary [online]. 2005 [viewed 23 July 2024] p.4. Available from [https://adatabase.ohchr.org/IssueLibrary/HUNGARY\\_Decade%20of%20Roma%20Inclusion%202005-2015.pdf](https://adatabase.ohchr.org/IssueLibrary/HUNGARY_Decade%20of%20Roma%20Inclusion%202005-2015.pdf)

<sup>56</sup> European Commission. *Roma equality, inclusion and participation in the EU*. *ommission.europa.eu* [online]. 2020 [viewed 20. July 2024]. Available from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu_en)



### 3 The situation of Roma in the Czech Republic

The Romani population living in the Czech Republic today is estimated at 250 000 people.<sup>57</sup> They are thus among the largest minority. Slovak Roma are the most numerous (75-85 %). There are already social, cultural and educational differences, which have an impact on the standard of living of families and individuals. The Olah Roma are another group that represents approximately 10% of the population. This group remains more closed to non-Roma and Roma. This is due to a lack of confidence in settling down, integrating for fear of losing their Romani identity (Romipen). Roughly 10 to 15 percent are Hungarian Roma, and very insignificant numbers are supplemented by Czech Roma (whose lives ended during the war) and Sinti, who mostly reside in Germany.<sup>58</sup> Romani people also joined the demonstrators against the regime at the end of the 1980s (as they did at the end of the 1960s). They believed in freedom and change that would bring new opportunities. In November 1989, they declared their ethno-emancipation aspirations on the Letná plain. In the first half of the 1990s, the first ever Romani political entity (apart from the Union of Gypsies of the Roma in the 1970s), the „Romani Civic Initiative“, was founded. The 1990 elections brought 10 Roma mandates. Although it was a shortened term until 1992, it was the first time ever that Roma sat on the benches of the Federal Assembly, the Czech National Council and the Slovak National Council.

Gradually, other Romani organizations and associations were formed that focused on the development and support of Romani culture. Namely, the Union of Romani Writers, the Cultural Union of Citizens of Romani Nationality, the Dženo Foundation (which focused on the development of traditional Romani values), the Community of Roma in Moravia, and many others. Mnohé z těchto organizací založily vlastní romská média - Lačo lav (Dobré slovo), Amaro gendalos (Naše zrcadlo), Romano kurko (Romský týden), Romano hangos (Romský hlas), Kereka (Kruh). In addition to the mentioned cultural support, the newly formed regional organizations also focused on education and sports. In 1992, the Dr Rajko Djurić Foundation was established to improve conditions for Roma in the fields of education and culture.

In 1998, the Foundation opened a private secondary school in Cologne, where the majority of students are Roma. The school prepares them to work in social services, community social workers and other social institutions. A year earlier (1997), Roma were also able to study at the Evangelical Academy in Prague. The latter provides a two-stage distance learning course

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<sup>57</sup> VLÁDA ČESKÉ REPUBLIKY. *Romská národnostní menšina*. [online] 21. 10. 2022 [cit. 15. května 2024]. Dostupné z: <https://vlada.gov.cz/cz/ppov/rnm/mensiny/romska-narodnostni-mensina-16149/>

<sup>58</sup> HORVÁTHOVÁ, J. *Kapitoly z dějin Romů*. NLN, Nakladatelství Lidové Noviny, 2002, s. 63-65.

for primary school graduates. After graduation, students are qualified to perform the function of Roma assistant (for the first degree) and can apply for the position of Roma counsellor if they complete the second degree.<sup>59</sup>

The Museum of Romani Culture was also founded in Brno (1991). The founders' goal was to document the history and culture of the Roma. Originally, the museum began its activities in temporary premises before acquiring a building for museum purposes in 2000. For the public, the Roma Museum offers a permanent exhibition, history and culture of the Roma, a library, Roma literature and lectures for schools. It also regularly publishes a professional Bulletin.

In the 1990s, Romani activists succeeded in obtaining the editorship of a Romani program on Czech Radio, Prague, called Roma vakeren (Romani Speak) (still ongoing, author's note). One of the other important cultural events is the first Romfest in 1990. The first edition of the world festival of Romani culture was held in Brno (Mariánské údolí). It featured a number of Czechoslovak and foreign Romani artists. In his speech to the participants, President Vaclav Havel said: „I am glad to be able to greet the festival in this beautiful setting of the Mariánské valley, where the Roma can show their culture, which has centuries-old roots.“<sup>60</sup> Gradually, other Romani festivals followed in other towns. They have become an opportunity to celebrate Romani culture, including a place for a broader segment of the Romani community to meet. Since 1999, the Khamoro (Sunshine) International Romani Festival has been held in Prague every year, with dance and music performances by artists from abroad.

The fall of communism brought hope for a better tomorrow to the Romani community as well. The involvement of Romani politicians, activists and organizations has brought concrete successes in the post-revolutionary years. The Roma have relied on their cultural wealth to create a space for dialogue and to break down prejudices. Then, in the second half of the 1990s, programs and projects to promote education among the Roma came along. Here, it is generally acknowledged that education is a value that plays an important role in personal and professional life. However, Romani people's appetite, euphoria and confidence in improvements during democratization had its limits.

The past in the form of forced assimilation or the assignment of Romani children to special schools will soon begin to manifest itself in a very negative way during the transition to

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<sup>59</sup> HORVÁTHOVÁ, J. *Kapitoly z dějin Romů*. NLN, Nakladatelství Lidové Noviny, 2002, s. 55.

<sup>60</sup> Internetová encyklopedie dějin Brna. *1. Mezinárodní festival romské kultury RomFest* [online]. [cit. 30. června 2024] Dostupné z: [https://encyklopedie.brna.cz/home-mmb/?acc=profil\\_udalosti&load=2864](https://encyklopedie.brna.cz/home-mmb/?acc=profil_udalosti&load=2864)

a market economy. Due to the low qualifications of the Roma, they were among the first unemployed. The reasons were latent racism of private employers and lack of education. In the selected localities, unemployment among Romani people ranged between 50 % and 95 %. Efforts to change the approach to the education of Romani children have been declared at all levels, but no concrete measures have been implemented. The needs of Roma pupils, coming from disadvantaged socio-cultural backgrounds are not sufficiently perceived by the education system. The unpreparedness of teachers to work with Roma pupils is reflected in the transfer of these children to special schools. In practice, Roma children are thus educated with children with mental handicaps. Usually, the cause is their social inequality.<sup>61</sup> This is based on the lack of adequate home conditions for learning, low parental education or functioning cooperation between school and parents.

