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## The Effect of Free Trade, Privatization and Democracy on the Human Rights Conditions for Minorities in Eastern Europe: A Case Study of the Gypsies in the Czech Republic and Hungary

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# THE EFFECT OF FREE TRADE, PRIVATIZATION AND DEMOCRACY ON THE HUMAN RIGHTS CONDITIONS FOR MINORITIES IN EASTERN EUROPE: A CASE STUDY OF THE GYPSIES IN THE CZECH REPUBLIC AND HUNGARY

*Marc W. Brown\**

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The following morning we got our final place in Auschwitz which was barrack No. 17. There was a man from Kosice named Weiss. He was the head of the block, and the first time he spoke to us he was very blunt. He said, "Do you see those tall smoking chimneys? Those are the crematoriums. That's about the only way you are going to get out of this place."<sup>1</sup>

#### INTRODUCTION

In August, 1994, I traveled with my cousin, George Brown, a Holocaust survivor, to visit the camp in which he was placed. He solemnly explained to me how he was forcibly taken with his family from their home in Hungary to the concentration camp in Auschwitz. In describing the conditions of the camp, he stated how the Nazis possessed an outright disregard for human life, and consequently, many violations of human rights occurred. The Nazi regime killed 6 million European Jews, however, my cousin told me about the 5 million "others" that were also executed in the concentration camps. The "others" included political threats to the Nazi regime, good Samaritans who tried to help out the victims, homosexuals, and Gypsies.

The Gypsies, also known as the Romani community, were victims of the Nazis, and throughout the period of history encompassing the end of World War II, the rise and fall of communism, and the transition into the new democratic governments, they have continually been victims of persecution and discrimination. Currently, 70% of Europe's estimated 8.5 million Gypsies live throughout the countries of Central and Eastern Europe, and are one of the most complex minorities.<sup>2</sup> Originally from Northern India, they have been present in Europe since the beginning of the fourteenth century.<sup>3</sup>

Why has this ethnic group been oppressed throughout the years? With the rise of democracy, should their conditions have improved? Should democracy and the politics behind it bring better conditions in the field of human

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<sup>1</sup> GEORGE BROWN, *I SURVIVED THE NAZI HELL* 13 (Futar Studio Ltd. Ed., Futar Books 1993)

<sup>2</sup> See MINORITY RIGHTS GROUP COMMISSIONED BY THE ADVISORY COMMITTEE ON HUMAN RIGHTS AND FOREIGN POLICY OF THE NETHERLANDS, *PROTECTION OF MINORITY RIGHTS IN EUROPE: POLICY RECOMMENDATIONS II* (1996) [hereinafter *PROTECTION OF MINORITY RIGHTS*].

<sup>3</sup> See *id.*

rights?<sup>4</sup> Is the opening of international free trade into newly-emerged democratic countries a means of bringing better conditions for the Gypsies? The Czech Republic and Hungary, countries that have moved to democracy and free trade with the fall of communism in 1989, have a large percentage of Gypsies within their borders and are continually confronted with issues regarding the Gypsies. Thus, they serve as a measure of determining if free trade, privatization, and democracy have improved the conditions of this historically persecuted group.

The origins of democracy are often simultaneously present with the arrangements for protecting human rights.<sup>5</sup> This makes it hard to "imagine a real democracy without recognition and application of at least a minimal number of rules enforcing respect for human rights."<sup>6</sup> Consequently, Western thinkers believe that under a pluralist democracy, many people can work together for "a common standard of achievement" proclaimed by the Declaration of Human Rights.<sup>7</sup> In determining the relationship between human rights, democracy and economic reform, it is useful to view changes in economies undergoing economic reform, similar to the changes occurring in the Czech Republic and Hungary, and how these changes have impacted on human rights within the country. Theorists studying the changes in China view social and economic rights as "interdependent ... and indivisible from civil and political rights" according to the 1993 Vienna Declaration on Human Rights.<sup>8</sup> Consequently, these theorists advocate that policies be created which would benefit economic growth more than democratic reforms and human rights.<sup>9</sup> In contrast, the introduction of economic reform in Vietnam has provided "an impetus toward democratization

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<sup>4</sup> See generally, Makau Mutua, *Ideology of Human Rights*, 36 VA. J. INT'L L. 589 (1996) (focusing on the connection between human rights and Western liberal democracies).

<sup>5</sup> See DEMOCRACY AND HUMAN RIGHTS 10 (Council of Europe ed., 1987).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 43

<sup>8</sup> See Alicia E. Yamin, *Reflections on Defining, Understanding, and Measuring Poverty in Terms of Violations of Economic Social Rights—Under International Law*, 4 GEO. J. ON FIGHTING POVERTY 273, 287 (1997), quoted in *Report of the World Conference on Human Rights*, U.N. Doc. A/Conf.157/24 (Part I) (1993).

<sup>9</sup> See *id.* But cf. Michael C. Davis, *Human Rights in Asia: China and the Bangkok Declaration*, 2 BUFF. J. INT'L L. 215, 222 (1996) (describing the Chinese government liberalizing economic reform message by moving "away from complete human rights nihilism" through democratization).

and improvements in human rights."<sup>10</sup> Consequently, human rights conditions in these Third World countries are most likely improved if "transitions from authoritarianism are preceded by processes of economic liberalization and expansions of civil society."<sup>11</sup> The fall of communism led to an understanding of human rights obstacles, "but the unreasonable proclivity for programs with drastic alterations may bring about unexpected degrees of resistance and political opposition."<sup>12</sup> However, even with this resistance, "[e]conomic reform and development are a foundation for the protection of human rights and fundamental freedoms."<sup>13</sup> This is what was planned for the Czech Republic and Hungary after 1989. Unfortunately, for the Gypsy community, the economic reforms have not brought the protection of human rights and fundamental freedoms.

Part I focuses on the economic conditions and factors that were present before and after the fall of the Communist leadership in the Czech Republic and Hungary, and how they relate to the conditions of the Gypsies. This part includes a study on trade patterns, import and export analysis, and hindrances to free trade. Part II looks into the effect that privatization has had on the labor market. Part III focuses on the governmental structure of the Czech Republic and Hungary by focusing on their constitutions and laws and explores if and how the countries have changed concerning matters of minority rights. Finally, Part IV is an in-depth analysis of the conditions faced by the Gypsies from the Communist regime to the present. The Gypsy problem has been documented in other parts of Eastern Europe,<sup>14</sup> however, this report focuses on the past, present and current problems in the Czech Republic and Hungary. The following analysis is useful in understanding the impact that democracy, free trade and open market conditions has had on the conditions of the Gypsies.

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<sup>10</sup> Yen D. Chu, *The Making of a Quagmire: The Inadequacies of Applying the Jackson-Vanik Amendment to Vietnam's Transitional Economy*, 35 COLUM. J. TRANSNAT'L L. 453, 455. See Robert L. Bartley, *The Case For Optimism*, FOREIGN AFF., Sept.-Oct. 1993, at 15, 17.

<sup>11</sup> MAHMOOD MONSHIPOURI, DEMOCRATIZATION, LIBERLIZATION & HUMAN RIGHTS IN THE THIRD WORLD 3 (1995).

<sup>12</sup> *Id.* at 42.

<sup>13</sup> *Id.* at 43.

<sup>14</sup> See Nader Mousavizadeh, *The Wanderers*, VILLAGE VOICE, Jan. 2, 1996, at 40 (reviewing ISABEL FONESCA, BURY ME STANDING: THE GYPSIES AND THEIR JOURNEY (1995)). See also Jeffrey Shandler, *The Other Other*, 11 TIKKUN Sept./Oct. 1996, at 92 (reviewing ISABEL FONESCA, BURY ME STANDING: THE GYPSIES AND THEIR JOURNEY (1995)).

## I. ECONOMIC CONDITIONS AND FREE TRADE

A utilitarian approach to free trade argues for trade policies that will most enhance the welfare of the total population.<sup>15</sup> These policies advocate free trade over protectionism.<sup>16</sup> Economists contend that free trade rules are preferable to restrictive trade rules because free trade maximizes global output of goods and services, while restrictive measures reduce the output of goods and services.<sup>17</sup> As the effects of free trade include lower prices and increased consumer choices,<sup>18</sup> the effects of protectionism carry with it quotas and tariffs that increase prices of both domestic and imported products.<sup>19</sup> Although the figures for consumer prices are an important measure of how free trade can effect an economy, one of the most important figures regarding the effect of free trade on minorities includes the changes in the labor market that would theoretically create more jobs.<sup>20</sup>

The movement toward free trade has accompanied the movement toward privatization, and in Eastern Europe these movements have been seen as a means to create a market economy.<sup>21</sup> Privatization reduces the role of the public sector and expands the role of private market institutions.<sup>22</sup> These private institutions thrive on free trade and the open market to receive and sell their products. Since the end of 1991, intra-regional trade has been carried out on the basis of world prices and convertible currency settlement.<sup>23</sup> Prior to 1991,

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<sup>15</sup> See Robert W. McGee, *The Moral Case for Free Trade*, 29 J. WORLD TRADE 69 (1995).

<sup>16</sup> See *id.*

<sup>17</sup> See Frederick M. Abbott, *International Trade and Social Welfare: The New Agenda*, Meeting of the Section on International Law of the American Association of Law Schools (January 7, 1995), in 17 COMP. LAB. L.J. 338, 342 (Winter 1996).

<sup>18</sup> See McGee, *supra* note 15, at 70.

<sup>19</sup> See *id.*

<sup>20</sup> Studies have shown that under protectionism more jobs would be lost, while conversely, under an economy with free trade, more jobs would be created. See Arthur Denzau, *How Import Restraints Reduce Employment*, Publication No. 80 Center for the Study of American Business (1987) (studying the effect that a voluntary restraint agreement has on jobs in the steel industry).

<sup>21</sup> See INTERNATIONAL LABOUR ORGANIZATION, WORLD LABOUR REPORT 65 (1995) [hereinafter WORLD LABOUR REPORT].

<sup>22</sup> See *id.* See *infra* Part IV.

<sup>23</sup> See ORGANIZATION FOR ECON. CO-OPERATION AND DEV., REFORMING THE ECONOMIES OF CENTRAL AND EASTERN EUROPE 79 (1992) [hereinafter REFORMING].

trade within Central and Eastern Europe was organized under the Council for Mutual Economic Assistance (CMEA) and was valued at official rates against the transferable rouble<sup>24</sup> that differed substantially from commercial rates used to value convertible currency trade.<sup>25</sup> The CMEA grouped the Eastern bloc economies together by serving as a major market for Soviet raw materials and manufactured goods, as well as a supplier of food and consumer goods.<sup>26</sup>

Throughout the Communist years, both the Czech Republic and Hungary were under a form of government that did not promote free trade. The international trade that took place was the result of the "socialist division of labor" imposed by the USSR.<sup>27</sup> Protectionism was a policy that was adhered to in these Eastern bloc countries, and if there was any form of trade, it took place within the bloc and other countries in the Communist world.<sup>28</sup> The objective behind this was to create regional integration based on specialization that led to economies of scale, but removed incentives to upgrade products.<sup>29</sup> Thus, certain Eastern bloc countries made products specifically geared toward the USSR technical standards to satisfy requirements of Soviet planners.<sup>30</sup>

With the advent of free trade in these former Eastern bloc countries significant changes have occurred, such as the removal of government trade monopolies, the implementation of a unified exchange rate, the increased access to foreign exchange and the replacement of quotas for average tariff protection.<sup>31</sup> Historically, free trade proponents have argued that trade restriction mechanisms, such as tariffs or quotas, are a way of forcibly transferring wealth from consumers who earned it to domestic producers who have not, a purely macroeconomic effect.<sup>32</sup> However, the relationship of free trade with human

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<sup>24</sup> The standard currency for the USSR (and currently today in Russia) was transferable for trade within the CMEA.

<sup>25</sup> See REFORMING, *supra* note 23, at 79.

