

Where Are They Heading? The Situation of the Roma Minority in Hungarian and International Law*

Balázs Majtényi

At present the Roma¹ live primarily in Europe, and they can be found in almost every country of the continent. Their number is estimated to be between 8 and 10 million in Europe, and the largest population of the European Roma – approximately 70% – is to be found in Central and Eastern Europe. Statistics on the Roma are rather difficult to gather, and even where these exist they are unreliable for a number of reasons. One of these, for example, is that the Roma, because of fears of prejudice and discrimination, often prefer to hide their affiliation, and do not like to declare themselves Roma. Reading the Regular Reports of the European Commission on the Candidate Countries, for example, it might seem that the Commission sometimes fires at random with statistical data when trying to fix the size of Roma Communities. For example in its 1999 Regular Report the Commission estimated the number of the Romanian Roma to be between 1.1 -1.5 million while in its 2002 Report between 1.8 and 2.5 million.

International documents both name and regard the Roma as a "transnational people". Many originate their ascendants from the north-west of India, from whence they travelled several centuries ago. Wherever the antecedents of the Roma now living in Europe come from, people who belong to the majority think they usually resemble each other recognisably, and they are bound together by the fact that the non-Roma population regards them as and calls them gypsies.

Numerous questions concerning the Roma in Europe remain unanswered and it remains to be seen whether they will assimilate in the society of the majority or perhaps they will demand their special rights as a national or ethnic minority. I presume the answer may vary country-by-country and even vary among the different groups of Romas within one country. In spite of this, one of the European Parliament Resolutions states that "the conditions of life of the Roma people are a problem which can only be tackled at the international level."² Of course, besides social integration, there is also a much gloomier alternative, namely that they will remain a disintegrated segment of European society for many years to come.

If a national legal system decides to provide for special minority rights and the free choice of identity, theoretically the Roma will be granted two possibilities - assimilation or special minority rights - from which to choose. In spite of this however, it obviously makes some difference which solution the state prefers, and what legal and financial means it has to support its preference. On the one hand it may provide for special minority rights, on the other, as a different solution, it may support the various forms of affirmative action promoting the assimilation process, like the quota system in the USA.

To achieve both forms of social integration, the states shall guarantee the equal enjoyment of human rights. However, in the era of universal human rights protection this might seem a minimalist objective and the need for it, which is often mentioned in documents accepted by international organisations as well, in a state governed by the rule of law cannot be subject to

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

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

dispute any more.³ Nevertheless, even such a minimalist approach has to be expressive since the Roma continue to "suffer systematic racial discrimination in virtually all spheres of public life, education, employment, housing, access to public space and access to citizenship".⁴ So unfortunately, recently the human rights problems of the Roma are not limited to the infringement of the various forms of positive distinction, but as a group they are subjected to violations of all known human rights.

If a state chooses the alternative of providing special minority rights, autonomy can be one of the possible solutions. „A well thought-out plan of autonomy, agreed to by civil society may, where appropriate, be understood to offer better protection of the rights of both majority and minority; especially the Roma.”⁵ (A catalogue of the special rights of minorities would be difficult to compile, nevertheless, it is certain that at the top of this imaginative hierarchy of rights we would find the autonomy of minorities, which "constitutes the maximum legal status a minority may achieve within a state.")⁶

The question of ensuring the participation of the Roma in the decision making and in the public and political life of their countries is very important. An attempt at the latter was made by the Hungarian legislator when it introduced the Minority Act ensuring autonomy for the Roma minority in Hungary. (Due to the territorial distribution of minorities in Hungary the principle of territorial autonomy alone would not have been applicable, so the Act was formulated so as to combine the principles of personal and local autonomy.) However, this attempt turned out futile because of the inadequacies of the text of the Act.

1. The Situation of the Roma and the Minority Act in Hungary

Today the Roma constitute the largest minority in Hungary. In the 2001 census, 190,000 individuals declared themselves to be of Gypsy ethnicity. As opposed to this, sociologists estimate the size of the country's Gypsy population to be about 600,000 persons. The Hungarian Roma belong to three linguistic groups: the Romungro, who speak Hungarian and who call themselves "musician Gypsies", the bilingual (Hungarian and Gypsy) Vlach Gypsies, who call themselves "Roma" or "Rom"; and the Hungarian-Romanian bilingual Romanian Gypsies, who call themselves "Boyash".⁷

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

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

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

⁶ Georg Brunner - Herbert Küpper: European Options of Autonomy: A Typology of Autonomy Models of Minority Self Governance. In: Kinga Gál (ed.): Minority Governance in Europe. Budapest, European Centre for Minority Issues – Local Government and Public Service Reform Initiative, 2002. 17.

⁷ See in this connection István Kemény: Linguistics Groups and Usage among the Hungarian Gypsies/Roma in: Kállai Ermő (ed.): The Gypsies/the Roma in Hungarian Society. Teleki László Foundation, Budapest, 2002.