However, some efforts to improve this situation by the state came later. Since 1997, Romani teaching assistants have been established in schools with a higher number of Romani pupils. They were supposed to be a support for Roma pupils to adapt to the school environment, language deficiencies including establishing a relationship between parents and the school. In the districts, positions of Roma advisors were created to resolve disputes in coexistence between the majority and Roma. In 1998, an inter-ministerial commission for Roma community affairs was established at the Office of the Government of the Czech Republic. Two years later (2001), the powers of this body were increased and the Council of the Government of the Czech Republic for Roma Community Affairs was established (author's note: it is still functioning). According to the survey (from publicly available resources, CVVM/1999, 2000)<sup>62</sup>, public opinion remained negative in relation to Romani people. These results are based not only on objective facts but also on intolerance of difference. This is reinforced, on the one hand, by a lack of knowledge and information and, on the other, by the distorted image of Romani people in the media.

At this time, the radicalization of neo-Nazi movements was on the rise. The media began to report on racially motivated attacks. The victims were Roma and Vietnamese. The attackers, armed with nunchucks, knives, basebal packs and chains, sought out members of these minorities in the streets. There was no particular public reaction to these extremes. The first skinhead victim was a Turkish citizen in (7.7.1990). A group of 23 attackers beat him to death.

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<sup>61</sup> HORVÁTHOVÁ, J. *Kapitoly z dějin Romů*. NLN, Nakladatelství Lidové Noviny, 2002, s. 57.

<sup>62</sup> CVVM. *Občané o soužití s Romy a o jejich možnostech ve společnosti* [online]. 22.05.2006 [cit. 30. června 2024]. Dostupné z: <http://cvvm.soc.cas.cz/cz/tiskove-zpravy/ostatni/vztahy-a-zivotni-postoje/1049-obane-o-souiti-s-romy-a-o-jejich-monostech-ve-spolenosti4>

Emil Bendik did not survive the next attack (his stomach was ripped open), Tibor Daniel was driven into the river and drowned, Tibor Berki died after repeated blows from bleeding in the brain, a Sudanese student succumbed to two cuts. This increase continued until 2001, when Tibor Absolon was killed. The lack of police access to investigations and the low penalties for perpetrators have sent fear and concern about the safety of their families into the Roma community. Subsequently, there have been waves of migration to England and Canada. Many Czech Roma have been granted political asylum precisely because Czech Republic has failed to protect the Roma minority from racial crime.<sup>63</sup>

In the 1990s there were repeated protests by Romani civic initiatives, Romani and other civic organizations. Together with them, President Václav Havel and Prime Minister Václav Klaus also condemned and warned of the danger of racial crime.<sup>64</sup> Representatives of the Romani Civic Initiative have repeatedly called on the Government to address the growing aggression by skinheads against Romani people.<sup>65</sup> The mentioned „Bratinka Report“ The „Bratinka Report“ highlighted the problems and provided the basis for government policy. In 2000, a concept of government policy towards the Roma was adopted. This is a government framework which will be updated every year to keep up with current situation.<sup>66</sup> The document did not contain specific tasks. Rather, it set out a series of tasks to be accomplished. Implementation was entrusted to ministries and other institutions. Although the monitoring mechanism was well described, the capacity for monitoring was limited. Each year, instead of a new concept, there is only an addition to the original one. The Human Rights Commissioner prepares a brief report on implementation. Thus, there was no mechanism to support the active involvement of ministries and other relevant actors. The concept was divided into 12 chapters describing the issues of employment, racial discrimination, education, housing and support for cultural development.<sup>67</sup>

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<sup>63</sup> Zpravodajský server Romea.cz. Vše o Romech na jednom místě. *Rasově motivované násilí v ČR po roce 1989*. [online]. 31.01.2012 [cit. 30. června 2024]. Dostupné z: <https://romea.cz/cz/uncategorized-cz/rasove-motivovane-nasili-v-cr-po-roce-1989>

<sup>64</sup> ČT24. Brutální vražda vyvolala protest proti rasismu. Před 25 lety zemřel Tibor Berki. [online]. 14.05.2020 [cit. 30. června 2024]. Dostupné z: <https://ct24.ceskatelevize.cz/clanek/domaci/brutalni-vrazda-vyvolala-protesty-proti-rasismu-pred-25-lety-zemrel-tibor-berki-50600>

<sup>65</sup> ROSTAS, I. A Task for Sisyphus. *Policies towards Roma in the Czech Republic, Hungary, and Romania*, CEU Pres, 2019, p. 105

<sup>66</sup> VLÁDA ČESKÉ REPUBLIKY. Rada vlády pro záležitosti romské menšiny [online]. [cit. 15. května 2024]. Dostupné z: <https://vlada.gov.cz/cz/ppov/zalezitosti-romske-komunity/koncepce-politiky-vlady-vuci-prislusnikum-romske-komunity--napomahajici-jejich-integraci-do-spolecnosti-626/#>

<sup>67</sup> VLÁDA ČESKÉ REPUBLIKY. Rada vlády pro záležitosti romské menšiny [online]. [cit. 15. května 2024]. Dostupné z: <https://vlada.gov.cz/cz/ppov/zalezitosti-romske-komunity/koncepce-politiky-vlady-vuci-prislusnikum-romske-komunity--napomahajici-jejich-integraci-do-spolecnosti-626/#>

The difficult situation of Romani people living in the Czech Republic in the 1990s until membership is also confirmed by surveys and reports by European institutions. As part of the accession negotiations, EU authorities monitor economic developments in the Czech Republic, the functioning of democracy and governance, and human rights policies. The European Commission has repeatedly noted in annual reports the lack of protection for minorities, especially Roma.