<sup>26</sup> See U.S. COMMISSION ON SECURITY AND COOPERATION IN EUROPE, 100TH CONG., REPORT ON REFORM AND HUMAN RIGHTS IN EASTERN EUROPE 7 (Comm. Print 1988)[hereinafter REPORT ON REFORM].

<sup>27</sup> See REFORMING, *supra* note 23, at 83.

<sup>28</sup> Evidenced by the CMEA trade. See *supra* text accompanying notes 24-26.

<sup>29</sup> See ORGANIZATION FOR ECON. CO-OPERATION AND DEV., ECONOMIC SURVEYS, REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC 78 [hereinafter REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC].

<sup>30</sup> See *id.* at 85.

<sup>31</sup> See *id.* at 87-88.

<sup>32</sup> See McGee, *supra* note 15, at 73.

rights in Eastern Europe is an unresearched area.<sup>33</sup>

In March 1992, the Czech Republic and Hungary<sup>34</sup> signed "Europe agreements" with the European Community that committed these countries to create industrial free markets within 10 years.<sup>35</sup> However, in comparison to trade barriers that were in effect in the last "pre-transition" year (1989), the tariffs to the Czech Republic were 44 percent higher,<sup>36</sup> and to Hungary, the tariffs were 58 percent higher.<sup>37</sup> The reasons given for these high tariffs were that 40 to 50% of the exports from Central and Eastern Europe were in goods that fell into the "sensitive" category.<sup>38</sup> Theorists have called for a slower pace of liberalization for these "sensitive" sectors.<sup>39</sup> In addition to the tariff quotas, import ceilings, voluntary restraints, anti-dumping procedures and other acts<sup>40</sup> were also implemented.<sup>41</sup> In regard to United States relations with the former Eastern bloc countries, the U.S., in 1993, donated billions of dollars to governments in the

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<sup>33</sup> See Peter Jakobus, *APEC: Profits vs. Human Rights?*, CULTURAL SURVIVAL Q., Winter 1995, at 4,5 (discussing the Asia-Pacific Economic Cooperation negotiations in 1989 and the importance given to human rights considerations in foreign policy and the rights of indigenous people in the Asian-Pacific region).

<sup>34</sup> Poland also participated.

<sup>35</sup> See Samuel Britton, *Economic Viewpoint: Iron Curtain in the way of trade*, THE FIN. TIMES, Apr. 29, 1993, at 24, 24.

<sup>36</sup> The highest of these tariff barriers to the Czech Republic include footwear, textiles & apparel—12.6% and Iron & Steel—12.5%. See *id.*

<sup>37</sup> The highest of these tariff barriers to Hungary include food & live animals—25.3% and footwear, textiles & apparel—17.6%. See *id.*

<sup>38</sup> See *id.* According to the April 1993 issue of Economic Policy, there are a core group of goods that substantial protection is applied to, and past protection behavior by the EC suggests that liberalization "may be more apparent than real". See *id.*

<sup>39</sup> See Damien Neven, *Trade Liberalisation with Eastern Nations: Some Distribution Issues*, 39 EUR. ECON. REV. 622, 623 (1995).

<sup>40</sup> See Britton, *supra* note 35, at 24. These acts included accusations by ministers of the EC placing temporary bans on meat and dairy products from Central and Eastern Europe because of allegations of foot-and-mouth disease. These accusations were unfounded according to Czech foreign minister, Pavel Bratinka. See *id.*

<sup>41</sup> See *id.* See generally REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC, *supra* note 29, at 91 (listing export restraint agreements, restrictive technical standards, testing and certification requirements, especially for engineering and pharmaceutical products; and restrictive health and sanitary regulations for agricultural goods as non-tariff barriers placed on the Eastern bloc countries).



region while maintaining trade barriers that decreased advancement.<sup>42</sup> An example of these restrictions includes forcing the Czech Republic to sign an agreement restricting clothing exports to the U.S., even though they account for only 0.05% of the U.S. clothing market.<sup>43</sup> Thus, while trying to spur the new free markets, the U.S. was conversely acting as a restraint through these barriers. Given that trade liberalization leaves some people worse off because of trade that arises out of comparative advantage, the Western countries were protecting their industries.<sup>44</sup> Also, there was a feeling that if the former Communist countries did not enter a self-sustained growth process, new nationalist movements would gain power that would revert to centralized decision-making, or even dictatorships.<sup>45</sup> However, since free trade was occurring and there was not much reported about Eastern European governments reverting back to communism, the Eastern European countries were profitably specializing in industries that were intensive in low-skill labor and capital, and gave them a comparative advantage in relation to Northern and Southern Europe.<sup>46</sup>

Even though the European Community (EC) set trade barriers on the Czech Republic and Hungary for sensitive products in 1992, it signed trade and co-operation agreements that included provisions for non-discriminatory tariff regimes.<sup>47</sup> Additionally, both Hungary and the Czech Republic were included within the EC Generalized System of preferences, respectively in 1990 and 1991.<sup>48</sup> Under the terms of the 1993 Central European Free Trade Agreement

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<sup>42</sup> See James Bovard, *Washington's Iron Curtain Against East European Exports*, USA TODAY (Magazine), March 1993, at 20.

<sup>43</sup> See *id.*

<sup>44</sup> See Neven, *supra* note 39, at 623.

<sup>45</sup> See Britton, *supra* note 35, at 24. According to the April 1993 issue of Economic Policy Hans-Werner Sinn of Munich University predicted this could occur if liberalization does not happen. This would consequently force Western European countries to "increase its military spending, borders would close and the cold war would return." *Id.* See generally Daniel Singer, *Ex-Communists and Rough Beasts; Letter From Europe*, 259 THE NATION 580 (1994) (exhibiting how many former communists are being elected in Eastern Europe with widespread dissatisfaction with the rapid swing to capitalism).

<sup>46</sup> See Neven, *supra* note 39, at 627.

<sup>47</sup> See REFORMING, *supra* note 23, at 91.

<sup>48</sup> See *id.*

(CEFTA)<sup>49</sup> about half of the regional trade would already be free and another large class of goods would be liberalized by the end of 1996.<sup>50</sup> Furthermore, the agreement of April 29, 1994, signed by Poland, Hungary, the Czech Republic and Slovakia, advanced the full liberalization of sensitive products by 1997-2000.<sup>51</sup>

In obtaining foreign investments, Hungary, Poland, the Czech Republic, the Slovak Republic and Slovenia, as of May, 1997, have utilized CEFTA to attract U.S. investors to the region.<sup>52</sup> Although the Hungarian foreign trade deficit in 1997 was estimated at \$2.5 billion, it is expected to be counter-balanced by privatization revenues and direct foreign capital and banking investments.<sup>53</sup> Finally, regarding tariff reduction, customs duties have been reduced on approximately 90% of industrial products and on 50% of agricultural products.<sup>54</sup>

### A. Czech Republic

Toward the end of 1987, Czechoslovakia declared a policy of restructuring that was similar to what Mikhail Gorbachev envisioned under *perestroika*, where enterprises would gain independence, mandatory planning would be eliminated and joint ventures with foreign firms would be permitted.<sup>55</sup> By 1989, the Czech Republic was trying to integrate into the world economy. A means of bringing this integration and restructuring of the economy to fruition was through import competition that would exert pressure on the then existing domestic monopolies, coupled with foreign investment.<sup>56</sup> Under Communist

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<sup>49</sup> See generally *EFTA Meetings with the Czech and Slovak Republics*, EFTA NEWS, March 1994, at 1-1 (explaining the discussions that have taken place at the Joint European Free Trade Association meetings in establishing an agreement).

<sup>50</sup> See Nick Denton, *C Europeans Speed Tariff Cuts: International News Digest*, THE FIN. TIMES, April 30, 1994 at 3.

<sup>51</sup> See *id.*

<sup>52</sup> See Paula L. Green, *Central Europe Looking to Woo U.S. Investment*, J. COMMERCE & COMMERCIAL, May 8, 1997, at 4A.

<sup>53</sup> See Budapest MTI Transcript of the Trade Ministers Report of Macroeconomic Prognosis for 1997 (January 10, 1997).

<sup>54</sup> See Green, *supra* note 52, at 4A.

<sup>55</sup> See REPORT ON REFORM, *supra* note 26, at 19.

<sup>56</sup> See REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC, *supra* note 29, at 78.

rule, the Czechoslovakian government<sup>57</sup> implemented a complex system of taxes and subsidies whereby domestic prices were insulated from price changes in the world market.<sup>58</sup> Additional restrictions included elaborate systems of licensing requirements, quantitative restrictions and a rigid allocation of foreign exchange.<sup>59</sup> Furthermore, government bilateral trade agreements determined quantities and prices in advance whereby price or demand changes could not shift domestic production.<sup>60</sup> At its peak, trade with the Communist bloc countries reached 80% of Czechoslovakian total trade, and in 1989 this trade amount accounted for more than 60% of their trade, compared to only 30% to industrialized countries.<sup>61</sup> However, in 1991, trade to the Eastern bloc countries reached only 40% while trade to industrialized countries surpassed this figure and accounted for 50% of the Czech Republic trade.<sup>62</sup>

Factors that contributed to this fall of CMEA trade include the minimization of holdings, increasing disarray in the USSR, and disagreement on the liquidation of outstanding balances of the rouble.<sup>63</sup> In 1996, this disparity increased to the point where trade to the industrialized countries reached 65% compared to 30% of the Czech Republic's trade to the countries of the former Communist bloc.<sup>64</sup>

In industries intensive in low-skill labor and capital, the Czech Republic has a comparative advantage and has tried to benefit through trade.<sup>65</sup> Its movement to free trade was a lot harder than that of other countries because the Czech Republic did not benefit from Most Favored Nation (MFN) status in the United States or Generalized System of Preferences (GSP) treatment in the European Community.<sup>66</sup> However, key acts were implemented that helped

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<sup>57</sup> The Czech Republic was known as Czechoslovakia prior to the Velvet Revolution in 1989.

<sup>58</sup> See REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC, *supra* note 29, at 78.

<sup>59</sup> See *id.*

<sup>60</sup> See *id.* at 79.

<sup>61</sup> See *id.* at 80.

<sup>62</sup> See *id.*

<sup>63</sup> See REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC, *supra* note 29, at 85.

<sup>64</sup> See *Czech Republic Statistics of 1997*, 1997 DIRECTION OF TRADE STAT. Y.B. 178 [hereinafter *Czech Republic Statistics*].

<sup>65</sup> See Neven, *supra* note 39, at 627.

<sup>66</sup> See REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC, *supra* note 29, at 83. This form of treatment was offered to other former communist countries, such as Poland and Hungary. See *infra* Part IB.

promote free trade. These acts included the abolition of the monopolistic Foreign Trade Organizations, the introduction of internal convertibility allowing access to foreign exchange for imports at a fixed exchange rate, the phasing out of quantitative restrictions on imports and exports, and the lowering of tariffs.<sup>67</sup> In 1991, the tariff schedule remained relatively flat, and effective rates of protection remained moderate.<sup>68</sup> Additionally, the Czech government aggressively devalued the Crown<sup>69</sup> and applied restrictive macroeconomic policies to carry out structural and institutional changes at the micro level.<sup>70</sup> The devaluation allowed domestic producers to shift exports from the collapsing eastern markets and trade them to the west.<sup>71</sup> This was the plan under free trade and consequently, the movement toward new goods entering new markets.

### *B. Hungary*

Although Hungary has a long history of economic reform<sup>72</sup> that challenges Marxist-Leninist economic doctrine, Hungary has continued to experience economic difficulty in the period following the collapse of communism.<sup>73</sup> The movement towards integration into the world trading system was not exploited, because the government leaders did not know how to accomplish this and still maintain the advantages of the CMEA.<sup>74</sup> The benefits of trade with the Soviet Union included: a secure supply of fuel and raw materials at prices below the world market; a stable market for Hungarian

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<sup>67</sup> See REPORT ON THE CZECH AND SLOVAK FEDERAL REPUBLIC, *supra* note 29, at 84.

