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## EU Inconsistencies Regarding Human Rights Treatment: Can the EU Require Czech Action as a Criterion for Accession?

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# EU INCONSISTENCIES REGARDING HUMAN RIGHTS TREATMENT: CAN THE EU REQUIRE CZECH ACTION AS A CRITERION FOR ACCESSION?

## INTRODUCTION

In January 1996, the Czech Republic took a significant step toward European integration when it submitted its formal request for membership in the European Union (EU).<sup>1</sup> Although the Czech Republic had already established an association with the EU through its Europe Agreement, full membership will require the Czech Republic to participate in the formation and implementation of EU laws.<sup>2</sup> The Czech government, in its application, recognized the importance of EU membership and cited the many economic and political benefits full membership will bring.<sup>3</sup> The integration process, however, raises several issues regarding the preparation and readiness of the Czech Republic for membership.<sup>4</sup> This Note focuses on the EU recommendation that the Czech Republic increase its efforts to combat discrimination against the Roma and take further steps to integrate the Roma into Czech society.<sup>5</sup>

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<sup>1</sup> See Commission Opinion on the Czech Republic's Application for Membership of the European Union, BULL. EUR. UNION, Supplement 14/97, 9 (1997) [hereinafter Commission Opinion on Application]. The Czech Republic has traditionally looked toward Western Europe, and the accession process will represent full integration into the Western European legal order. See Wiktor Osiański, *Rights in New Constitutions of East Central Europe*, 26 COLUM. HUM. RTS. L. REV. 111, 111 (1994).

<sup>2</sup> See generally Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, 1994 O.J. (L 360/2), as amended by 1996 O.J. (L 343/1) and explained in 1997 O.J. (C 141/5), available in 3 ENCYCLOPEDIA OF EUROPEAN UNION LAW § 43.2660, et seq. [hereinafter Europe Agreement].

<sup>3</sup> Ministry of Foreign Affairs of the Czech Republic, *Memorandum* (visited Oct. 12, 1998) <[http://www.czech.cz/english/132\\_eu.htm](http://www.czech.cz/english/132_eu.htm)> [hereinafter *Memorandum*]. The *Memorandum* accompanied the Czech Republic's application for membership in the EU and stated the reasons for its application. Ministry of Foreign Affairs of the Czech Republic, *Czech-EU Relations* (visited Oct. 12, 1998) <<http://www.czech.cz/english/142.htm>> [hereinafter *Czech-EU Relations*].

<sup>4</sup> See generally Commission Opinion on Application, *supra* note 1.

<sup>5</sup> See *id.* at 19–20. See also Council Decision 98/267 of 30 March 1998 on the Principles, Intermediate Objectives and Conditions Contained in the Accession Partnership with the Czech Republic, Annex, 1998 O.J. (L 121) 2, 3.2 [hereinafter Council Decision on Acces-

While the EU's effort to urge the Czech Republic, through the integration process, to provide greater protection for its Roma population is commendable, the EU does not have the power to directly impose human rights requirements on Member States.<sup>6</sup> Although the EU has grown from a coalition for economic cooperation to an entity whose scope has begun to include political and social issues, the EU has yet to adopt a treaty provision that would authorize EU institutions to enact human rights legislation.<sup>7</sup> Therefore, under the current constitutive treaties of the EU and opinions of the European Court of Justice (ECJ), the EU, in its accession negotiations with the Czech Republic, currently recommends action that is inconsistent with requirements it can directly impose on Member States.<sup>8</sup> If the EU continues to focus on the treatment of the Roma in the Czech Republic as a criteria for membership, the EU should also take steps to authorize EU institutions to require Member States to comply with similar guidelines regarding human rights protection.

The purpose of this Note is to explore the development of EU human rights protection in light of EU recommendations for the Czech Republic's accession to the EU. This Note also proposes suggestions for EU action in order to align its recommendations for acceding states with requirements it can also impose on Member States.