In 1997, the Commission issued an opinion on the Czech Republic's application for EU membership, stating that minorities make up 7% of the Czech population. Mostly Slovaks and Roma (estimated at 2 to 3%). It also mentions the Council of Europe Framework Convention on National Minorities, which the Czech Republic has not ratified. It also refers to the current Recommendation (No. 1201) of the Parliamentary Assembly of the Council of Europe, which recognises the collective rights of minorities (not legally binding). In matters concerning the Roma, the Commission draws attention to the difficult situation of the Roma. The Roma are victims of daily discrimination, racial aggression by the skinheads. It calls on the Government of the Czech Republic to ensure adequate protection for them by the police and the authorities. The opinion also mentions the difficult access to employment and housing. It also recalls the fact of the loss of citizenship of some Roma after the division of Czechoslovakia. As it later turned out, this practice was in violation of the Czech Citizenship Act. These persons were deported. It also points out the need for knowledge concerning social conditions. So that measures could subsequently be taken to improve access to education for Roma children.<sup>68</sup>

In the Resolution on the Regular Report from the Commission on Czech Republic's progress towards accession (1999), the European Commission once again highlights the importance of protecting minorities and their fundamental rights. It is dissatisfied with the fact that the Czech Government, despite the creation of an action plan and institutional bodies designed to tackle this problem, has not introduced specific measures concerning the Roma minority. It calls on the Government of the Czech Republic to support practical steps for the social and economic integration of the Roma<sup>69</sup> Despite these partial efforts, the situation of Romani people in the Czech Republic has not improved. A report by the European Commission (2001) speaks of the continuing segregation of Romani pupils. Approximately 70% of Romani

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<sup>68</sup> European Commission. *Commission Opinion on the Czech Republic's Application for Membership of the European Union*. eur-lex.europa.eu [online]. 15.7. 1997 [viewed 20. July 2024]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51997DC2009&qid=1722699708582>

<sup>69</sup> European Commission. *Resolution on the Regular Report from the Commission on Czech Republic's progress towards accession*. Official Journal C 219. eur-lex.europa.eu [online]. 30.7.1999 [viewed 20. July 2024]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51999IP0157>

children are sent to special schools. The establishment of Roma assistants in schools and preparatory schools works well, but funding is not available to expand the scope. Slight support has been given to Roma secondary school pupils. However, no measures have been taken for university students. According to the Commission, Romani people living in the Czech Republic continue to face widespread discrimination and deeply substandard living conditions and opportunities. They are very often victims of racially motivated crimes.<sup>70</sup>

The Regular report on Czech Republic's progress towards accession (2002) states that in the field of education, the government has approved measures concerning Roma pupils. This was in response to the final recommendation of the UN Human Rights Committee expressing its negative opinion on the segregation of Roma in special schools. It also mentions the establishment of preparatory classes, Romani assistants in schools, and Romani coordinators in the regions (7 regions out of 13). It also recalls the adoption of a document, a conception of the Government's policy towards members of the Romani community, or the implementation of minority projects to improve education and discrimination against Romani people. In its 2002 report, the commission acknowledged the steps taken to improve the lives of Roma. It calls on the Czech government to relaunch structural measures to achieve tangible results in the areas of education, discrimination and housing.<sup>71</sup>

The monitoring report notes the Czech government's agreement on the new anti-discrimination law. However, the legislation still needs to be harmonised with the *acquis* and the equality body required by the *acquis* needs to be created. However, there are concerns about the situation of the Roma. Discrimination and social exclusion of Roma continues. Unemployment among Roma is high, including an increase in discriminatory employment practices against Roma. The Commission calls on the government to put in place incentive structures for Roma employment. In the field of education of Roma children, the Commission believes that it is necessary to continue the gradual dismantling of the special school system. Local governments must make greater efforts in Roma integration programmes.<sup>72</sup>

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<sup>70</sup> European Commission. *Regular report on the Czech Republic's progress towards accession*. *op.europa.eu* [online]. 9.10.2002 [viewed 20. July 2024]. Available from: <http://op.europa.eu/en/publication-detail/-/publication/374a4724-f7b5-11ee-a251-01aa75ed71a1/language-en/format-PDF/source-338225987>

<sup>71</sup> European Commission. *Regular report on the Czech Republic's progress towards accession*. *Op.europa.eu* [online]. 9.10.2002 [viewed 20. July 2024]. Available from: <http://op.europa.eu/en/publication-detail/-/publication/374a4724-f7b5-11ee-a251-01aa75ed71a1/language-en/format-PDF/source-338225987>

<sup>72</sup> European Commission. *Comprehensive monitoring report on the Czech republic's preparations for membership*. *eur-lex.europa.eu* [online]. 2003 [viewed 20. July 2024]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52003SC1200&qid=1722699708582>

It is obvious that the condition of the Roma in the 1990s has much deeper roots. Let us recall the enforcement of the 1950s and the policy of „Roma assimilation“ by the then Czechoslovakia, the ban on nomadism by the law on the permanent settlement of nomadic persons (October 1958), or the controlled dispersal of persons from some Roma settlements in Slovakia and their relocation to the Czech Republic (1965). The illegal sterilizations of Romani women, which have caused many Romani women (unknowingly) to lose the opportunity to have another child, represent another painful memory for Romani people. The consequences of these injustices are still manifested today. For example, the unjustified placement of Roma children into special schools.<sup>73</sup>

Criticism and attention to the system of education of Romani children in the Czech Republic has increased from the ranks of experts Balvin (1997), Balabanova (1999) and NGOs. The authors Kraus and Patrackova (1998) define segregation as separation, exclusion. Internationally, the segregation of Roma children in schools has been noted by the UN Committee on the Elimination of Racial Segregation, the OECD, and the ERRC, the European Roma Rights Centre (dedicated to the issue of segregation of Roma children not only in the Czech Republic). The result was a lawsuit brought by eighteen families from Ostrava to the European Court of Human Rights.<sup>74</sup>

An effort to improve the current level of education among Romani people was promised by the amendment to Education Act No 29/1984 Coll. on the system of primary schools, secondary schools and higher vocational schools. Specifically, in Article 1, which provides that *“pupils and other applicants who have completed compulsory schooling or have reached the age of 16 and who have demonstrated in the admission procedure the abilities, knowledge and interests required for the type of school chosen shall be admitted to study at secondary schools“* except for those referred to in paragraph 2.<sup>75</sup> She served as a Member of Parliament from 1998 to 2002. She was the last Romani representative in the Parliament until today (author's note).