<sup>68</sup> See *id.* at 93.

<sup>69</sup> The Crown was the standard currency in Czechoslovakia and has remained as the currency in the Czech Republic.

<sup>70</sup> See KAREL DYBA, THE CZECH REPUBLIC AND ECONOMIC TRANSITION IN EASTERN EUROPE 45 (Jan Svejnar ed., Academic Press, Inc. 1995)

<sup>71</sup> See *id.*

<sup>72</sup> In 1968, Hungary lifted mandatory planing indicators and broadly decentralized the economic system. In the late 1970's and early 1980's, Hungary introduced competitive pricing, merged the three branch ministries into one Ministry of Industry and gradually dismantled large enterprises and trusts in supporting small enterprises. In 1984, Hungary separated the National Bank from smaller commercial banks, introduced foreign banks and a bond market. REPORT ON REFORM, *supra* note 26, at 21.

<sup>73</sup> See *id.*

<sup>74</sup> See ORGANIZATION FOR ECON. CO-OPERATION AND DEV., ECONOMIC SURVEYS, REPORT ON HUNGARY 85 (1991) [hereinafter 1991 REPORT ON HUNGARY].

exports; subsidized loans in the form of bilateral rouble-trade deficits, while simultaneously enjoying bilateral convertible-currency surpluses; and low marketing and market penetration costs for exporters in the huge CMEA market.<sup>75</sup> Some of the disadvantages included government-negotiated, not enterprise-negotiated, agreements, barter transactions and the disincentives that go with a trade partner that did not reward product innovation.<sup>76</sup> Thus, it can be inferred that Hungarians enjoyed advantages that could have been jeopardized if Hungary had traded with unfamiliar Western markets. The Hungarian leaders determined that "the status quo, although not bright, was too comfortable."<sup>77</sup> However, changes that occurred with Gorbachev's foreign policy included integration of the USSR and the Eastern bloc countries into the world economy.<sup>78</sup> Furthermore, non-liquidity in some Central and Eastern European countries gave Hungarian firms no choice but to penetrate new markets for survival.<sup>79</sup>

Hungary's recent economic success has emerged because firms have responded flexibly and quickly to greater freedom and to the decline in domestic demand and demand from the CMEA.<sup>80</sup> The major changes that occurred revolved around the access to trade with convertible-currency and the movement away from the rouble. Rouble trade fell from 53% of Hungarian imports in 1986 to 26% in 1990.<sup>81</sup> Freedom existed not only for the selection of outputs, markets and new products, but also in new possibilities for joint venture agreements.<sup>82</sup> Thus, Hungary with a strong comparative advantage in human capital-intensive industries compared to Northern Europe, and a strong export potential in high-tech industries compared to Southern Europe, could capitalize on these advantages.<sup>83</sup> However, these advantages only came about

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<sup>75</sup> See *id.* at 85-86.

<sup>76</sup> See *id.*

<sup>77</sup> *Id.* Hungary had a three-pronged trade strategy: (1) Obtain inexpensive energy and raw materials from the USSR for food and relatively outdated manufactured goods; (2) obtain modern technology from advanced industrial countries for food, energy and processed raw materials; and (3) exchange employment-generating manufactured goods with other central and eastern European countries. See *id.*

<sup>78</sup> See *id.*

<sup>79</sup> See *id.*

<sup>80</sup> See 1991 REPORT ON HUNGARY, *supra* note 74, at 85.

<sup>81</sup> See *id.* at 89.

<sup>82</sup> See *id.*

<sup>83</sup> See Neven, *supra* note 39, at 627.

recently. Figures from 1989 indicate that Hungary's area of competitive advantage was in bovine animals and petroleum oils, and in 1995, it became meat and women's clothing.<sup>84</sup>

The share of total exports in convertible-currency increased from 47% in 1986 to 73% in 1990, while the share of convertible-currency imports increased from 50% in 1986 to 71% in 1990.<sup>85</sup> Furthermore, trade with non-Communist countries increased as exports rose from 25% in 1986 to 43% in 1990, while trade with the USSR and other CMEA countries fell from 57% in 1986 to 32% in 1990.<sup>86</sup> Since 1990, Hungarian trade with western countries has doubled.<sup>87</sup> In 1996, exports to the industrial western countries constituted 69% and imports constituted 68%, while the former CMEA countries accounted for only 29% of imports and 32% of exports.<sup>88</sup>

With domestic markets now open to international competition, domestic producers were exposed to world prices.<sup>89</sup> This caused a change in the structure of the Hungarian trade as domestic comparative advantages and disadvantages were revealed.<sup>90</sup> The outcome of this was the influx of convertible-currency into Hungary. The factors that caused the strong convertible-currency export/import performance include: strong economic growth in Western European countries that have favorable conditions for Hungarian exports by removing most quantitative restrictions;<sup>91</sup> additional quota allowances for steel, sheep meat, textiles and clothing; the extension of GSP status to Hungarian goods; flows of foreign direct investment that helped strengthen Hungary's competitive position. Furthermore, since Hungary knew it no longer had privileged access to protected CMEA markets, it exerted greater effort to penetrate western markets.<sup>92</sup> However, some trade restrictive measures were still kept, such as global quotas for consumer goods, foreign

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<sup>84</sup> See ORGANIZATION FOR ECON. CO-OPERATION AND DEV., ECONOMIC SURVEYS, REPORT ON HUNGARY, 63-64 (1997) [hereinafter 1997 REPORT ON HUNGARY].

<sup>85</sup> See 1991 REPORT ON HUNGARY, *supra* note 74, at 89.

<sup>86</sup> See *id.* at 93.

<sup>87</sup> See 1997 REPORT ON HUNGARY, *supra* note 84, at 63.

<sup>88</sup> See *Czech Republic Statistics*, *supra* note 64, at 247.

<sup>89</sup> See 1997 REPORT ON HUNGARY, *supra* note 84, at 63.

<sup>90</sup> *Id.* See Neven, *supra* note 39, and 1997 REPORT ON HUNGARY, *supra* note 84 and accompanying text.

<sup>91</sup> In reference to Article 4(a) of the protocol of accession of Hungary to the GATT.

<sup>92</sup> See 1991 REPORT ON HUNGARY, *supra* note 74, at 87.

exchange restrictions, import fees and the import pre-financing system.<sup>93</sup>

Hungary is currently undertaking a process of trade liberalization through multilateral bodies (General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO)) and numerous bilateral agreements.<sup>94</sup> Aside from the import surcharge,<sup>95</sup> tariff levels have been falling, consequently benefiting Hungarian consumer world market prices.<sup>96</sup> In other respects, non-tariff barriers are still existent through protectionist measures such as global quantities on consumer goods.<sup>97</sup>

A few days after Hungary received an invitation to join the North Atlantic Treaty Organization (NATO) in 1997, Hungary was described as an excellent candidate for membership in the European Union (EU).<sup>98</sup> However, the EU's Commission Opinion stressed that in order for Hungary to join, it must "tackle corruption, improve the judicial system and protect the Gypsy minority."<sup>99</sup> Furthermore, it must limit the growth of the budget deficit and foreign debt, increase the development of healthcare, and improve customs control and consumer and environmental protection.<sup>100</sup>

In the cases concerning the Czech Republic and Hungary, free trade was seen as a way to enhance overall wealth, more so than through a protectionist market.<sup>101</sup> A potential fatal flaw that could occur is, if in pursuit of free trade and capitalism, human rights' violations are ignored.<sup>102</sup> Thus, the issue then becomes one of efficiency and maximizing total wealth, not protecting the rights of the citizens.<sup>103</sup> Part II explores the effect that privatization has had on the Czech Republic and Hungary and its effect on the human rights conditions.

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<sup>93</sup> See *id.* at 98.

<sup>94</sup> See 1997 REPORT ON HUNGARY, *supra* note 84, at 69.

<sup>95</sup> The 8% surcharge solely applied to consumption goods is to have been eliminated by July 1, 1997.

<sup>96</sup> See 1997 REPORT ON HUNGARY, *supra* note 84, at 69, 70.

<sup>97</sup> See *id.* at 70. There are extreme protectionist measures for cars. See *id.*

<sup>98</sup> See Andras Doncsev, *Road to Joining the EU Opens*, BUDAPEST SUN, July 24, 1997, available in 1997 WL 8262841.

<sup>99</sup> *Id.* See *Czech Republic*, HILFE COUNTRY REPORT, I (1997), at 1, available in 1997 WL 8537156, at \*40 (recognizing the discrimination against the Gypsies through the citizenship law as a weakness in joining the EU).

<sup>100</sup> See Doncsev, *supra* note 98.

<sup>101</sup> See McGee, *supra* note 15, at 70.

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*

## II. PRIVATIZATION AND LABOR MARKET EFFECTS

Privatization is a set of policies designed to curtail the size and influence of the public sector through the sale of public assets.<sup>104</sup> There must be a goal to achieve "complete intellectual and moral reconstruction" for total economic restructuring to occur and for the establishment of a new institutional system.<sup>105</sup> In 1989, Central and Eastern European countries were confronted with the responsibility of managing a drastic transformation of societal and economic conditions in a manner that resulted in radical reforms of their constitutions concerning their economic structure.<sup>106</sup> Over the past decade, privatization has been strong, as these countries have moved to "dismantle" their previous, dominantly state-owned, economies.<sup>107</sup> Massive redistribution of property occurred that reshaped not only their economic systems but their political and social systems as well.<sup>108</sup> However, in the absence of significant restructuring, privatization alone could not solve the underlying problems facing the previously state-owned enterprises.<sup>109</sup> A hurdle that had to be overcome in privatization was the fact that Communist rule was long intertwined within the countries of Eastern Europe, and that the judicial system was directly affected by it. Consequently, it has become very hard to find judges who are qualified to rule on the actions and policies of their former Communist rulers.<sup>110</sup> The difficulty of passing judgment on others who were previously part of the same establishment became a very hard task to accomplish, and consequently, the human rights violations that have occurred have been very difficult to try in court.

Mass privatization left new owners and managers with the responsibility of implementing the investments and reforms necessary to make their enterprises viable.<sup>111</sup> These investments and reforms were created through free

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<sup>104</sup> See MARIUSZ MARK DOBEK, *THE POLITICAL LOGIC OF PRIVATIZATION I* (1993).

<sup>105</sup> See Csaba Varga, *Transformation to Rule of Law From No-Law: Societal Contexture of the Democratic Transition in Central and Eastern Europe*, 8 *CONN. J. INT'L L.* 487, 488 (1993).

<sup>106</sup> See *id.* at 491.

<sup>107</sup> See *id.*

<sup>108</sup> See *id.*

<sup>109</sup> See *WORLD LABOUR REPORT*, *supra* note 21, at 64. See Dobek, *supra* note 104, at 68 (discussing the steps that Poland made in privatizing its economy).

<sup>110</sup> See Mark Gibney, *Decommunization: Human Rights Lessons from the Past and Present, and Prospects for the Future*, 23 *DENV. J. INT'L L. & POL'Y* 87, 88 (1994).

<sup>111</sup> See *WORLD LABOUR REPORT*, *supra* note 21, at 64.



trade in the newly capitalized markets.<sup>112</sup> The state of the labor market was a high unemployment rate that was caused by the worker's withdrawal.<sup>113</sup> The laborers' acts of quitting their jobs had a direct effect on minorities in the market and how they were treated.<sup>114</sup> The policy response to the unemployment has produced benefit systems and social welfare programs.<sup>115</sup>

The effect of international trade on social welfare has been well researched. Adam Smith<sup>116</sup> theorized the measures that would have to be taken to alleviate the impact of free trade rules on workers, and Freidrich von Hayek advocated the belief that a liberal economy will provide a social welfare safety net in the context of opposition to state intervention in the marketplace.<sup>117</sup> More recently, the World Trade Organization<sup>118</sup> took measures to lower trade barriers, not only on trade in goods but trade in services as well.<sup>119</sup>

The impact of "free trade" measures on labor conditions and their effect on human rights have been addressed in the United States,<sup>120</sup> however, it would be useful to consider their impact in Europe. According to the Discrimination (Employment and Occupation) Convention in 1958, which both the Czech Republic and Hungary signed, the International Labour Organization's stance on discrimination includes a violation of rights enunciated by the Universal Declaration of Human Rights.<sup>121</sup> Article 2 states that each member should "pursue a national policy designed to promote, by methods appropriate to

<sup>112</sup> See Varga, *supra* note 105, at 492 (discussing how the transition period enabled former communist countries to set historic new directions for their future).