In the Hungarian Minority Act the legislator listed the Roma minority among national and ethnic minorities, which may have been a protest against the official Roma policy of the previous era.⁸ The Hungarian Minority Act⁹ was accepted by the Parliament on July 7 1993, with an overwhelming majority of 96.5%.¹⁰ (Under the reign of socialism, in 1961 the Political Committee of MSZMP KB (Hungarian Socialist Working People's Party, Central Committee) declared that the Roma are not to be regarded as a national minority, thereupon the official politics aimed at assimilating the Roma through social-political measures improving their situation. (Though these measures did yield some results, they came to nothing after the political transition.) The concept of autonomy espoused by the Act addresses the individual Hungarian citizens belonging to one of the minorities listed¹¹, encouraging them to establish corporate entities in public and civil law in villages, towns, districts of the capital and at national level.

Since the adoption of the Minority Act it has been discussed again and again in professional circles and in academia, whether it was a good decision to enlist the Roma among national and ethnic minorities and whether it wouldn't have been better to uphold assimilation as a more prosperous alternative as regards social integration. István Kemény and Béla Janky in a study of theirs, for example, draw a parallel between the Romungro (a group of the Roma living in Hungary) and the Jews in Hungary, emphasising that both groups speak Hungarian as their native language and in the course of the 2001 census the majority of both groups professed to be of Hungarian ethnicity.¹² (When current legislation on minority rights was being drafted, it was proposed that Jews should figure amongst the ethnic and national minorities. It was a well-intentioned effort of the government but was rejected by the majority of Hungary's Jewish population.)

The ancestors of the Jews who live in Hungary today entered the country in the 18th and 19th centuries, without of course having Hungarian as their mother-tongue. Now their native language is Hungarian, and it is likely that a great majority of them gave the response that they are Hungarian to the 2001 census question on ethnicity. The ancestors of the Romungros entered Hungary from the sixteenth to eighteenth centuries. Now their native tongue is Hungarian, and a large proportion of them – probably the majority of them - declared themselves to be of Hungarian ethnicity at the time the 2001 census was conducted. However, as a result of segregation and exclusion, the number of those who declare themselves to belong to the Roma minority has increased, as opposed to the Vlach and Romanian Gypsies who - it appears - are on the way to assimilation. Anyway, researchers and Roma politicians frequently doubt the correctness of the decision of the legislator, though they admit that the dissolution of Roma minority self-governments that were established on the basis of the Minority Act is now absurd and impossible.

⁸ Georg Brunner, 'Die rechtliche Lage der Minderheiten in Mittel- Ost- und Südosteuropa', in: *Osteuropa Recht/NSZK* 1994, Vol. 40. 162.

⁹ Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

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

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

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

The reason why the correctness of the decision was again questioned is mainly to be searched for in the deficiencies of the act. For instance the Hungarian minority electoral system has a peculiar feature: any voter is free to vote for the minority candidate in her/his electoral district. However, because of the negative historical experiences the Hungarian legislator rejected registration of ethnic affiliation when adopting the law. (In Central and Eastern Europe in the past, when minority was prosecuted or discriminated against, data on ethnicity were frequently misused.) As a result of this, most of those who vote for minority candidates belong to the majority and their vote is influenced by their preference, prejudice and temporary caprice. This is due to the fact that the legislator specified the same day for minority self-government elections as for the local self-government elections. (Although no precise data on the minorities are available today, we can safely state that a great number of non-minority voters voted for minority candidates at the elections.) What is objectionable in this arrangement is that the basic right of minorities is infringed whenever it so happens that those not belonging to the minorities decide on the person who will represent them: In the final analysis, this goes against the system of minority self-government.

2. On International Legislation

Besides the equal enjoyment of human rights both form to the social integration (assimilation and/or special minority rights) of the Roma, a form of additional positive distinction is required. In my opinion, minorities need positive distinction to combat the disadvantages rooting from the position of being in a minority situation. (Positive measures taken to eliminate disadvantage fit the Aristotelian concept of 'equality as justice', which is based on the idea that not everybody should be treated in the same way, but only those who are in the same situation. In this view, one acts justly by treating similar cases similarly and different cases differently.)¹³

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

As regards the treatment of minorities by the European Union, one has to note that the Commission in its Regular Reports deals with the Roma question not generally in the framework of political and civil rights and economic, social and cultural rights but in a separate chapter for

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

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

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

minority rights and the protection of minorities. This devotion to minorities might seem strange if we consider the fact that some Western European states like France or Greece do not even recognise the existence of national minorities. However, this approach is supported by international organisations dealing with the Roma issue, which often focus and limit their attention to Central and Eastern Europe. It is quite normal practice in the field of minority protection, consider for example that the scope of provisions on minorities accepted by the League of Nations in the pre-WWII period covered only Central and Eastern Europe and today the High Commissioner on National Minorities exerts its activities only in this region. So it is not something unique that the EU demanded the guarantee of special minority rights only on the part of candidate countries.