Ivan Vesely (long-time Romani activist, chairman of the Dzeno association) assesses the position of Romani people after Czech Republic's accession to the EU for the European news website (euroactiv, 2005). In his contribution, he accuses the Czech state of taking an alibi

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<sup>73</sup> FRYDRYŠKOVÁ, K. *Romové pod vlivem komunismu*. Časopis pro multikulturní mládež. Romani vod'ori. [online] 11.05.2011 [cit. 9. dubna 2024]. Dostupné z: [https:// www.romanovodori.cz/etno/romove-pod-vlivem-komunismu/](https://www.romanovodori.cz/etno/romove-pod-vlivem-komunismu/)

<sup>74</sup> NIKOLAI, T. a SEDLÁČKOVÁ, P. *Příběhy ze špatné čtvrti, aneb, Jak pracovat s tématem segregace nejen ve školství*. Praha: Člověk v tísni, 2007, s. 24

<sup>75</sup> Poslanecká sněmovna. *Návrh novely školského zákona*. Sněmovní tisk 299/0 [online] 1999 [cit. 15. května 2024]. Dostupné z: [https:// www.psp.cz/sqw/text/tiskt.sqw?O=3&CT=299&CT1=0](https://www.psp.cz/sqw/text/tiskt.sqw?O=3&CT=299&CT1=0)

approach to addressing the serious problems facing Romani people. He does not consider leaving responsibility to the non-profit sector, as well as a naive approach to programme proclamations and the redistribution of European funds without checking whether they have been used for the necessary target groups, to be effective steps towards change. It draws attention to social, housing and education rights. According to his observations, there is an increase in unemployment and social exclusion of Roma. He also believes that Roma in the EU need to be addressed comprehensively and in a targeted manner without linking social policies to other socially disadvantaged groups where the causes of inequalities are different.<sup>76</sup>

The views of Romani activists, politicians and other related individuals may not receive the attention they actually deserve because of their subjective nature. The reasons for this are personal, professional or otherwise it is a matter of a professional experience, on the basis of which they have sufficient internal knowledge of the Roma community. In many ways, these individuals are thus better able to understand some of the socio-cultural specifics of the Roma community and consequently the real needs than anyone else. Last but not the least, it is Romani civil society that, along with other human rights activists, has been consistently pushing local governments and authorities to move Romani integration forward for a long time. It is from their efforts and pressure that government action in the form of the adoption of documents and procedures for the benefit of the Roma then comes.

After an evaluation of the implementation of the government's concept (2005), the document was updated to include a new goal of improving the status of Romani people in all areas of social life. This took into account the new legislation of the Czech Republic as a member of the EU as well as the broader context of social inclusion at the European level. Within this framework, a national action plan has been developed for the period 2004-2006 (by the Council of Europe, Commissioner for Human Rights). It contained six priorities: improving the quality of life of Roma, removing internal obstacles to Roma integration, removing external obstacles to Roma integration, promoting the development of Roma culture and language, ending social exclusion and ensuring security.<sup>77</sup>

Monitoring in 2009 noted an important reform in education that was supposed to bring equal opportunities to Romani children. These measures were taken in the context of the European Court of Human Rights ruling in the case of *D.H. v. Czech Republic*. The Court ruled

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<sup>76</sup> VESELÝ, I. Romové v EU rok poté. [online]. Euroactiv, 27.7.2005 [cit. 9. dubna 2024]. Dostupné z: <https://euractiv.cz/section/aktualne-v-eu/opinion/romov-v-eu-rok-pote/>



that the frequent placement of Roma children in special schools was a discriminatory form of school segregation.<sup>78</sup>

### **3.1 D.H. Judgment**

On 13th November 2007, the European Court of Human Rights in Strasbourg issued a landmark verdict in the case of D.H. 18 Romani children from the Ostrava region filed a complaint because they are dissatisfied with their placement in special schools. The Court addressed the question of whether there had been a violation of the prohibition of discrimination related to the right to education (Article 14 of the Convention, together with Article 2 of Protocol No. 1 to the Convention). On 7 February 2006 a Chamber of the Second Section of the Court held that there had been no violation of the prohibition of discrimination relating to the right to education. The applicants disagreed with the decision and applied to refer the case to the Grand Chamber.

The complainants' intention was primarily to point out the unfair inclusion of Romani children in special education on the basis of their race. Although, according to the Court of Appeal, they had cited anecdotal data and research by international organisations in their complaint, it was also clear that the number of Roma pupils in special schools represented a relative majority. The Grand Senate recognised the establishment of special schools to find solutions for children with special educational needs. However, the psychological tests were aimed at the majority and did not take into account the particularities of the Roma community. Nor could the parents' consent to the inclusion of their children in a special school be considered legitimate, as it was clear that they had not been able to understand the significance of such a decision.

According to the Court, this case is not the only state where there are problems with the education of Romani children. It has thus been proven that the Czech legislation has caused a broadly negative impact on the Romani community, and thus the complainants belong to that community. There has thus been a violation of Article 14 of the Convention, together with Article 2 of Protocol No. 1<sup>79</sup>

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<sup>78</sup> ROSTAS, I. A Task for Sisyphus. Policies towards Roma in the Czech Republic, Hungary, and Romania, CEU Pres, 2019, p. 109-111

<sup>79</sup> The European Court of Human Rights. In the case of D.H. and Others v. the Czech Republic. [online]. 2007 [viewed 15. July 2024]. Available from: [http:// hudoc.echr.coe.int/fre#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/fre#{)

The Court awarded the applicants fair compensation in the sum of EUR 4,000 euros each for non-pecuniary damage and EUR 10,000 euros each for costs.

In particular, the Human Rights Court noted that the Roma are a disadvantaged and vulnerable minority, requiring special protection precisely for historical reasons<sup>80</sup>.