<sup>113</sup> See WORLD LABOUR REPORT, *supra* note 21, at 64.

<sup>114</sup> See *infra* Part IV for a discussion of the employment patterns of the Gypsies in the Czech Republic and Hungary and how they changed before and after 1989.

<sup>115</sup> See WORLD LABOUR REPORT, *supra* note 21, at 64.

<sup>116</sup> See generally ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (Edward Cannan ed., 1961) (1812).

<sup>117</sup> See Abbott, *supra* note 17, at 341.

<sup>118</sup> The General Agreement on Tariffs and Trade (GATT) was the facilitator of free trade until January 1, 1996, when the World Trade Organization (WTO) took over as the administering body of the GATT.

<sup>119</sup> See Abbott, *supra* note 17, at 339.

<sup>120</sup> See U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948). See generally James F. Smith, *NAFTA and Human Rights: A Necessary Linkage*, 27 U.C. DAVIS L. REV. 793 (1994) (explaining how human rights and trade are "inextricably linked" and should be considered together).

<sup>121</sup> See ILOLEX: *The ILO's Database on International Labour* (visited Dec. 1, 1997) <<http://www.ilo.org/public/english/50normes/conrec/c111.htm>>.

national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."<sup>122</sup>

In Hungary's labor market, social security has been better than that of most Eastern European countries.<sup>123</sup> However, even with the advancement in social security, there has been less worker influence, and consequently, companies are more receptive to reducing operating costs by "shedding" labor and creating more profit.<sup>124</sup> The questions that logically arise are: Which group of laborers are let off? Is it done equally or are there more laborers who are adversely discriminated against in the movement toward more profit? There have been old prejudices and stereotypes emerging in the hiring of some minorities.<sup>125</sup>

In the Czech Republic, because of the lack of employment opportunities for minorities, there has been an exodus towards the west to escape these conditions.<sup>126</sup> Although there are safety fears and violence from skinheads, a lot of employment discrimination has caused this exodus.<sup>127</sup> Unfortunately, the Gypsies are a significant part of the laborers who were let off. The constitutional changes that took place after the fall of the communist leadership were implemented to address the problem of discrimination against minorities, such as the Gypsies. This is the focus of Part III of this article.

### III. CONSTITUTIONAL AND LEGAL CHANGES

With the fall of Communism in 1989, the countries of Eastern Europe found that they had to make changes to adapt to their new position in the world. The economic conditions in the former Soviet bloc countries were major facilitators in the movement toward democracy and free market principles. Consequently, changes had to be made, and these changes included the movement toward free trade.<sup>128</sup> However, another change that had to be

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<sup>122</sup> *Id.*

<sup>123</sup> See Smith, *supra* note 120, at 65.

<sup>124</sup> See *id.*

<sup>125</sup> See *id.*

<sup>126</sup> See Jane Perlez, *Havel Lectures the Czechs on the Rights of Gypsies*, N.Y. TIMES, November 9, 1997, §1, at 14.

<sup>127</sup> See *id.* See *infra* notes 233-35 and accompanying text.

<sup>128</sup> See *supra* Part I.

made, which played a direct role in the conditions of minorities and the way they were treated, was in the countries' constitutions. This mechanism for change was very visible, and is also a measure of determining how the Gypsy community should be treated.<sup>129</sup>

Under Mikhail Gorbachev, Eastern European countries were given the opportunity to show their national interests with his government's policy of *perestroika*. The constitutional changes that ensued directly caused changes in how Gypsies and other minorities were to be treated in Eastern Europe.<sup>130</sup> Although some commentators found Gorbachev to be "blind and insensitive to ethnic issues,"<sup>131</sup> Czech human rights activist Jaroslav Sabata asserted that "Gorbachev opened up a new climate here, destroying the old atmosphere of fear."<sup>132</sup> Therefore, was Gorbachev's political ideology implemented in the constitutions? Were there more rights granted to minorities when "the old atmosphere of fear" was destroyed?<sup>133</sup> Article 27 of the International Covenant on Civil and Political Rights<sup>134</sup> gave ethnic minorities the right to enjoy their own culture and the right to self-determination.<sup>135</sup> The following analyzes the constitutions of the Czech Republic and Hungary before and after the fall of Communism and the impact of the changes on the treatment of ethnic minorities.

### A. *Constitutions and Laws Under Communism*

#### 1. Czechoslovakia

When looking at minority issues in Eastern Europe before 1989, there is a tendency to explain all violations of human rights as being directly a result of the country's Communist past.<sup>136</sup> This could be true, however, it also can be a

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<sup>129</sup> See *infra* Part IV.

<sup>130</sup> See *infra* notes 151-83 and accompanying text.

<sup>131</sup> REIN MULLERSON, INTERNATIONAL LAW, RIGHTS AND POLITICS: DEVELOPMENTS IN EASTERN EUROPE AND THE CIS 75 (1994) *quoted in* J. DUNLOP, NATIONS & POLITICS IN THE SOVIET SUCCESSOR STATES 48 (1993).

<sup>132</sup> REPORT ON REFORM, *supra* note 26, at 9.

<sup>133</sup> *Id.*

<sup>134</sup> 6 ILM 368 (1967). Both the Czech Republic and Hungary are signatories to the International Covenant on Civil and Political Rights.

<sup>135</sup> See MULLERSON, *supra* note 131, at 74.

<sup>136</sup> See *id.* at 95.

part of societies "black and white vision of the world."<sup>137</sup>

Under Communist rule, the Communist party had a lot of influence in determining how the constitution was written and how its corresponding laws were to be enacted. Under § 143 of Czechoslovakia's constitution of 1948, the judges were bound not only by the laws, ordinances and decrees of the administration, but also by the Communist party's determination of "the principles of the people's democratic order."<sup>138</sup> After changes were made to the Czechoslovakian constitution in 1968, Article 2 stated that the foundation of the country would be principles of a socialist democracy where the rights of individuals are the same throughout the Republic.<sup>139</sup> Also, Article 5 gave unitary state citizenship to every citizen in Czechoslovakia.<sup>140</sup> However, this was the extent of statements for the rights of individuals, and there was nothing written about minority rights and corresponding rights that could protect them.

## 2. Hungarian People's Republic

The constitution of the Hungarian People's Republic, adopted in 1949, established a country with a foundation for socialism, and according to Article 1, all power belonged to the working people.<sup>141</sup> According to Articles 4 and 5, the protection of rights was exclusively for the working people and their organization of forces to complete the building of socialism.<sup>142</sup> There was an overtly anti-capitalistic statement in Article 12 of the constitution where it stated that private ownership and private initiative could not violate public interests.<sup>143</sup> Whereas the Czechoslovakian constitution had no reference to human rights, the Hungarian People's Republic's constitution did mention it in Article 54, where human rights were respected, and they were in accordance with the interests of a socialist

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<sup>137</sup> *Id.*

<sup>138</sup> ASSEMBLY OF CAPTIVE EUROPEAN NATIONS, DENIAL OF HUMAN RIGHTS IN EASTERN EUROPE 8 (1963) [hereinafter ASSEMBLY].

<sup>139</sup> See THE CONSTITUTIONS OF THE COMMUNIST WORLD, CZECHOSLOVAKIA 583 (William B. Simons ed. & Th. J. Vondracek trans., Sijthoff & Noordhoff 1980).

<sup>140</sup> See *id.*

<sup>141</sup> See THE CONSTITUTIONS OF THE COMMUNIST WORLD, HUNGARY 196-97 (William B. Simons ed. & William Solyom-Fekete trans., Sijthoff & Noordhoff 1980) [hereinafter COMMUNIST HUNGARY CONSTITUTION].

<sup>142</sup> See *id.*

<sup>143</sup> See *id.* at 199.

society.<sup>144</sup> Furthermore, the exercise of these rights were determined to be inseparable from the fulfillment of the duties of its citizens and shall be established by law.<sup>145</sup> Finally, Article 61 gave the citizens equality and severe punishment for every kind of discrimination on the grounds of sex, religion, or nationality.<sup>146</sup> Unfortunately, this did not extend to ethnic or racial groups,<sup>147</sup> classifications into which the Gypsies fell.<sup>148</sup>

The Communist regime violated every domestic and international obligation with regard to human rights.<sup>149</sup> The denial of basic freedoms was so unbearable, that in 1956 it led to a revolution, which was suppressed by the Soviet Red Army.<sup>150</sup> In Communist Hungary, it can be inferred that human rights were interrelated with the legal set-up of the country. If there was no protection of human rights exhibited through the police authorities and the judicial system, then most likely, these rights did not extend to the ethnic minorities. Consequently, because of this lack of protection, it had a direct effect on the negative way in which the Gypsies were treated.

## B. Post-1989

### I. Czech Republic

The Czech Republic adopted its new constitution on December 16, 1992, and with it came a foundation for human rights and rights for minorities. This is apparent in the preamble that states "free citizens who are conscious of

<sup>144</sup> See *id.* at 209.

<sup>145</sup> See *id.*

<sup>146</sup> See *id.* at 210.

<sup>147</sup> The Gypsies met the Mandela Test (Mandela v. Dowell Lee, 2 App. Cas. 548 (H.L. 1983)) of an ethnic group: "A long shared history, a cultural tradition of its own, a common geographical origin or descent from a small number of common ancestors, a common literature, a common religion, and the characteristic of being a minority." ROBERT HOME, RACE EQUALITY AND PLANNING (Huw Thomas & Vijay Krishnarayan eds., 1994).

<sup>148</sup> In Hungary, nationalities consist of people from other nations, for instance, Austrian nationals within the borders of Hungary. Gypsies do not have a homeland, and thus, would not be considered a nationality because they have no nation to call home. Rather, the Gypsies would best be classified as an ethnicity.

<sup>149</sup> See ASSEMBLY, *supra* note 138, at 9.

<sup>150</sup> See *id.*

their obligations towards others and of their responsibility toward the whole, as a free and democratic state based on respect for human rights."<sup>151</sup> Article 1 establishes the Czech Republic as a democratic law-governed state based on respect for the rights and liberties of men and citizens, and Article 6 states that decisions by the majority provide for the protection of the minority.<sup>152</sup> Through these articles, Gypsies and other minorities are protected. However, the greatest amount of protection that was given to minorities was through a resolution by the presidium of the Czech National Council on the promulgation of the Charter of Fundamental Rights and Freedoms.<sup>153</sup> The Federal Assembly adopted this Charter in remembrance of "the bitter experience from the times when human rights and fundamental freedoms were suppressed in our country."<sup>154</sup> Chapter 1, Article 3 of the general provisions grants fundamental human rights to anyone without distinction to gender, race, color, language or membership in a national or ethnic minority, and Chapter 2, Article 7 of the Fundamental Freedoms states that no one shall be subjected to inhumane or degrading treatment or punishment.<sup>155</sup> This is very important to recognize when determining how the Gypsies have been treated since 1989.<sup>156</sup> In Chapter 3, Articles 24 and 25 state that one's ethnic identity must not be used to his detriment, and ethnic minorities are guaranteed "all-round development,"<sup>157</sup> including the right to education in their language and the right to participate in the settlement of matters concerning national and ethnic minorities.<sup>158</sup> Chapter 4, Article 26 concerns the economic, social and cultural rights, and provides that everybody has the right to freely choose his profession and the preparation for such profession, as well as the right to engage in economic activity.<sup>159</sup> Finally, in Article 27, everyone is given the right to associate freely with others for the

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<sup>151</sup> CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, CZECH REPUBLIC, 117 (Albert P. Blaustein & Gisbert H. Flanz eds., Oceana Publications, Inc. 1993) [hereinafter CZECH REPUBLIC CONSTITUTION].