Part I of this Note examines the development of EU human rights law. This part also discusses substantive changes in the area of human rights contained in the recently ratified Treaty of Amsterdam. Part II focuses on the Czech Republic's relations with the EU as it has sought to achieve full membership. This part also outlines the current status of the Roma in the Czech Republic and compares Czech constitutional protections with EU recommendations on Roma integration.

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sion Partnership]. Roma (or Romany) is a synonym for Gypsy. See Jean-Marie Henckaerts & Stefaan Van der Jeught, *Human Rights Protection Under the New Constitutions of Central Europe*, 20 LOY. L.A. INT'L & COMP. L.J. 475, 475 n.21 (1998). The Roma are a minority in the Czech Republic who originally came from Northern India around the fourteenth century. See Marc W. Brown, *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*, 4 BUFF. HUM. RTS. L. REV. 275 (1998). A full discussion of the Roma follows at *infra* notes 94-117 and accompanying text.

<sup>6</sup> See Nanette A. Neuwahl, *The Treaty on European Union: A Step Forward in the Protection of Human Rights?*, in *THE EUROPEAN UNION AND HUMAN RIGHTS 1* (Nanette A. Neuwahl & Allan Rosas eds., Kluwer Law International 1995).

<sup>7</sup> See Tara C. Stever, *Protecting Human Rights in the European Union: An Argument for Treaty Reform*, 20 FORDHAM INT'L L.J. 919, 958-61 (1997). For a discussion of the EU treaties and the lack of human rights provisions, see *infra* notes 9-21, 53-61 and accompanying text.

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

Part III analyzes the inconsistencies of current Member State practice and EU law with the requirements under the Czech Republic's Accession Partnership. Part IV provides suggestions for further EU action in the area of human rights. This Note concludes that EU expansion into non-economic areas requires a stronger effort to introduce human rights protections directly into EU treaties, namely through the adoption of a treaty amendment that would authorize EU institutions to monitor Member State treatment of human rights and enact human rights legislation.

## I. THE EU AND HUMAN RIGHTS

### A. *Human Rights in the Shadow of the EU*

The constitutive treaties of the EU—the Treaty Establishing the European Coal and Steel Community (ECSC Treaty), the Treaty Establishing the European Atomic Energy Community (Euratom Treaty), and the Treaty Establishing the European Community (EC Treaty)—focused mainly on economic cooperation.<sup>9</sup> The Council of Europe concluded the European Convention on Human Rights and Fundamental Freedoms (ECHR) during this time, but the EU constitutive treaties addressed neither the provisions in the ECHR nor the principles promulgated thereunder.<sup>10</sup>

Although individual EU institutions have made human rights declarations and resolutions,<sup>11</sup> the Preamble to the Single European

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<sup>9</sup> See generally TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, Apr. 18, 1951, 261 U.N.T.S. 140 [hereinafter ECSC TREATY]; TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY, Mar. 25, 1957, 298 U.N.T.S. 167 [hereinafter Euratom TREATY]; TREATY ESTABLISHING THE EUROPEAN COMMUNITY (previously the TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY as renamed by the TREATY ON EUROPEAN UNION), Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EC TREATY]; Hon. John P. Flaherty & Maureen E. Lally-Green, *Fundamental Rights in the European Union*, 36 DUQ. L. REV. 249, 255 (1998).

<sup>10</sup> See European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 220 [hereinafter ECHR]; DIARMUID ROSSA PHELAN, *REVOLT OR REVOLUTION: THE CONSTITUTIONAL BOUNDARIES OF THE EUROPEAN COMMUNITY* 120 (1997). For a full discussion of the ECHR, see *infra* notes 22–34 and accompanying text.