### 3.2 Introducing inclusion in education

However, the Czech Republic's fulfillment of its commitments had its weaknesses. The fight against discrimination remained for a long time only in the form of a concept. The Anti-Discrimination Act was adopted only in 2007.<sup>81</sup> Author G. Albert, in her chapter (A History of Roma School Desegregation in Central and Eastern Europe, 2012) mentions the continuing segregation. In the field of education, the situation has not changed. Neither the D.H. verdict or the campaigns of human rights organizations (Amnesty international, European Roma Rights Centre) have worked. She states that the necessary legislative changes have not yet come. The existing Education Act, which does not take into account the needs of Romani pupils, is still in force. There has been only a minor change, when „special schools“ were renamed „primary schools“ because of the stigma in the public space.

The introduction of special education 40 years ago (where, in addition to children with mental disabilities, we also include Roma children) was an economic motivation for schools to obtain a higher subsidy per pupil. The smaller light came from the workshop of the then Minister of Education Ondřej Liška. D.H.'s judgment was noted by the government. Subsequently, a coalition of NGOs (domestic and foreign) called „Together to School“ was formed to end segregated education for Romani children. During his tenure, Minister Liška introduced the so-called „clean-up“ when the ministry employees involved in the violation of the rights of Roma children could no longer further the direction conceived by the politicians. He also initiated the collection of ethnic data at schools on the success of Roma children in education. His actions have thus set the basis for the National Action Plan for Inclusive Education.<sup>82</sup>

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<sup>80</sup> Profipravo.cz. *Rozsudek ESLP ve věci D. H. a spol. (diskriminace romských dětí)* [online]. 14.11.2007 [cit. 25. června 2024]. Dostupné z: [https://profipravo.cz/index.php?page=article&id\\_category=13&id\\_article=249848&csum=4b960407](https://profipravo.cz/index.php?page=article&id_category=13&id_article=249848&csum=4b960407)

<sup>81</sup> Open Society Institute. *Monitoring the EU Accession Process: Minority Protection* [online]. 2002 [viewed 30. July 2024]. Available from: <http://www.opensocietyfoundations.org/publications/monitoring-eu-accession-process-minority-protection>

<sup>82</sup> ROSTAS, I. Ten years after: a history of Roma school desegregation in Central and Eastern Europe, CEU Press, 2012, p. 180-181

Continuing ministers Kopicova (since 2009) and Dobes (since 2010) have come under pressure from civil society and special educators, including the architects of the previous system, to maintain the current practice. In the public space, these groups introduced false information on the D.H. verdict which was allegedly politically motivated. On the initiative of the „Together to School“ platform, visits to special schools were launched to investigate compliance with the law. The participants were: members of the platform, Minister Kopicova and the Czech School Inspectorate. In March 2010, the Czech School Inspectorate reported misconduct in special schools by 34 people. At least 5 000 children (most of them Romani) had been enrolled in these schools in the past without documented mental disabilities. Officials at the schools committed fraud in the sense that they deprived the state of millions of crowns in individual payouts and also that they extracted money at the expense of healthy children. Police investigations have shown that more than 83% of former special schools have not adapted to the conditions of the amended Education Act (2004). More than 35% in certain regions up to 53% of the children attending these schools are Roma.<sup>83</sup>

Although the European Court of Human Rights ruled in the D.H. case in 2007, according to the author (Gwendolyn Albert, at the time of writing, 2012), effective measures have not been put in place for the benefit of Roma pupils. The changes announced repeatedly in reports to inter-governmental organisations (Council of Europe, OSCE, UN) by the Czech authorities remain only on paper.

Between 2007 and 2014, the Government failed to improve the situation of Roma education. The implementation of the national strategic plans had limits. On the basis of these facts, the European Commission initiated infringement proceedings against the Czech Republic (September 2014). A year later, Parliament adopted an amendment to the Education Act in the form of the introduction of support measures to ensure equal opportunities in education. The law (2016) abolished the education programme for children with mild mental disabilities. The NGOs Open Society fund, the European Roma Rights Centre and Amnesty international are

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<sup>83</sup> ROSTAS, I. Ten years after: a history of Roma school desegregation in Central and Eastern Europe, CEU Press, 2012, p. 181

calling for more funding to be made available from the state budget for this reform of inclusive education.<sup>84</sup>

Under pressure from NGOs, IGOs and European institutions, concrete steps have been introduced to change the educational system. Valid from 1 January 2018, the Decree on the Education of Pupils with Special Educational Needs and Gifted Pupils (Decree No 27/2016 Coll.) The amendment to the Education Act contains support measures to ensure equal opportunities for all children without distinction.<sup>85</sup> It includes, for example, increasing pedagogical interventions, changing group size (from 4 to 6), introducing conditional funding for upward units, increasing the number of pedagogical assistants to help the education, adaptation and training of children with special needs.

Assistants should also help in communication between children, parents and the community from which the pupil comes. It also involves the use of other teaching staff such as a school psychologist and a special educator. The aim of the measures is to support the achievement of success in teaching through direct teaching activities to children in need.<sup>86</sup>

### **3.3 Findings and cases of structured institutional discrimination**

Despite the above-mentioned efforts and efforts in the form of the D.H. judgment (2007), many years of efforts and lobbying by the civil sector at home and abroad, repeated calls by intergovernmental organizations and European institutions for remedies, segregation of Romani children remains a practice in education. This is confirmed by the results of PAQ research (2022) „*Analysis of the reasons for the higher share of Roma pupils educated according to the RVP ZV UV in classes established under Section 16, paragraph 9, of the Education Act and the proposal a set of measures for the field of education and other relevant area*“ (research report, 2022, PAQ research, STEM).