<sup>152</sup> See *id.* at 118.

<sup>153</sup> See *id.* at 151.

<sup>154</sup> *Id.* at 152. See *infra* text accompanying notes 188-97.

<sup>155</sup> See CZECH REPUBLIC CONSTITUTION, *supra* note 151, at 153-59.

<sup>156</sup> See *infra* Part IV.

<sup>157</sup> "All-round development" is defined as the right to develop with other members of the minority their own culture, the right to disseminate and receive information in their language and the right to associate in national associations. *Id.* at 159.

<sup>158</sup> See *id.*

<sup>159</sup> See *id.* at 160.

protection of their economic and social interests. It can be inferred that this would apply to all minorities possessing fundamental rights.

The Czech Citizenship Law is one of primary concern for the Gypsies. The law was created primarily in response to the influx of Gypsies from the eastern part of Czechoslovakia who were encouraged to move west under Communism.<sup>160</sup> Some Gypsies were unable to gain citizenship because of the tough measures Czechs included in their citizenship laws; more than 20,000 Gypsies, 10% of the country's Gypsy population have been excluded from Czech citizenship.<sup>161</sup> These laws are extremely discriminatory in that they require applicants to have permanent residency, but apartments, in which most Gypsies live, are seen as temporary.<sup>162</sup> Also, citizenship requires a five year crime-free record, however, most Gypsies have been accused of a crime,<sup>163</sup> which makes it hard for them to pass this part of the citizenship test.<sup>164</sup> Finally, the mastery of the Czech language is another major hurdle for Gypsies to overcome because of the educational discrimination they encounter.<sup>165</sup> This citizenship law was denounced by the United Nations High Commissioner for Refugees and Council of Europe in April 1996, when both concluded that the act of denying citizenship to former Czechoslovakian citizens, who were long-term residents of the Czech Republic, violated international norms.<sup>166</sup>

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<sup>160</sup> See Donald Kenrick, *On the Move Once More*, INDEX ON CENSORSHIP, July 1994, at 69. Most of the Gypsies who, before World War II, lived in the Czech portion of Czechoslovakia were killed by the Nazi's in the concentration camps. When the Communists took over, they encouraged this western Gypsy movement.

<sup>161</sup> See Tad Szulc, *Unpleasant Truths About Eastern Europe*, FOREIGN POLICY, March 1, 1996, at 52. See *infra* Part IVA(1). See Craig R. Whitney, *Immigration: Europe Redefining Citizenship*, OTTAWA CITIZEN, Jan. 10, 1996, at A9 (explaining that about 20,000 Gypsies have been denied citizenship in the Czech Republic since 1993).

<sup>162</sup> See CHRIS POWELL, *GYPSY POLITICS AND TRAVELLER IDENTITY 96* (Thomas Acton ed., University of Hertfordshire Press 1997).

<sup>163</sup> Some of these crimes are those that were done while the country was under communist rule. These include the crime of failing to get a job and petty crime. The law doesn't differentiate between the type of crime committed or the severity of the act done, but rather if the applicants record is clean or not.

<sup>164</sup> See Bella Edginton, *Czech Republic/To Kill a Romany*, RACE & CLASS, Jan.-Mar. 1994 at 80, 81-82.

<sup>165</sup> *Id.* See *infra* notes 253-61 and accompanying text.

<sup>166</sup> See Christopher E. Smith, *Foreigners in Their Own Land*, CHRISTIAN SCIENCE MONITOR, July 17, 1996, at 20.

## 2. Republic of Hungary

The preamble in the constitution of the Republic of Hungary establishes Hungary as a constitutional state with a parliamentary democracy and a "socially alert" market economy.<sup>167</sup> (Most of the changes occurred in 1990. However, amendments added later placed more emphasis on a market economy.) In regard to a market economy, Article 9 gives public and private property equal protection and recognizes the right to enterprise and freedom of economic competition.<sup>168</sup> Concerning human rights, Article 7 states Hungary's intention of accepting the universally recognized rules and regulations of international law,<sup>169</sup> and Article 8 states Hungary's recognition of the inalienable rights of persons.<sup>170</sup> However, one of the biggest changes in the constitution that is directly relevant to the situation of the Gypsies is found in Article 32/B, whereby an ombudsman may be appointed by the government for the investigation of any abuses of nationality or ethnic minority rights.<sup>171</sup> Furthermore, Article 66 provides for equality of all civil, political, economic, social and cultural rights, and Article 68 states that national and ethnic minorities share the power of the people.<sup>172</sup> Hungarian minorities who are granted protection can collectively participate in public life and can foster their own culture.<sup>173</sup>

On July 7, 1993, the National Assembly adopted a law on the rights of the National and Ethnic Minorities.<sup>174</sup> The purpose of this law is to halt the assimilation process of national and ethnic minorities and to maintain minority cultures.<sup>175</sup> Hungary was not required by the International Covenant on Civil

<sup>167</sup> See CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, HUNGARY, 1 (Gilbert H. Flanz ed. & Sandor Gallai trans., Oceana Publications, Inc. 1995) [hereinafter HUNGARY CONSTITUTION].

<sup>168</sup> See *id.* at 2.

<sup>169</sup> See *supra* note 134.

<sup>170</sup> See HUNGARY CONSTITUTION, *supra* note 167, at 1-2.

<sup>171</sup> See *id.* at 9. Now ethnic rights are being considered where under the communist constitution they were not considered at all.

<sup>172</sup> See *id.* at 16-17. See also *Economic & Social Rights*, 15 HUM. RTS. INTERNET REP. 60, 60-61 (1994) (discussing the progress made by the United Nation Sub-Commission on Prevention of Discrimination and Protection of Minorities on economic and social rights).

<sup>173</sup> See HUNGARY CONSTITUTION, *supra* note 167, at 16-17.

<sup>174</sup> See KATALIN KRISTOF, *The Hungarian Situation*, in HUMAN RIGHTS AND MINORITIES IN THE NEW EUROPEAN DEMOCRACIES: EDUCATIONAL AND CULTURAL ASPECTS 101 (Cesar Birzea ed., Council of Europe Press 1994).

<sup>175</sup> See *id.*



and Political Rights to develop this law, which granted minorities a measure of political autonomy over their cultural affairs and subsidized their education, however, since Hungary enacted it, it should be enforced.<sup>176</sup> The law allows national and ethnic minorities to preserve their ethnic identity and choose their national identity.<sup>177</sup> It applies to those groups that have lived in Hungary for more than one century, are a numerical minority in the population whose members hold Hungarian citizenships and who are different from the rest of the population in terms of their native tongue, culture and traditions.<sup>178</sup> The Gypsies are considered the largest and most socially disadvantaged of the minority groups.<sup>179</sup> Outside of the individual and collective rights and self-government parts of this law, there are important educational measures that provide for education for the Gypsies and teach the Gypsy history and cultural traditions within the educational institutions.<sup>180</sup>

This law is very beneficial for the Gypsy community but unfortunately, the application of it has been very ineffective. Hungary has not only disregarded it, it has actively worked to undermine the minority rights recognized in international law and has even denied Gypsies the basic rights that it provides to all of its citizens.<sup>181</sup> Furthermore, there has been minimal funding to help set up Gypsy self-governments at the local level, and at the national level, there have been irregularities in financing that are believed to be caused by active intervention by the Hungarian government to use the Gypsy representatives for their own benefit.<sup>182</sup>

As can be seen from the study of these constitutions, it was not the fact that the constitutions under Communism were anti-minority and anti-human rights, but rather, there was not much mention of them.<sup>183</sup> It took the rise of a capitalist society based on democracy to establish these principles as policy for the country, but it also took the governments to enforce it. Part IV gives an

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<sup>176</sup> See HUM. RTS. WATCH/HELSINKI, RIGHTS DENIED: THE ROMA OF HUNGARY 108 (1996) [hereinafter RIGHTS DENIED].

<sup>177</sup> See *id.*

<sup>178</sup> See *id.* at 101-102.

<sup>179</sup> See KRISTOF, *supra* note 174, at 102.

<sup>180</sup> See *id.* at 104.

<sup>181</sup> See RIGHTS DENIED, *supra* note 176, at 108.

<sup>182</sup> See *id.* at 115.

<sup>183</sup> Except for Article 54 of the communist Hungarian constitution that mentioned human rights, but was limited to being "in accordance with the interest of a socialist society." COMMUNIST HUNGARY CONSTITUTION, *supra* note 141, at 209.

analysis of how these new reforms were implemented under the democratic governments after 1989 and how they differed from previous governmental policy. Unfortunately, the rights of the Gypsy community have been jeopardized and diminished through the changes in the market, and through the disregard by the Hungary and Czech governments for the ensuing violations.

#### IV. THE GYPSY COMMUNITY

"I do not dare to go out at night in Prague because of the skinheads who attack Gypsies."<sup>184</sup> This is how Gypsies in Eastern Europe feel daily. Considering that there is such animosity against this group of minorities, it is not surprising that they are discriminated against economically and through employment opportunities. In a recent survey, public opinion polls indicate that 85% of the Czech Republic want Gypsies excluded from their neighborhoods, 92% believe Gypsies are criminals and 83% believe Gypsies should be denied all welfare benefits.<sup>185</sup> Further, most Czechs will openly state that Gypsies are criminals, thieves, prostitutes, stupid and dirty.<sup>186</sup> Thus, it is not surprising when there are reports of 1,250 attacks against Gypsies in the Czech Republic since its move away from Communism, and 10 of these attacks resulted in deaths.<sup>187</sup>

Under the Third Reich, the Nazi's plan of persecution and genocide did not escape the Gypsies. "Building on long-held prejudices, the Nazi regime viewed Gypsies both as 'asocials' (outside 'normal' society) and as racial 'inferiors'—believed to threaten the biological purity and strength of the 'superior Aryan' race."<sup>188</sup> Although the Jews comprised a majority of the demographics of the concentration camps, the Gypsies were also present.<sup>189</sup> While the Jews wore yellow badges, political prisoners wore red badges and homosexuals wore pink badges, the Gypsies wore "black triangular patches, the symbol for 'asocials,'" or green badges that represented "professional criminals, and

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<sup>184</sup> See Perlez, *supra* note 126, at A8.

<sup>185</sup> See POWELL, *supra* note 162, at 93-94.

<sup>186</sup> See Edginton, *supra* note 164, at 81.

<sup>187</sup> See Perlez, *supra* note 126, at A8. According to a study conducted by the European Center for the Rights of Gypsies. See *Id*

<sup>188</sup> U.S. HOLOCAUST MEMORIAL MUSEUM, SINTI & ROMA, VICTIMS OF THE NAZI ERA 1933-1945 (1996) [hereinafter SINTI & ROMA].

<sup>189</sup> Interview with George Brown in Budapest, Hung. (August 4, 1994). See *supra* text accompanying note 1.

sometimes the letter 'Z.'"<sup>190</sup>

Between 1933 and 1945 the Gypsies faced an extermination campaign where over 600,000 Gypsies were murdered.<sup>191</sup> This represented between one-fourth and one-fifth of their total population.<sup>192</sup> Even after years of discrimination that dated back to 1899,<sup>193</sup> Gypsies who could not prove that they were of German nationality were deported, and in 1936, Gypsies were described as being "of alien blood" and "very dangerous for the purity of the German race" as part of the Nuremberg Laws.<sup>194</sup> In 1937, Gypsies were declared to be "inveterate criminals," and widespread arrests ensued.<sup>195</sup> In pursuance of the genocide of the Gypsies, the Nazis sterilized young women, deported large numbers of them to unlivable ghettos and executed mass killings in the death camps of Belzec, Treblinka, Sobibor, Majdanek and Auschwitz.<sup>196</sup> In describing the concentration camps, Gypsies sang a song about the extermination, "They took us in through the gate... They let us out through the chimneys."<sup>197</sup>

<sup>190</sup> SINTI & ROMA, *supra* note 188.