<sup>11</sup> See generally Joint Declaration by the European Parliament, the Council and the Commission of 5 April 1977, 1977 O.J. (C 103) 1; Joint Declaration Against Racism and Xenophobia, 1986 O.J. (C 176) 62; Resolution on the Joint Declaration by the European Parliament, the Council, the Representatives of the Member States Meeting within the Council and the Commission Against Racism and Xenophobia, 1986 O.J. (C 176) 63; Resolution on the Joint Declaration Against Racism and Xenophobia and an Action Programme by the Council of Ministers, 1989 O.J. (C 69) 40; Resolution Adopting the Decla-

Act contained the first reference to human rights in an EU treaty.<sup>12</sup> Because the declarations and resolutions adopted by the individual institutions of the EU did not arise from specific treaty provisions, those institutional actions did not bind the Member States.<sup>13</sup> Therefore, the EU had not yet explicitly empowered itself to monitor human rights or require Member States to adhere to specific guidelines regarding human rights.<sup>14</sup>

B. *The Treaty on European Union and the Establishment of Human Rights Protections*

The Treaty on European Union (TEU) contains several articles that refer specifically to human rights.<sup>15</sup> Article 6(2) of the TEU provides that:

[t]he Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.<sup>16</sup>

Although the TEU refers explicitly to the ECHR, Article 46 of the TEU prohibits the ECJ from applying Article 6(2) as a substantive basis for adjudication.<sup>17</sup> Because TEU Article 46 enumerates the powers

ration of Fundamental Rights and Freedoms, 1989 O.J. (C 120) 51; Resolution on Human Rights in the World in 1993 to 1994 and the Union's Human Rights Policy, 1995 O.J. (C 126) 15; Resolution on Racism, Xenophobia and Anti-Semitism, 1995 O.J. (C 126) 75 and 1995 O.J. (C 308) 140; Resolution on Respect for Human Rights in the European Union, 1996 O.J. (C 320) and 1997 O.J. (C 132); and Resolution on Racism, Xenophobia and Anti-Semitism and the Results of the European Year Against Racism, 1998 O.J. (C 56).

<sup>12</sup> See SINGLE EUROPEAN ACT, July 1987, [1987] 2 C.M.L.R. 741, Preamble, para. 5 (1987); Neuwahl, *supra* note 6, at 5.

<sup>13</sup> See Flaherty & Lally-Green, *supra* note 9, at 316.

<sup>14</sup> See *id.*

<sup>15</sup> See TREATY ON EUROPEAN UNION, Feb. 7, 1992, 1992 O.J. (C 224), [1992] 1 C.M.L.R. 719, art. 6 (1992) [hereinafter TEU]. When the Treaty of Amsterdam entered into force on May 1, 1999, it renumbered the provisions of the TEU. See Note on the Citation of Articles of the Treaties in the Publications of the Court of Justice and the Court of First Instance, [1999] All ER (EC) 646 (1999) [hereinafter Note on the Citation of Articles]. Citations to the TEU in this Note reflect the renumbering.

<sup>16</sup> *Id.* art. 6(2).

<sup>17</sup> See *id.* art. 46. Article 6(2) only summarizes the ECJ's jurisprudential development of the concept of human rights and therefore does not create any new obligations for the Member States. See PHELAN, *supra* note 10, at 125. Consequently, Article 6(2) is not derived

conferred on the ECJ,<sup>18</sup> the absence of authorization to enforce Article 6(2) prevents the ECJ from reviewing ECHR compliance.<sup>19</sup>

Therefore, while the TEU requires that the Union respect fundamental rights, it does not provide a mechanism to enforce those rights.<sup>20</sup> Although the ECJ has not yet been granted the express powers to employ the provisions of the ECHR, the ECJ has used the ECHR to guide its understanding of fundamental human rights protected by the EU treaties in several cases.<sup>21</sup>

### C. The ECHR

The Council of Europe completed the ECHR in 1950 and implemented it in 1953.<sup>22</sup> Since its completion, each of the current Member States has signed the ECHR.<sup>23</sup> The Czech Republic acceded to the ECHR in 1993.<sup>24</sup> Although each Member State is individually a party to the ECHR, the EU is not a party to it.<sup>25</sup> Furthermore, the ECJ ruled that the EU could not accede to the ECHR unless an EU treaty provision enabled it to do so.<sup>26</sup> The newly ratified Treaty of Amsterdam permits the ECJ to enforce provisions of the ECHR against EU institutions, but only to the extent that the institutional action falls within the scope of the EU treaties.<sup>27</sup>

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directly from textual authorization in the EU treaties and cannot provide a separate substantive basis for ECJ adjudication. *See id.*

<sup>18</sup> *See* TEU, *supra* note 15, art. 46.