Research findings show the exclusion of Romani children is the same as it was 5 years ago. There are still 130 segregated schools in the Czech Republic in which Romani children make up at least one-third. There is a growing tendency to move Romani children into special

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<sup>84</sup> Open Society fund. *Eight years after the D.H. judgement a comprehensive desegregation of schools must take place* [online]. 1.11.2019 [viewed 15. July 2024]. Available from: [http:// osf.cz/en/2019/11/01/eight-years-after-the-d-h-judgement-a-comprehensive-desegregation-of-schools-must-take-place/](http://osf.cz/en/2019/11/01/eight-years-after-the-d-h-judgement-a-comprehensive-desegregation-of-schools-must-take-place/)

<sup>85</sup> Ministerstvo školství, mládeže a tělovýchovy: vyhláška č. 27/2016 Sb., o vzdělávání žáků se speciálními vzdělávacími potřebami a žáků nadaných [online]. 2018 [cit. 9. června 2024]. Dostupné z: <https://msmt.gov.cz/dokumenty-3/vyhlasaka-c-27-2016-sb-o-vzdelavani-zaku-se-specialnimi-2>

<sup>86</sup> Ministerstvo školství, mládeže a tělovýchovy: vyhláška č. 27/2016 Sb., o vzdělávání žáků se speciálními vzdělávacími potřebami a žáků nadaných [online]. 2018 [cit. 9. června 2024]. Dostupné z: <https://msmt.gov.cz/dokumenty-3/vyhlasaka-c-27-2016-sb-o-vzdelavani-zaku-se-specialnimi-2>

classes in mainstream schools. The procedures of school counseling centre are in many cases outdated and their results vary inexplicably in different regions of the Czech Republic. Furthermore, the analysis found that some municipalities support the segregation of Roma children through their catchment area policies. According to the results, segregation mainly affects Roma children living in social exclusion and poverty. The number of schools with a representation of Roma children between 50 and 75% has also increased.<sup>87</sup>

ERRC report on the case of the murdered Roma in Žatec. It took place on 18th October 2016 in a pizzeria. The conflict began with a man harassing female customers which escalated into a physical altercation between him and other attackers, more than 4 of whom were trained in martial arts. After the police arrived on the scene, the brutal beating of the man continued (in which, according to witnesses, the police themselves participated) or at least failed to protect him from the violence. When the police tried to put the man on the ground, the attackers continued to jump on him, beat him and verbally abuse him with „*you black motherfucker*“ in front of the police patrol. (report of the ERRC, 2016).

Based on the results of the autopsy, the investigation into the case was concluded that the death of the Roma was not caused by third-party intervention. The culpability of the police officers and the assailants was thus ruled out. The whole case has stirred emotions in the community. Hundreds of Romani people staged a commemorative protest for the death of the young man. European Roma Rights Centre followed the investigation. It also drew attention to the presence of anti-gypsyism in the Czech Republic in connection with the behaviour of the attackers and police officers.<sup>88</sup>

In 2021, another case of police violence occurred in Teplice. Stanislav Tomáš was brutally handcuffed during his arrest and later died. Video footage of the arrest that was shared on social media sparked protests, particularly because the footage showed a police officer kneeling on the victim's neck in a manner reminiscent of the police killing of the black American George Floyd (2020). Again, the police's conclusions ruled out a causal link between the death and the police's actions. However, the report of Deputy Ombudsman Monika Simunkova (13.12.2021) states that the police played a significant role in the death of Roma.

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<sup>87</sup> PAQ research. *Výzkumná zpráva: Analýza příčin vyššího podílu romských žáků vzdělávajících se dle RVP ZV UV ve třídách zřízených podle § 16 odst. 9, školského zákona a návrh souboru opatření pro oblast vzdělávání a další relevantní oblasti* [online]. STEM, 2022 [cit. 9. července 2024]. Dostupné z: <https://www.paqresearch.cz/post/segregace-romu-vzdelavani/>

<sup>88</sup> European Roma Rights Centre. *No arrest after Romani man beaten to death in Czech Republic*. errc.org [online]. 21.10. 2016 [viewed 19. July 2024]. Available from: <http://www.errc.org/press-releases/no-arrests-after-romani-man-beaten-to-death-in-czech-republic>

The police officers allegedly neglected to call the emergency services, including monitoring the state of health of (S.T.). Representatives of civil society have contacted the General Inspectorate of Security Forces on this matter. In the supervisory proceedings, the Inspectorate did not find any unlawful conduct in the investigation of the police's detention of Stanislav Tomas.

In August 2023, attorneys for the European Roma Rights Centre and the Forum for Human Rights (FORUM) filed a lawsuit with the European Court of Human Rights over the death of the Romani man Stanislav Tomáš during his arrest by the police.<sup>89</sup>

The documented examples point to discrimination against Romani people, which creates distrust of state institutions in the community. It is caused by the long-standing systemic segregation of Roma, as well as, for example, systemic racism in police structures which see the commentary by political scientist Edita Stejskalová, who describes antigypsyism as a historical part of the institutional practice of these systems.<sup>90</sup>

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<sup>89</sup> European Roma Rights Centre. *Roma rights activists take police killing of Stanislav Tomáš to European Court*. errc.org [online]. 10.8.2023 [viewed 20. July 2024]. Available from: [http:// www.errc.org/press-releases/roma-rights-activists-take-police-killing-of-stanislav-tomas-to-european-court](http://www.errc.org/press-releases/roma-rights-activists-take-police-killing-of-stanislav-tomas-to-european-court)

<sup>90</sup> STEJSKALOVÁ, E. *Ministře spravedlnosti Petře Blažku, ministře vnitra Víte Rakušane, odstraňte anticiganismus v justice a u policie*. romea.cz [online]. 27.3.2024 [cit. 9. června 2024]. Dostupné z: [https:// romea.cz/cz/komentare/edita-stejskalova-ministre-spravedlnosti-petre-blazku-ministre-vnitra-vite-rakusane-odstrante-anticiganismus-v-justici-a-u-policie](https://romea.cz/cz/komentare/edita-stejskalova-ministre-spravedlnosti-petre-blazku-ministre-vnitra-vite-rakusane-odstrante-anticiganismus-v-justici-a-u-policie)

## 4 Discussion of the findings

### 4.1 The finding of negative perceptions of minorities

In understanding the process of Europeanisation, a difference was found in the perception of trust in European institutions. The Roma minority showed higher trust in supranational institutions than the majority society. In the same way, the need for protection by European actors was linked to security and potential threats to state sovereignty. Thus, in the pre-accession period, the issue of minorities was perceived as threats and problems by many states. Some rejected protection outright. The findings point to a trend of negative perceptions of minorities (often Romani people) that is not only related to recent times, but to a much deeper period of the former regime. The social isolation of these states can have a significant impact on the inability to accept other groups. Negative attitudes towards otherness may result from the long-standing closed-mindedness of individual states. The authors also mention the higher trust Romani people have in European institutions than majority societies. Vermeersch (2017, justifies the transnational activism of the Roma in Central and Eastern Europe on the grounds that the Roma had no external lobbying opportunity in a friendly state in the region<sup>91</sup> From my point of view, this is a rather surprising finding. On deeper reflection, however, it may make sense. The stigma and discrimination against Roma, including their inferior status in the countries where they live, may not give these communities much hope for change. A transnational system that also focuses on minority protection may then be perceived by some Roma as a protectionist system. However, as the available literature does not elaborate on these issues, the explanations of the causes cannot be considered to be substantiated.