<sup>191</sup> See Carol Silverman, *Persecution and Politicization: Roma (Gypsies) of Eastern Europe*, 19 CULTURAL SURVIVAL Q. 43, 44 (1995).

<sup>192</sup> See *id.*

<sup>193</sup> In 1899 the Bavarian police created a special Gypsy affairs section that restricted the movement of Gypsies in Bavaria as well as placing penal sentences for Gypsies who didn't have jobs. See Myriam Novitch, *Half a million Gypsies victims of the Nazi Terror*, THE UNESCO COURIER, October 1984, at 24. See also Walter O. Weyrauch, *Oral Legal Traditions of Gypsies and Some American Equivalents*, 45 AM. J. COMP. L. 407, 409 (Spring 1997) (discussing Gypsy persecution and how their oppressors have used reasoning that the Gypsies have brought this onto themselves as justification for their acts).

<sup>194</sup> See Novitch, *supra* note 193, at 24.

<sup>195</sup> See *id.*

<sup>196</sup> See *id.* See also *Auschwitz Site Picked to Study Gypsy Deaths*, THE RECORD, NORTHERN N.J., Jan. 3, 1996, at A11 (discussing that the construction of a center to document the study of the extermination of the European Gypsies would be placed at Auschwitz). See also *Remembering Gypsy Victims*, THE WASH. POST, August 3, 1997, at A22 (describing the annual commemoration of the gassing of about 3,000 Gypsy prisoners held at a special compound in Auschwitz).

<sup>197</sup> JERRY FICOWSKI, THE GYPSIES IN POLAND: HISTORY AND CUSTOMS 48 (1989). See generally BETTY ALT & SILVIA FOLTS, *WEeping VIOLINS: THE GYPSY TRAGEDY IN EUROPE* (1996) (describing the Gypsy genocide inside the concentration camps in Europe). See generally Zygmunt Bauman, *Modernity's Inner Demons*, 10 TIKKUN 40 (July 1995) (correlating the plight of the Jews and Gypsies as the "inner demons" of modern

These atrocities took place over fifty years ago, and a lot has occurred since the end of World War II. Under Communism, there existed a constant violation or an outright denial of fundamental rights and freedoms.<sup>198</sup> Since 1989, certain things have improved but others have not. The final part of this article analyzes the conditions of the Gypsies under the Communist regime and then compares them to the conditions that prevailed since 1989.

The United Nations has recognized the rights of nation states and individual people, but neglects to place obligations to protect ethnic minorities.<sup>199</sup> Consequently, the individual citizen is being diminished to a national dimension, while political institutions are being implemented with nationalistic content instead of democratic substance, and thus the democratic integration of the country is being postponed until "better days."<sup>200</sup>

### A. Czech Republic

#### I. Violence and Police Response

Although the Czech Republic has the Charter of Fundamental Rights to protect its minorities, prejudice against Gypsies occurs in housing, education, jobs and recreation.<sup>201</sup> Gypsies are forced to live in less desirable areas, are denied access to job opportunities and are barred from business establishments, such as bars and restaurants.<sup>202</sup>

Under Communism, although conditions for Gypsies were not good, there were some benefits. The form of justice advocated by the government was best characterized through the penal code which stated that "enemies of the people" should be reprimanded more severely than Communists for the same offense, and that sabotage constitutes acts of treason.<sup>203</sup> The personal freedoms, such as freedom of the press and freedom of expression, were restricted to

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life living as non-territorials among territorial nations; people historically "in" but not "of" any nation).

<sup>198</sup> See ASSEMBLY, *supra* note 138, at 1.

<sup>199</sup> See Denis Goulet, *International Ethics and Human Rights*, 17 ALTERNATIVES 231, 242 (1992).

<sup>200</sup> *Id.* at 242-243.

<sup>201</sup> See ALT, *supra* note 197, at 91.

<sup>202</sup> See *id.*

<sup>203</sup> See ASSEMBLY, *supra* note 138, at 7.

opinions approved by the Communist party heads.<sup>204</sup> This "stifling" of freedom actually helped the Gypsies because it restricted anti-Gypsy acts and even reprimanded the public acts of violence against the Gypsies.<sup>205</sup> Essentially, what the Communist leaders were looking for was control through assimilation.

In the 1950's, Czechoslovakia passed laws aimed at the nomadic Gypsies, that restricted their freedom of travel by removing wheels from carts and wagons, and by shooting horses.<sup>206</sup> The prison sentence for violating these laws were terms of six months to three years.<sup>207</sup> In the 1960's, the Czechoslovakian government tried a "dispersal and transfer" scheme whereby Slovak Gypsies would be forcibly relocated to Czech lands that contained a low density of Gypsies.<sup>208</sup> In 1976, the Czechoslovakian government recommended a sterilization of the Gypsy community as an act of "socialist humanity."<sup>209</sup> The government in 1982 described the public attitude towards Gypsies "as somewhere between indifference and racism," however, it leaned toward the latter.<sup>210</sup> This persisted in 1986 when the Czechoslovakian Commissioner for Problems of the Gypsy Populace<sup>211</sup> asserted that its future plans included a "regulation of the birthrate of the unhealthy population."<sup>212</sup> Its goal of suppressing the birthrate was through forced sterilization, and incentives such as money or furniture were given to those women who voluntarily consented to the operation.<sup>213</sup> In 1987, 36.6% of the women who were sterilized were Gypsies, while Gypsies represented only 2 to 3% of the population.<sup>214</sup> However, amidst these atrocities, there was a movement through the Civic Forum to give the Gypsies ethnic status,<sup>215</sup> which consequently would give them

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<sup>204</sup> See *id.* at 8.

<sup>205</sup> POWELL, *supra* note 162, at 94.

<sup>206</sup> See *id.* at 92.

<sup>207</sup> See *id.*

<sup>208</sup> See Silverman, *supra* note 191, at 44.

<sup>209</sup> See Paul Berman, *Old Hatreds in the New Europe: Roma After the Revolutions*, 7 *TIKKUN* 49, 51 (Jan./Feb. 1992).

<sup>210</sup> POWELL, *supra* note 210, at 90

<sup>211</sup> The name of the commission essentially gives away the feelings of the Czechoslovakian government toward the Gypsies.

<sup>212</sup> ALT, *supra* note 197, at 91 *quoted in Prague Against Gypsies*, Sept. 15, 1986, at 40.

<sup>213</sup> See *id.* See *supra* note 196 and accompanying text.

<sup>214</sup> See Silverman, *supra* note 191, at 44.

<sup>215</sup> See POWELL, *supra* note 162, at 91. See CZECH REPUBLIC CONSTITUTION, *supra* notes 157-58 and accompanying text.

more protection.

Since 1989, there have been reports of incidences of violent acts on Gypsies across the Czech Republic.<sup>216</sup> Neither the government nor the courts have done anything to restrict the skinhead movement.<sup>217</sup> There have been acts of violence brought on by the community<sup>218</sup> and by the police force.<sup>219</sup> Skinhead groups frequently roam villages to beat up Gypsies, Jews and foreigners, or to distribute hate pamphlets and music.<sup>220</sup> However, the violence is not restricted to the radical skinheads. On the street, racism seems the standard as people make faces at Gypsies and avoid them.<sup>221</sup> Gypsies are openly blacklisted by many businesses with "Gypsies not welcome," which have been ignored by the police, and Gypsies have had "dogs set on them as they try to enter bars."<sup>222</sup> At soccer games, clubs representing communities with high proportions of Gypsies<sup>223</sup> hear racist chants similar to the types of racist chants hurled at Black players in Britain.<sup>224</sup>

The media propagated this form of "casual" racism by running campaigns linking Gypsies with typhoid and other types of diseases, and the crime reporting policy has been to identify the ethnicity of offenders only when Gypsies are

<sup>216</sup> See Smith, *supra* note 166, at 20 (collecting statistics of 344 racially motivated attacks that have occurred between 1990-1996). See *Sad Gypsies* THE ECONOMIST, Apr. 11-17, 1998, at 39 (explaining that since 1989, 29 Gypsies have been killed in racist attacks).

<sup>217</sup> See *Roma Convicted in Domazlice, Czech Republic*, ROMA RIGHTS, summer 1997, at 13 (showing how when a fight took place between skinheads and Gypsies, only the Gypsies received suspended sentences while the skinheads were let free and the courts have held that although there is intense anti-Gypsy sentiment in the core of the skinheads movement, being a skinhead does not suffice to demonstrate ethnic hatred).

<sup>218</sup> See *Community Attack on Roma in Klatovy, Czech Republic*, ROMA RIGHTS, summer 1997, at 10-11 (reporting what happened to two Gypsies when they were chased down and beaten up by a mob shouting "we will kill you now, Gypsies!")

<sup>219</sup> See *Police Abuse of Roma in Pisek, Czech Republic*, Roma Rights, summer 1997, at 9 (discussing the police abuse inflicted on a Gypsy by forcing him to the ground and beating him with truncheons on his body and head). See *Sad Gypsies*, *supra* note 216 (discussing how nearly two-thirds of Czech policemen think Gypsies are to blame for provoking the racist attacks).

<sup>220</sup> See Silverman, *supra* note 191, at 48.

<sup>221</sup> POWELL, *supra* note 162, at 92.

<sup>222</sup> *Id.* at 92-93.

<sup>223</sup> Trnava and Kosice.

<sup>224</sup> See POWELL, *supra* note 162, at 93.

involved.<sup>225</sup> As a "liberated" media, they are now free to discriminate and utilize this freedom through reports against the Gypsies.<sup>226</sup> The media added to the historic prejudices by focusing on a few affluent Gypsies and making them symbols of envy and resentment, while the majority, who were not successful, were condemned for their "shiftlessness, idleness and stupidity."<sup>227</sup> Consequently, from the ensuing discrimination, the Gypsies became the scapegoats of society.

The Czech leaders are quick to boast that their country is almost the only country that has "remained immune" to the return of Communism and the anti-minority laws that were present under Communist leadership.<sup>228</sup> However, what the Czech leaders fail to mention is that more Gypsies have been killed as a result of hate crimes in the Czech Republic since 1989 than in Bulgaria, Romania, and Slovakia combined.<sup>229</sup> The reforms of the Czech Republic have failed to ensure the most basic human rights for the country's largest minority and they tend to sit back and do nothing about the violent acts that occur.<sup>230</sup> These acts of violence after the 1989 revolution and the Gypsies' inability to obtain citizenship<sup>231</sup> have caused the Gypsies to emigrate in search of employment and a more secure environment.<sup>232</sup> Even though in 1996, Czech Prime Minister Vaclav Klaus moved to stop the exodus by telling Gypsies that "emigration won't not solve their people's problems," hundreds of Gypsies decided to move to Canada.<sup>233</sup> These Gypsies were inspired by a TV documentary that showed Gypsies having a "trouble-free" life in Canada.<sup>234</sup> However, when they arrived at their "secure environments" they did not

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<sup>225</sup> See *id.*

<sup>226</sup> See *id.* at 94.

<sup>227</sup> *Id.* at 97.

<sup>228</sup> See Smith, *supra* note 166, at 20.

<sup>229</sup> See *id.*

<sup>230</sup> See *id.* See Edginton, *supra* note 164, at 82 (stating that what is going on is a "policy of no discussion" in the governments method of handling the violent acts against Gypsies).

<sup>231</sup> See POWELL, *supra* note 162, at 96. See *supra* notes 160-66 and accompanying text.

<sup>232</sup> See Rajko Djuric, *Opinion II: Victims of the European Revolutions*, 20 INDEX ON CENSORSHIP 3 (1991).

<sup>233</sup> *Gypsy Exodus*, ATLANTA JOURNAL; THE ATLANTA CONSTITUTION, Aug. 15, 1997, at C2. See *Sad Gypsies*, *supra* note 216, at 40 (discussing that when hundreds of Gypsies traveled to Canada, a provincial mayoress said her town would happily pay for them to get out.).