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

<sup>20</sup> *See id.* art. 6(2), 46.

<sup>21</sup> *See* Neuwahl, *supra* note 6, at 6–13. For a full discussion of ECJ human rights jurisprudence, *see infra* notes 35–52 and accompanying text.

<sup>22</sup> *See* ECHR, *supra* note 10; Stever, *supra* note 7, at 948.

<sup>23</sup> *See* European Convention on Human Rights, General Note, 3 ENCYCLOPEDIA OF EUROPEAN UNION LAW § 50.0015 [hereinafter Note on ECHR]. Although the UK, Ireland, and Denmark have signed the ECHR, its provisions have not been applied within the national legal order. *See* Neuwahl, *supra* note 6, at 20–21; Flaherty & Lally-Green, *supra* note 9, at 277.

<sup>24</sup> *See* Note on ECHR, *supra* note 23, § 50.0015.

<sup>25</sup> *See* Stever, *supra* note 7, at 949.

<sup>26</sup> *See* Opinion 2/94, Re the Accession of the Community to the European Human Rights Convention, 1996 E.C.R. I-1759, [1996] 2 C.M.L.R. 265, 291 (1996). The ECJ determined that the EU treaties did not confer the power to enact human rights legislation or to accede to international human rights treaties. *See id.* at 290. Because EU action is authorized only when a treaty provision permits such action, the absence of a treaty provision prevents the EU from acting in the sphere of human rights. *See id.*

<sup>27</sup> *See* Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 1997 O.J. (C 340) art. L [hereinafter Treaty of Amsterdam]; TEU, *supra* note 15, art. 6(2); Flaherty & Lally-Green,

The ECHR establishes a Commission of Human Rights, a Court of Human Rights (ECtHR), and a Committee of Ministers of the Council of Europe (Committee of Ministers).<sup>28</sup> The Commission of Human Rights serves as an advisor and mediator with regard to enforcing the ECHR provisions.<sup>29</sup> The ECtHR's jurisdiction is limited to determining whether a party to the ECHR has committed an abuse of an ECHR provision.<sup>30</sup> The Ministers of Foreign Affairs of each of the parties to the ECHR comprise the Committee of Ministers.<sup>31</sup> The Committee of Ministers decides whether a party has violated the ECHR only if the alleged violation is not referred to the ECtHR within three months.<sup>32</sup> Therefore, each of the three bodies created by the ECHR plays a role in implementing ECHR provisions and overseeing compliance.<sup>33</sup>

The provision of the ECHR most relevant to this Note is the right of freedom from discrimination "on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."<sup>34</sup>

#### D. ECJ Protection of Human Rights

Although the ECJ has not specifically addressed racial discrimination,<sup>35</sup> the ECJ has established the outlines of other EU human rights protections.<sup>36</sup> Case 29/69, *Stauder v. City of Ulm, Sozialamt* contained the ECJ's first reference to human rights.<sup>37</sup> In *Stauder*, a German citizen challenged the German text of a Commission Decision allowing the sale of surplus butter at a reduced price.<sup>38</sup> *Stauder*, the German

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*supra* note 9, at 316. For a full description of the Treaty of Amsterdam, see *infra* notes 53–61 and accompanying text.

<sup>28</sup> See Stever, *supra* note 7, at 951.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 953–54.

<sup>31</sup> See *id.* at 957.

<sup>32</sup> See *id.*

<sup>33</sup> See Stever, *supra* note 7, at 951–57.

<sup>34</sup> ECHR, *supra* note 10, art. 14.

<sup>35</sup> See Flaherty & Lally-Green, *supra* note 9, at 306–07.