European integration and its impact on the situation of Roma in the European Union is the research question of this thesis. For a more precise observation, I devote a chapter to the situation of Roma in the Czech Republic. The above-mentioned rejection of minorities in the pre-accession process can generally be perceived as a topic that the candidate countries did not want to pay much attention to minorities groups. On the other hand, the trust of Roma activists in European institutions speaks of a positive perception of European integration, with hopes of improving the situation of their community. Although hopes were high, the real impact of European integration on improvement has been much less. The European institutions have put in place strategic frameworks for dealing with the Roma minority and have also provided a

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<sup>91</sup> VEMEERSCH, P. *How does the EU matter for the Roma? Transnational Roma activism and EU social policy formation. Problems of Post-Communism*, September – October 2017, 64 (5), pp. 219-227.

space for Roma representatives to have regular dialogues with them. However, the real situation of local Roma continues to get worse year after year. It is also clear that negative perceptions of minorities are still present among Member States. In this respect, there is a lack of research on the impact of European integration on public attitudes towards minorities.

#### **4.2 Finding, weaknesses in European legislation**

An important finding also relates to EU legislation. The absence of a minority policy in the *acquis* has caused some constraints in negotiations, with the European institutions being more restrained in their demands. This led to a broader definition of European norms to protect minorities and the adaptation of states was based on democratic individualism.<sup>1</sup> (Schimmelfennig, Frank, and Ulrich Sedelmeier, 2005). The C. Radelli (2005) also talk about the so-called „room for manoeuvre“ for political actors, in which the protection of minorities was perceived as acceptable in exchange for economic, security and economic guarantees.

The reticence of states in pre-accession negotiations on common policies speaks volumes about national priorities. This finding is consistent with the analysis of legal legislation. National minorities have long been overlooked in the development of the European Community. This is preceded by national approaches for which human rights or minority issues have not been political priorities. Attention came only in the 1990s, after the adoption of the revised EU Treaties. Some states began to raise the human rights issue even in the context of planned enlargement. Yet, as the above findings show, there has been little interest in setting policies to protect minorities. Thus, the efforts of the European institutions have not been fulfilled due to the above-mentioned gaps in the European legislation and thus the worsened position to promote these less attractive topics across the candidate countries to the extent that tangible changes have taken place. In general, it can be said that this approach to minorities continues today after EU accession. European and national policies have moved to the level of strategic frameworks towards minorities, especially Roma. However, this has not been enough to improve the legal protection of the Roma minority, even in the light of reports by European institutions on the worsening situation of the Roma.



### **4.3 Finding, prohibiting racial segregation in education**

The important finding was the definition of Council Directive 2000/43/EC for racial equality, which explicitly prohibits racial discrimination in education.<sup>92</sup> However, segregated education of Roma children continues in the Member States. Reports by the European Commission, the Council of Europe and the European Agency for Fundamental Rights even show that the state of education of Roma children is worsening. The candidate countries (now member states) have already committed themselves to actively addressing this problem in the process of Europeanisation. However, some areas were not a priority issue for the nation states. Strategic plans to promote Roma integration have not been translated into real implementation. As the authors (Schimmelfennig and Sedelmeier 2005) states, these were often proclamations by actors in order to fulfil formal obligations for EU accession.

Based on this finding and comparing it with the results of the PAQ study on the case of the Czech Republic, the research question can be answered unequivocally that membership in the European Union has not improved the situation of Roma in education. Discrimination, segregation and unequal access to public services continue. Although it has long been researched that segregation is harmful to Roma children, it is functional and therefore legitimate in many Member States. Yet civil society, the Roma community and experts have been calling for decades for systemic change that will bring economic benefits not only to Roma children but to society as a whole. The question is, to what extent is this state of affairs hampered by the strongly entrenched views and beliefs of the majority against the Roma community? The attitudes of states towards the Roma minority in the transition process and today seem to be unchanged.

### **4.4 Finding special protection for Roma people**

I consider the judgment of the D.H. European Court of Human Rights (2007) to be a fundamental finding in my thesis, which in its explanation of the verdict drew attention to the fact that *„Roma are a disadvantaged and vulnerable minority, requiring special protection precisely for historical reason“*<sup>93</sup>This is a case that has brought important standards to the

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<sup>92</sup> Council directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>93</sup> Profipravo.cz. Rozsudek ESLP ve věci D. H. a spol. (diskriminace romských dětí) [online]. 14.11.2007 [cit. 25. června 2024]. Dostupné z: [https://profipravo.cz/index.php?page=article&id\\_category=13&id\\_article=249848&csum=4b960407](https://profipravo.cz/index.php?page=article&id_category=13&id_article=249848&csum=4b960407)

protection of Roma rights. The Court's references to the need for special protection for Roma raise the question of whether these shortcomings have been translated into the policies of the European institutions and, by extension, the Member States over the last 17 years. The current and previous Strategic Frameworks for Roma Integration also do not specifically address these recommendations. Their content does describe the situation of the Roma in each country, including specific recommendations. However, the legal framework for Roma in the European Union, which could stop, for example, discrimination against Roma children in education, does not address the recommended necessity, which was highlighted by the European Court of Human Rights in 2007.