<sup>234</sup> See *id.*

necessarily escape discrimination.<sup>235</sup> The remedy for this citizenship law is to grant citizenship to Gypsies, which would alleviate the Gypsy flight.<sup>236</sup>

The police have somehow found a way to blame the Gypsies for the ills of society. Granted there are Gypsies who are criminals, but is it possible that people who are only 4% of the overall population, can be "responsible" for 50% of the robberies, 60% of the thefts and 20% of the overall crimes?<sup>237</sup> Although there is no direct evidence of police specifically targeting the Gypsies for these crimes, it becomes hard to believe that such a small population can be responsible for the high percentages of crimes that occur. These figures parallel the Communist period where they accounted for 75% of all charges for "endangering the morals of youth" and 25% of charges for "parasitism."<sup>238</sup> Consequently, the Gypsies have been over-represented in prisons with horrible living conditions.<sup>239</sup> When violence occurs against Gypsies, the police are reluctant to act by not recording the atrocities,<sup>240</sup> interacting aggressively with Gypsies, and regularly conducting unauthorized searches of their houses.<sup>241</sup>

The 1989 revolution brought the "plight" of the Gypsies to the attention of the world, but included with it were prejudices and stereotypes.<sup>242</sup> Consequently, the Gypsies have been blamed for rising prices, unemployment, increases in crime, the rise of the Mafia and the scarcity of goods.<sup>243</sup>

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<sup>235</sup> See *Skinheads and Gypsies*, MACLEAN's, Sept. 8, 1997, at 27 (describing neo-Nazi skinhead chants such as "out, Gypsies, out" and signs placed outside a Toronto model occupied by Gypsy refugees from the Czech Republic such as "honk if you hate Gypsies"). See Craig R. Whitney, *Immigration: Europe Redefining Citizenship*, OTTAWA CITIZEN, Jan. 10, 1996, at A9 (explaining how 20,000 Gypsies have been denied citizenship since 1993 which implies no health benefits or pension rights).

<sup>236</sup> See Smith, *supra* note 166, at 20. In alleviating the problem, all former citizens of Czechoslovakia at the time of dissolution should automatically be given citizenship in the Czech Republic. See *id.*

<sup>237</sup> POWELL, *supra* note 162, at 91.

<sup>238</sup> *Id.*

<sup>239</sup> See *id.*

<sup>240</sup> Thus causing many Gypsy victims to not report the violent acts in the first place. See *id.* at 93.

<sup>241</sup> See *id.*

<sup>242</sup> See Silverman, *supra* note 191, at 46.

<sup>243</sup> See *id.*



## 2. Employment Discrimination

Under Communism, Gypsies were placed in state enterprises that are now closed.<sup>244</sup> Even though there was employment, it was mandated. Structurally, the Gypsies were an "underclass" being exposed to "state racism" by being placed in comparatively lower-level jobs.<sup>245</sup> There were anti-Gypsy prejudices expressed by a large percentage of the public, but since the powers were within the control of the state, the discrimination was relatively "invisible."<sup>246</sup> Since the fall of the socialist governments in 1989, harassment and prejudice toward Gypsies have intensified along with a sharp decrease in the Gypsies' economic status.<sup>247</sup>

It seems that the Czech government is willing to bend its own rules when issues arise against the Gypsies.<sup>248</sup> Unemployment is much higher for the Gypsies than the rest of the population. Gypsies are the first to be laid off, employment ads specify "no Roma (Gypsy)," <sup>249</sup> and positions in the public sector are openly declared as being "not for Gypsies," which make it that much more difficult for Gypsies to find jobs.<sup>250</sup> Since Gypsies are visibly different, it becomes very easy to tell who is a Gypsy. Although legislation prevents employers from requiring job applicants to reveal their identities, in practice employers do not want to hire Gypsies, and thus, they require Gypsies to provide this information.<sup>251</sup> However, when Gypsies do find jobs, they are generally employed in seasonal occupations and poorly paid.<sup>252</sup> It makes one realize how hard it is for their conditions to improve in the employment sector.

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<sup>244</sup> See *id.*

<sup>245</sup> See POWELL, *supra* note 162, at 94. Their placement in lower level jobs was the result of the inferior education they received. See *infra* 253-61 and accompanying text.

<sup>246</sup> *Id.*

<sup>247</sup> See Silverman, *supra* note 191, at 46.

<sup>248</sup> See POWELL, *supra* note 162, at 95.

<sup>249</sup> *Id.* at 94 (discussing how employers "justify" advertising that expressly excludes Gypsies).

<sup>250</sup> See Silverman, *supra* note 191, at 46.

<sup>251</sup> See POWELL, *supra* note 162, at 94.

<sup>252</sup> See *id.* at 91.

### 3. Educational Discrimination

The Gypsies in the Czech Republic receive an education inferior to the ethnic Czechs because of their placement in segregated schools.<sup>253</sup> For those students who are lucky enough to attend school,<sup>254</sup> they are restricted from taking academic subjects and placed in technical fields or assigned to special schools for the mentally disabled.<sup>255</sup> Gypsies are often segregated "for hygiene reasons" and "dirty" children are sent home.<sup>256</sup> As a result, the state withdraws welfare payments because of their children's lack of school attendance.<sup>257</sup> It is understandable for Gypsies to feel uncomfortable at school because of the textbooks that refer to them as "alien" and repeat the negative stereotypes<sup>258</sup> with which society refers to them.<sup>259</sup> The number of Gypsies that enter higher education is minimal and only 29% advance to vocational schools.<sup>260</sup> Thus, discrimination persists against Gypsy students within the educational system. However, amidst this discrimination, there has been some progress as pre-schools have been opened to help Gypsy children learn Czech.<sup>261</sup>

#### B. Hungary

##### 1. Violence and Police Response

Under Communist rule, open expressions of nationalism and racism were overtly discouraged, and violent attacks against Gypsies occurred only

<sup>253</sup> See Silverman, *supra* note 191, at 47.

<sup>254</sup> For many of them, their parents are too poor to clothe them properly.

<sup>255</sup> See Silverman, *supra* note 191, at 47. See POWELL, *supra* note 162, at 91 (discussing that over 25% of Gypsies are in special schools).

<sup>256</sup> See POWELL, *supra* note 162, at 94.

<sup>257</sup> See *id.* Because the Gypsy children were not attending school, they were breaking truancy laws. See *id.*

<sup>258</sup> Some of these negative stereotypes are: committing crimes to get a bed on a cold night; coercing doctors into giving them false medical certificates saying that they are unable to work; breed more prodigiously than "normal" people and threaten to swamp the country; work with mechanical things that spoil the neighborhoods both visibly and audibly; make and sell illicit alcohol; urinate in bushes; and bring women to tourist areas for the purpose of prostitution. *Id.* at 95.

<sup>259</sup> See *id.*

<sup>260</sup> See *id.* at 91.

<sup>261</sup> See *id.*

sporadically.<sup>262</sup> However, Gypsies were harassed by the police through arbitrary identification checks, arrests and "routine beatings during interrogations."<sup>263</sup> This form of control was tolerated and encouraged by the socialist central authorities as a way to control the Gypsy population.<sup>264</sup> They felt that this was a way to solve the "Gypsy problem" and their failure to assimilate into Hungarian culture.<sup>265</sup>

With the weakening of the central authority, public expression of intolerance and anti-Gypsy sentiment became common with the increasing number of skinhead groups.<sup>266</sup> There were large increases in the number of violent attacks on Gypsies, however the police and courts were reluctant to accept the "racial character" of these acts and brought only minor charges of "hooliganism" or a "child's prank."<sup>267</sup> Punk groups called for "Gypsy-free zones" and graffiti plastered on walls read "KTG", meaning, "Kill the Gypsies."<sup>268</sup> The skinhead movement reached a pinnacle in 1991-92 but now is intertwined in local, regional, and national organizations.<sup>269</sup> Although not many mainstream Hungarians support this movement, they receive substantial financial and organizational support from established, mainstream, Hungarian political

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<sup>262</sup> See RIGHTS DENIED, *supra* note 176, at 11.

<sup>263</sup> *Id.*

<sup>264</sup> See *id.* See generally *Struggling for Ethnic Identity The Gypsies of Hungary*, Hum. Rts. Watch/Helsinki (1993) (discussing activities done to control the Gypsy population).

<sup>265</sup> See RIGHTS DENIED, *supra* note 176, at 109.

<sup>266</sup> See *id.* at 11-12. See *Skinhead attack in Veszprem, Hungary*, Roma Rights, summer 1997, at 14 (describing an attack that took place on a 15 year old Gypsy by a group of skinheads while he was waiting at a bus stop).

<sup>267</sup> See RIGHTS DENIED, *supra* note 176, at 12. See *supra* notes 237-41 and accompanying text.

<sup>268</sup> ALT, *supra* note 197, at 92.

<sup>269</sup> See RIGHTS DENIED, *supra* note 176, at 42. A study done by the Ministry of Welfare in 1994 found that approximately 40,000 youths between the ages of 14-17 entirely identify themselves with the skinhead ideology and 160,000 identify themselves "to some extent" with the movement. See *Id.* at 43.

parties.<sup>270</sup>

Many policemen still use the same tactics that were used under Communist rule, and with no effective internal review, it seems the police have the freedom to do whatever they want.<sup>271</sup> Policemen have also been involved or actively participated in violent activities throughout Hungary with non-extremist groups, thus discrediting the belief that all attacks on the Gypsies are committed exclusively by the extremist minority.<sup>272</sup> Anti-Gypsy public opinion supports that violence against Gypsies has nothing to do with racism, but is instead a response to anti-social behavior or is a result of their socio-economic status.<sup>273</sup> The police either stall investigations or fail to adequately investigate cases of assault against the Gypsies, and those who bring the accusations are often accused themselves.<sup>274</sup> These policemen, as well as members of the Citizens' Guards and individual citizens, account for many of the attacks against the Gypsies, while a majority of the public sanction and tacitly support a level of intolerance and discrimination that allows these acts to continue.<sup>275</sup> Consequently, this violence will most likely continue until the government takes a stand against it.

## 2. Employment Discrimination

Discrimination in the workplace has probably been the most critical problem that Gypsies have faced in Hungary since the fall of Communism.<sup>276</sup> Gypsies were employed at rates as high as those for Hungarians until 1989, but since then, they have been almost entirely removed from the labor market.<sup>277</sup>

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<sup>270</sup> *See id.* Although the radical Hungarian Interest Party has welcomed the skinheads into their ranks, the mainstream Independent Smallholders Party (an original member of the post-communist coalition government) has also welcomed them by providing them with technical and financial support. As part of the Independent Smallholders Party's connection to the skinhead movement, two of their supporters were found committing anti-Semitic acts by breaking into a synagogue in Debrecen and setting afire the tabernacle and Torah inside. *See id.* at 44, 46.

<sup>271</sup> *See id.* at 12.

<sup>272</sup> *See id.* at 12-13.

<sup>273</sup> *See id.* at 13. *See supra* note 237-41 and accompanying text.

<sup>274</sup> *See id.*

<sup>275</sup> *See id.* at 48-49.

<sup>276</sup> *See id.* at 76.