3. On the Security Based Approach

The minority question is, in part, being treated in the framework of human rights protection but as a security question both in the East and the West and this attitude unambiguously presents itself at the international stage as well. International organisations and their documents -- adopted within the framework thereof -- treat the international protection of minorities as a part of international human rights protection¹⁶ but they sometimes regard it as a security policy issue.¹⁷ This approach is obviously present in the documents of the OSCE (Organisation for Security and Co-operation in Europe) and we may encounter this outlook in several resolutions of the Parliamentary Assembly of the CoE and in the regular reports on the former accession countries made by the European Commission as well. The relation between the security policy approach and the current idea of human rights is however not exempt from tension since it may lead to a utilitarian concept of human rights which is at present rejected by recent theory of human rights. It would result in the legalisation and institutionalisation of a dangerous viewpoint with reference to which one might diverge from the general protection of human rights in two ways. On the one hand the human rights of persons endangering peace and security in certain cases are restricted as happened in the Iraqi jail of Abu Graib or on Guantanamo in the recent past. On the other hand, by granting them special minority rights, those menacing security might be appeased in the interest of greater social usefulness. Quite to the contrary, according to current legal theory the

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

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

dangerousness of individuals or groups of individuals to security might not cause any infringement on general human rights nor may it generate the provision of special rights. Since, if we consider that the basis of human rights is the fact that a human is a moral creature and every man is equally valuable, we can only in very exceptional cases accept measures restricting human rights for the public good taken in either a narrower or a wider sense. In case of resigning ourselves to utilitarianism, the individual or groups of individuals might become a tool of lofty community objectives.

The security policy approach is reflected in the limited mandate of the OSCE High Commissioner on National Minorities¹⁸ and in the documents concerning the Roma issue. It seems to be justified also by the fact that the Union was interested in the fate of the Roma minority particularly in the phase of the accession process. While the Regular Monitoring Reports dealt with the Roma living in the accession countries in detail, the Comprehensive Monitoring Reports, which were accepted at the end of the accession process, cut it very short on the Roma question.

Furthermore, several statements from international documents can be interpreted only in the light of the security approach. For example, one can read in one of the European Parliament Resolutions: "recognising that there is widespread discrimination against the Roma in practically every country where they are settled, but that their numbers in Central and Eastern Europe make the problem particularly acute." Or in the Report of the OSCE High Commissioner on National Minorities one can read the following about positive distinction: "Policies should be also considered and instituted in such a way that intra-community tensions are not exacerbated by (the appearance of) unfairly favourable treatment for one group over others."¹⁹

4. Deficiencies of the International Documents

Another weakness of international organisations is that they lack consistency. It is especially true in the case of the Regular Reports of the European Commission, which in one year touch upon a question in a separate chapter, then in the next year they drop the issue to take it up again later on. For example, the Regular Report of 2000 on Poland mentions that "some acts of discrimination by public authorities and violence against Roma do take place".²⁰ However, in the reports of the following years there is not a word about the discrimination by public authorities, from which one might deduce that the problem was satisfactorily solved in the meantime. Or, for example, the Bulgarian Report mentions at one point that "police protection is inadequate"²¹, at other times it does not say anything about the issue.

In some cases one might even observe a confusion of concepts. For instance, the minority education related to the Roma is often confused with or dealt together with the segregation of the

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

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

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

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

Roma at school.²² Consequently, international documents often do not cope with separating theoretically negative discrimination and positive distinction. It is thus not by accident that a recommendation of the Committee of Ministers – while supporting and promoting minority education for Roma children – draws our attention to the danger, that this should “not lead to the establishment of separate curricula, which might lead to the setting up of separate classes”.²³

Now and then we can even find prejudiced views in these documents. *The Human Rights Problems and Protections of the Roma* /UN working paper/ writes about the building of the notorious wall in the Czech town of Usti nad Labem. (This wall separated the Roma and non-Roma population in the city.) The paper mentions the following: “Whilst it cannot be denied that the municipal authorities of that town might have had some genuine cause for concern or could have taken reasonable action to eliminate the noise and visual pollution coming from the two blocks of flats which were source of inconvenience to the non-Roma neighbourhood, the proposal to build a wall to separate and segregate the two communities was most disquieting since it amounted to an affront to human dignity and was a clear breach of the principle of equality of individuals before the law.”²⁴

Various documents adopted by international organisations concerning the Roma are frequently incoherent, thus it is hard to deduce any common regulatory elements from them. The most one may declare in general is that these documents are characterised by a security policy approach, and regularly recommend the observance of the prohibition of discrimination. Furthermore, they are perhaps overly committed to the concept of Roma-nation, but fail to take into consideration the possibility of alternative forms of positive distinction.

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The Human Rights Problems and Protections of the Roma

E/CN.4 Sub.2/2000/28

23 June 2000

Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-second session.

OSCE (CSCE)

²² The most widespread form of segregation of Roma students in certain countries is that they are systematically routed to "special schools" for the mentally disabled.

²³ Recommendation No. R (2000) 4

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

Roma (Gypsies) in the CSCE Region, Report of the High Commissioner on National Minorities 1993

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