During the pre-accession period, negotiations were held at the European level with Romani representatives of the International Romani Union (IRU), who recommended to the representatives of European institutions that the Roma, one of the largest minorities, should be institutionalized. (The author's note in the book, *Cikansky baron jsem ja*, mentions these negotiations by the former president of the IRU, E. Scuka, 2018). Given the long-term trend of the European Commission creating, monitoring and investing huge flows of funds to improve the lives of Romani people, the question arises as to whether studies should be conducted on the possible enshrinement of special protection for Romani people. Protection that would eliminate segregation, discrimination and hateful attitudes towards Roma in the public space, which have long been legitimate.

## Conclusion

An analysis of existing instruments, including the conclusions drawn from them by the European Commission, the Council of Europe, the European Parliament, international and national organisations, shows that there is a need to renew and strengthen the commitment to Roma inclusion at national and European level. The monitoring reports show an annual deterioration in the Roma population, especially in the areas of education, discrimination and social exclusion. This is despite the planned strategic documents defining specific problems and proposals for solutions, including the setting of goals for the next programming period.

In the chapter on Europeanisation, it was found that states in the pre-accession process approached minority issues alongside other priorities with less concern. Often only because of formal compliance obligations or in exchange for other economic or security guarantees. According to the authors, the basis of European integration is the merging of policies. Not just selected ones, but all those that affect public life. It seems that policy integration is only possible in certain spheres. It is logical that the motivation for membership was primarily economic, economic interests, freedom of movement or the single internal market. However, the EU treaties under review also refer to other values such as equality and non-discrimination. If the lax approach of nation states to Roma integration, which begins and largely ends with the adoption of a government strategy without the implementation of concrete measures continues, European integration within the framework of minority protection cannot be fulfilled! It is not enough for these strategic plans to emerge only through the fulfilment of the condition for the drawing down of European structural funds for individual states.

The findings also show that the long-term efforts of the non-profit sector and human rights activists are able to draw attention to some problems, such as the ongoing segregation of Romani children in education, but often everything ends up in discussion. Similar developments can be found without change in European institutions such as the European Commission and the Council of Europe, which have repeatedly called on Member States to address the segregation of Roma children. The case in the Czech Republic confirms that the right to education (which is regulated by the Council of Europe's Race Directive)<sup>94</sup> continues to be violated in the case of Romani children. This is confirmed by a study (PAQ research, 2023),

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<sup>94</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

according to which Roma children face the same exclusion in education as they did 5 years ago.<sup>95</sup>

The FRA, 2017 survey highlights the ceilings and reasons for these failures. One of the results of the survey is that „*more than half of Czechs do not wish to have a Roma as a neighbour*“<sup>96</sup> Negative perceptions of Romani people persist. It is a remnant of previous regimes in individual Member States and a policy of forced Roma assimilation. According to the findings in the previous chapter, the rejection of minorities was also reflected in the pre-accession negotiations. The prevailing narratives that stereotype Romani people are deeply rooted in the idea that these are correct and therefore legitimate beliefs because they are generally accepted. The above-mentioned facts point to the limits of the efforts of Roma and pro-Roma organisations, NGOs and European institutions to promote the necessary changes.

The findings of the analytical part of this thesis demonstrate that European integration has not improved the situation of the Roma. This group of (according to estimates) 6 million European citizens continues to face discrimination in education and other areas of public life. Although it is not possible to reach an ideal state, in the context of other human rights agendas, slight improvements can be seen. For example, in the promotion of LGBT rights or women's rights, there has been some degree of change in recent decades. Examples include the adoption of registered partnerships or the increased participation of women in public life. Roma rights, however, continue to be violated. This starts with children who are placed in special schools simply because of their Roma origin.

I consider the explanation of the D.H. judgment by the European Court of Human Rights, which states that „Roma are a disadvantaged and vulnerable minority that requires special protection for historical reasons, to be an important finding of the whole thesis.“

In the context of the worsening situation of the lives of Romani people in the European Union and the mentioned repeated failures of the strategic framework for Romani integration, including the negative narratives in public space, the declaration of the Human Rights Court can be perceived as a challenge and a recommendation for more effective remedies in the future. Special protection for the Roma, one of the largest minorities in the European Union, with an

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<sup>95</sup> PAQ research. *Výzkumná zpráva: Analýza příčin vyššího podílu romských žáků vzdělávajících se dle RVP ZV UV ve třídách zřízených podle § 16 odst. 9, školského zákona a návrh souboru opatření pro oblast vzdělávání a další relevantní oblasti* [online]. STEM, 2022 [cit. 9. července 2024]. Dostupné z: <https://www.paqresearch.cz/post/segregace-romu-vzdelavani/>

<sup>96</sup> NERAD, F. V Česku žije nejvíc lidí v unii, kteří nechtějí vedle Romů pracovat ani bydlet, uvádí evropská agentura. [online]. iROZHLAS, 6. dubna 2018 [cit. 30. června 2024]. Dostupné z: [https://www.irozhlas.cz/zpravy-svet/romove-evropska-unie-ceska-republika-diskriminace\\_1804060700\\_pj](https://www.irozhlas.cz/zpravy-svet/romove-evropska-unie-ceska-republika-diskriminace_1804060700_pj)

institutional framework in place, can be an effective means of combating segregation, discrimination and anti-Roma attitudes. Roma participation cannot be overlooked as one of the key priorities of the EU Strategic Framework for Roma Equality, Inclusion and Participation. Full participation from design to implementation of measures has long been lacking at national and European level.

This finding from my work, which is based on an understanding of the European integration process and a thorough analysis of European legislation, reports and recommendations, can be the subject of further discussion and research regarding a possible legal framework for Roma in the EU.

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## **Abstract**

The present text analyses the protection of minorities in the European Union. In the individual chapters, the theoretical and practical parts of the work are discussed. The chapter on Europeanisation focuses on the theory of European integration. A process representing the negotiations, barriers and commitments for the merging of policies within the functioning of the European Union. The practical part analyses the legal protection of minorities, especially the Roma. The analysis continues with the case of the Czech Republic, which focuses particularly on the continuing segregation of Roma children in education, but also on the discrimination against Roma in general. Selected research findings in the last chapter offer answers and recommendations for the future.