<sup>277</sup> *See id.*

Up to and just after World War II, the Gypsies lived in isolated communities where their economic contacts with ethnic Hungarians involved trading or working in specialized Gypsy crafts and services.<sup>278</sup> A change occurred in the 1950's when government assimilation programs attempted to bring the Gypsies into the mainstream workforce, and consequently, large numbers of Gypsies were employed.<sup>279</sup> Full employment was mandated by the government, and thus there was no employment discrimination against Gypsies.<sup>280</sup> However, even with full employment, jobs were very limited,<sup>281</sup> and Gypsies received less money because they were placed in worse jobs than their ethnic Hungarian counterparts.<sup>282</sup> With the fall of the economy in the 1980's, jobs were lost, and by 1989 many of the Gypsies were out of the workforce.<sup>283</sup>

With the economic changes that took place in 1989, Hungary looked to trade in markets across the world to sell their products. It was assumed that with new markets, there would be more production, and with more production, more jobs. However, from 1989 to 1995 there has been an opposite effect on the labor market, which has taken a heavy toll on the Gypsy workforce, as its unemployment rate is twice that of the non-Gypsy workforce.<sup>284</sup> Today, total unemployment in Hungary is 12 to 13%,<sup>285</sup> but at least 60% of working-age Gypsies are unemployed, and in many areas of the country the Gypsy unemployment rate is close to 100%.<sup>286</sup> Now, it is even more difficult for Gypsies to enter the workforce because of direct discrimination on ethnic grounds and a lack of education, which is related to the on-going discrimination.<sup>287</sup> To combat this discrimination, there have been laws that forbid

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<sup>278</sup> Examples of these services include woodworking and smithing. *See id.*

<sup>279</sup> *See id.* Gypsy employment was so high under communism that in 1976 the Gypsy population was close to full employment. *See* Gabor Havas et al., *The Statistics of Deprivation—The Roma in Hungary*, HUNGARIAN Q., Summer 1995, at 70.

<sup>280</sup> There were even prison sentences imposed for those Gypsies who did not work. *See* RIGHTS DENIED, *supra* note 176, at 77.

<sup>281</sup> Jobs included manual labor in low-skill factory jobs and in the booming construction industry. *See id.*

<sup>282</sup> *See id.*

<sup>283</sup> *See id.*

<sup>284</sup> *See id.* at 78.

<sup>285</sup> A figure that includes Gypsy unemployment. Therefore, it can be inferred that the unemployment rate among ethnic Hungarians is lower. *See id.* at 76 n.133.

<sup>286</sup> *See id.*

<sup>287</sup> *See id.* at 79. *See infra* text and accompanying notes 293-306.

discrimination in the workplace based on ethnicity,<sup>288</sup> and laws that forbid employment agencies from recording information regarding an applicant's ethnic status or from accepting requests from employers for employees with ethnic criteria.<sup>289</sup> However, in practice, Gypsies have been removed from the labor market, a fact that can only be attributed to discrimination by employers and discrimination by government employment offices.<sup>290</sup> Lacking jobs, Gypsies are unable to provide for their families or support their children's education, and thus are hindering their children's chances for a prosperous future.<sup>291</sup> The pattern goes on and on, and Hungarian government policy only provides "paper protection" for the rights of Gypsies in the labor market by not enforcing laws against discriminatory practices when they occur.<sup>292</sup>

### 3. Educational Discrimination

The lack of education is a significant problem for the Gypsy community, and Gypsy leaders have cited educational improvement as one of their "most pressing concerns."<sup>293</sup> Before World War II and during the beginning of the Communist era, most Gypsies did not attend school, and in the 1970's and 1980's, government programs were geared to educate Gypsies for the workforce, although very few went on to high school.<sup>294</sup> Gypsies were not considered a national minority, and thus did not have the right to be educated in their mother language.<sup>295</sup>

The current educational situation of the Gypsies is that almost none complete high school or the university (0.1%)<sup>296</sup> and greater than half drop out of school before completing eighth grade.<sup>297</sup> When they attend school, Gypsy

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<sup>288</sup> Law IV passed in 1991. *See id.* at n.143.

<sup>289</sup> *See id.* Law XXII passed in 1992. *See id.* at n.144.

<sup>290</sup> *See id.* at 79-83.

<sup>291</sup> *See id.* at 87.

<sup>292</sup> *See id.*

<sup>293</sup> *Id.* at 61.

<sup>294</sup> *See id.*

<sup>295</sup> *See id.* at 61-62.

<sup>296</sup> *See* Human Rights Watch/Helsinki interview with Erno Kala, in Miskolc, Hungary (July 21, 1995) (describing the reaction he received when he was the only Gypsy present for a university examination and the people almost "fainted," when he was there to take an exam) (quoted in RIGHTS DENIED, *supra* note 176, at 63).

<sup>297</sup> *See* RIGHTS DENIED, *supra* note 176, at 61.

students are often isolated in segregated classes in "Gypsified" schools, and the parents of non-Gypsy students make sure that their children are placed in "Gypsy-free schools."<sup>298</sup> The government's reason for segregation is to provide additional help to Gypsy children by placing them in a remedial classroom where they will learn the skills to ultimately integrate into the mainstream educational system.<sup>299</sup> Unfortunately, this integration rarely happens, and very few Gypsy students are enrolled in advanced classes.<sup>300</sup> One of the primary reasons for this is because of the "public" belief that Gypsies are inferior to the mainstream Hungarians.<sup>301</sup>

Economics have also restricted the advancement of Gypsies in the educational system. With the removal of state subsidies for school supplies, books, transportation, and dormitory space, it has become extremely difficult to send children to school, and the poorer members of society suffer.<sup>302</sup> Consequently, these children must rely on the nearest village school, where the educational level is inferior.<sup>303</sup> Recent laws<sup>304</sup> have included the right to teach the Gypsy language and culture, however, there are no state operated schools, and the teaching of the Gypsy culture is minimal.<sup>305</sup> Unfortunately, what most ethnic Hungarians know about the Gypsies is that the word "Gypsy" has overwhelmingly negative connotations.<sup>306</sup> Hopefully, with changes being made in the educational curriculum, Gypsies will be presented in a more favorable light.

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<sup>298</sup> *Id.* This is a local variant of "white flight" in the U.S. and Southern white parents not wanting their children to go to the same school with black children. *See id.* at 67.

<sup>299</sup> *See id.* at 64.

<sup>300</sup> *See id.*

<sup>301</sup> *See* Gyorgy Kerenyi and Jozsef Makai, *Pure Black*, MAGYAR NARANCS, May 19, 1994, at 12-13 (discussing how a member of the educational committee in Ozd, Hungary, suggested that Gypsies belong to a "weakened genetic type") *quoted in* RIGHTS DENIED, *supra* note 176, at 66.

<sup>302</sup> A Gypsy parent in Baranya county, Hungary stated "Either he'll have books or shoes. I can't afford both." *Id.* at 68.

<sup>303</sup> *See id.* at 69.

<sup>304</sup> *See supra* notes 173-80, and accompanying text.

<sup>305</sup> *See Rights Denied*, *supra* note 176, at 62, 69.

<sup>306</sup> *See id.* at 72.

## CONCLUSION AND RECOMMENDATIONS

The purpose of this article was to study the effect of free trade, privatization and democracy on the conditions of minorities in Eastern Europe. There were many variables presented that showed how free trade moved into the Czech Republic and Hungary with the fall of Communism leadership and its subsequent impact on the labor market. As constitutions changed, the government planned to improve conditions for the ethnic minorities. Did this happen? It seems that given the horrific background of the Nazi discrimination and the discriminatory laws that were passed during the Communist era, there were constitutional changes made to help the ethnic minorities, however, it is their implementation that lags behind and there is still discrimination against them.

One would think that with the abundance of opportunities that are available under the new form of government that advocates free trade and capitalism, there would be more opportunities for Gypsies to be employed and for their conditions to improve. Unfortunately, amidst the outward discrimination and racism that is present in the Czech Republic and Hungary, it seems that the Gypsies' employment possibilities and the possibilities for improved conditions have taken a back seat. Employers want to hire people who are educated, however, with the deficiencies in schooling for Gypsy children, it seems that their opportunities for employment will not improve. Until the government backs the laws they have passed,<sup>307</sup> it appears that the Gypsies' condition will not improve, and human rights violations will still be abundant.

Will these "modern" governments ever support what they have passed through their legislature? Will they ever change their citizenship laws to grant these people the rights they deserve? One possible reason for the Czech Republic's and Hungary's behavior is that a strong state has been superseded by a weak one that is not adequately equipped and is reluctant to oppose racist public expressions of opinion.<sup>308</sup> A second reason is the lack of response to racist acts and the enactment of racist government policy, which is not an outcome of the loss of power, but rather a policy to enhance state power.<sup>309</sup> This is a frightening reality that is similar to the action of the Nazi government over a half

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<sup>307</sup> The new constitution and charter for fundamental rights and freedoms in the Czech Republic and the new constitution in Hungary and the law on the rights of minorities.

<sup>308</sup> See POWELL, *supra* note 162, at 95.

<sup>309</sup> See *id.*



century ago. Fortunately, today's discriminatory acts are not as horrific as those of the Nazis.

Even though there have been recent empowerment sessions for Gypsies to strengthen their morale,<sup>310</sup> it seems that they are encountering an institutional framework that discriminates against them. However, if they are able to join together, it would be beneficial for them to discuss their "deeply rooted fears and prejudices and achieve mutual respect."<sup>311</sup> There have been some advancements,<sup>312</sup> but there is a current need for changes that will create better conditions for the Gypsies in Eastern Europe.

As a solution to the labor problems, special employment and retraining programs are needed to help Gypsies compete in markets in poor areas with high rates of unemployment.<sup>313</sup> Furthermore, every effort must be made to eliminate employment discrimination practices.<sup>314</sup> To solve the discrimination through education, the countries should fully integrate all Gypsy children into mainstream classrooms with equal chances for advancement. Although they may be subject to discrimination by their classmates who have been influenced by their parents, it is important for them to be a part of society and to be included in the classroom. It may require additional work for them to speak or understand the Czech or Hungarian languages, but classes in their native language should still be included in their education to link them to their culture. This will provide additional opportunities for Gypsies to be employed by school districts to teach the Romani language. Furthermore, the educational hierarchy has to take steps to eliminate the negative stereotypes of the Gypsies, and possibly to integrate more material on human rights into the curriculum. Finally, concerning those who are beyond primary school, the secondary schools and universities should make courses available in Czech and Hungarian that could be

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<sup>310</sup> See John Feller, *Out of the Margins* (visited Nov. 10, 1997) <<http://www.afsc.org/afsc-1~2.htm#exch>> (reporting about meetings between African-American and East-Central European Gypsies to discuss political organizing, collective histories and personal experiences).

<sup>311</sup> See *id.* This can be formed if the Czech and Hungarian Gypsies band together to help facilitate ideas and discuss ways to improve their conditions.

<sup>312</sup> See Vince Beiser, *New Life: Changing Gypsy Stereotypes in the Czech Republic*, In *These Times*, Mar. 1993, at 6 (exhibiting how a Gypsy community was transforming itself with a renewal program that would change the attitudes of local Czechs toward their Gypsy neighbors).

<sup>313</sup> PROTECTION OF MINORITY RIGHTS, *supra* note 2, at 57.

<sup>314</sup> See *id.*

easily comprehended by new students.<sup>315</sup>

Post-1989 Europe promoted goals of maximizing security and freedom for its citizens.<sup>316</sup> The changes within the structure of the constitution that differed from the constitution under Communist rule provided more rights for minorities, and through free trade and economic reforms there, theoretically, should have been better conditions for the Gypsies.<sup>317</sup> Unfortunately, these changes only occurred on paper. Their implementation lagged far behind, and thus, the conditions for the Gypsies did not improve. Currently, the Gypsies are persecuted, ridiculed and denied access to educational opportunities that lead to jobs and inclusion into mainstream society. They do not have a place to call home or regard as a safe haven for their culture. They were only recently provided with constitutional protection as an ethnicity, but still, violent acts are occurring. Why is this still happening? There may not be many answers except for latent discrimination that has been occurring for years. Unfortunately, there has been no direct correlation between improvements in free trade and improvements in the living conditions of the Gypsies in the Czech Republic and Hungary. However, with increased job possibilities under capitalism and less discrimination by the governments, there is a chance for improved conditions for the Gypsies in Eastern Europe.

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<sup>315</sup> *Id.* at 58.

<sup>316</sup> See POWELL, *supra* note 162, at 99.

<sup>317</sup> See *supra* text accompanying notes 8-14.