<sup>36</sup> See *id.* at 313–15. See also PHELAN, *supra* note 10, at 139–40. The ECJ has already recognized the following rights: property, freedom of work, free exercise of commerce, professional activities, non-discrimination on the basis of sex, non-violability of the dwelling, non-arbitrary and proportionate government intervention in one's private life, freedom of expression, respect for privacy, medical secrecy, and legal professional privilege. See *id.*

<sup>37</sup> 1969 E.C.R. 419, [1970] C.M.L.R. 112 (1969); see also PHELAN, *supra* note 10, at 129.

<sup>38</sup> 1969 E.C.R. 419, [1970] C.M.L.R. 112 (1969).

citizen challenging the German text of the Decision, contended that the German requirements under the Decision violated his right of privacy.<sup>39</sup> Although the ECJ determined that the Decision did not violate Stauder's human rights, the ECJ did state that it would protect "fundamental human rights enshrined in the general principles of [EU] law."<sup>40</sup>

In Case 11/70 *Internationale Handelsgesellschaft v. Einfuhr und Vorratsstelle Getreide*, the ECJ stated again that it would protect fundamental rights as general principles of EU law.<sup>41</sup> In this case, the ECJ specifically recognized Member State constitutional traditions as evidence of those general principles.<sup>42</sup> The ECJ, however, did not recognize international treaties as guidelines for fundamental rights until Case 4/73 *Nold v. Commission*.<sup>43</sup> As the ECHR is an international treaty, the *Nold* decision marked the beginning of ECHR incorporation into EU law.<sup>44</sup>

Most recently, the ECJ expanded its protection of human rights to include Member State actions regarding EU legislation.<sup>45</sup> In Case C-5/88 *Wachauf v. Federal Republic of Germany*, the ECJ held that Germany's implementation of EU legislation must conform to general principles of fundamental rights.<sup>46</sup> *Wachauf* marked the first time the ECJ required Member States to conform to general principles of human rights when implementing EU law.<sup>47</sup> Furthermore, in Case C-260/89 *Elliniki Radiophonia Tileorassi v. Dimotiki Etairia Plirofosissis*, the ECJ expanded the scope of *Wachauf* to include Member State action that falls within the scope of EU law although not evolving directly from EU legislation.<sup>48</sup>

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<sup>39</sup> *See id.*

<sup>40</sup> *Id.* Because the Commission amended the Decision to allow Member States to choose from a number of ways of identifying the recipient (including ways that did not require Stauder's name to be disclosed), the ECJ found that the Decision, as amended, did not violate any of his fundamental rights. *See id.*

<sup>41</sup> 1970 E.C.R. 1125, [1972] C.M.L.R. 255 (1970).

<sup>42</sup> *See id.*

<sup>43</sup> 1974 E.C.R. 491, [1974] 2 C.M.L.R. 338 (1974).

<sup>44</sup> *See id.*

<sup>45</sup> *See* Case C-5/88, *Wachauf v. Federal Republic of Germany*, 1989 E.C.R. 2609, [1991] 1 C.M.L.R. 328 (1989).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> 1991 E.C.R. I-2925, [1994] 4 C.M.L.R. 540 (1991).



Although the ECJ has expanded its scope of human rights protection since *Stauder*, the Court has also established limits.<sup>49</sup> In Joined Cases 60 and 61/84, *Cinéthèque v. Fédération Nationale des Cinémas Français*, the ECJ ruled that it would not examine the protection of human rights if the Member State action fell within the jurisdiction of the national legislatures.<sup>50</sup> In *Cinéthèque*, a French law prohibited the release of certain videocassettes.<sup>51</sup> By limiting the ECJ's supervision of human rights to those areas that fall within the powers of EU institutions, the ECJ has both addressed some of the concerns of Member States regarding EU protection of human rights and refrained from expanding the scope of EU influence into areas not addressed by the EU treaties.<sup>52</sup>

### E. Human Rights Protections in the Treaty of Amsterdam

In June 1997, the Amsterdam European Council produced a draft of the Treaty of Amsterdam.<sup>53</sup> On October 2, 1997, representatives of the 15 Member States executed it.<sup>54</sup> Member States were to ratify the Treaty of Amsterdam by the end of 1998.<sup>55</sup> The Treaty came into force on May 1, 1999.<sup>56</sup>

Most notably, the Treaty of Amsterdam amends Article 6(1) of the TEU to provide that the "Union is founded on . . . respect for human rights and fundamental freedoms."<sup>57</sup> The Treaty of Amsterdam also provides a means by which the Council, Commission, Member States, and Parliament may address "a serious and persistent

<sup>49</sup> See Joined Cases 60 and 61/84, *Cinéthèque v. Fédération Nationale des Cinémas Français*, 1985 E.C.R. 2605, [1986] 1 C.M.L.R. 365 (1985); Case 12/86, *Demirel v. Stadt Schwäbisch Gmünd*, 1987 E.C.R. 3719, [1989] 1 C.M.L.R. 421 (1987). In *Demirel*, the ECJ held that even where EU law may be implicated, the implementation of a Member State law that does not have to implement EU law will not be subject to ECJ review for human rights compliance. See 1987 E.C.R. 3719, [1989] 1 C.M.L.R. 421 (1987).

<sup>50</sup> 1985 E.C.R. 2605, [1986] 1 C.M.L.R. 365 (1985).

<sup>51</sup> *Id.*

<sup>52</sup> See Neuwahl, *supra* note 6, at 11. See, e.g., Case 29/69, 1969 E.C.R. 419, [1970] C.M.L.R. 112 (1969) (where the ECJ made its first reference to human rights); Case C-5/88, 1989 E.C.R. 2609, [1991] 1 C.M.L.R. 328 (1989) (where the ECJ expanded its jurisdiction over human rights to include Member State implementation of EU law); Joined Cases 60 and 61/84, 1985 E.C.R. 2605, [1986] 1 C.M.L.R. 365 (1985) (where the ECJ refused to examine human rights when Member State action fell outside of the scope of the EU treaties).

<sup>53</sup> See Flaherty & Lally-Green, *supra* note 9, at 260.

<sup>54</sup> See *id.*

<sup>55</sup> See *id.* at 264 n.74.

<sup>56</sup> See Note on the Citation of Articles, *supra* note 15.

<sup>57</sup> Treaty of Amsterdam, *supra* note 27, art. F(1).

breach by a Member State” of human rights.<sup>58</sup> Therefore, the Treaty of Amsterdam permits limited action taken directly by EU institutions and Member States to protect human rights.<sup>59</sup>

Part III of the Treaty of Amsterdam expands ECJ jurisdiction to include review of actions of institutions with regard to fundamental rights protections “insofar as the Court has jurisdiction under the Treaties establishing the European Communities and under this Treaty.”<sup>60</sup> Curiously, however, the ECJ’s jurisdiction has not been expanded to review Member State actions within this sphere.<sup>61</sup> Because the Treaty of Amsterdam has only recently been ratified, it is unclear how the ECJ will interpret this expansion of its jurisdiction.

## II. THE CZECH REPUBLIC AND THE EU—FROM ASSOCIATION TO ACCESSION

### A. *Early Stages of Association*

In September 1988, the EU (then the European Community) established diplomatic relations with the Czechoslovak Republic.<sup>62</sup> By December 1991, Czechoslovakia entered into a Europe Agreement with the EU.<sup>63</sup> Although the Czech Republic and the EU negotiated a new agreement upon the “Velvet Divorce” of Czechoslovakia, the Europe Agreements have provided a continuous basis upon which the Czech Republic has interacted with the EU.<sup>64</sup>

The Europe Agreement contains the following five goals: setting a framework for political dialogue; promoting expansion of trade and economic relations; providing a basis for EU financial and technical

<sup>58</sup> *Id.* art. F(1). First, either one-third of the Member States or the Commission must submit a proposal to the Council regarding a serious and persistent breach by a Member State. *See id.* After receiving permission from Parliament, the Council must ask the Member State alleged to have committed the breach to submit its observations about the matter. *See id.* In order to determine that there has been a serious and persistent breach, the Council must unanimously agree. *See id.* If the Council has found such a breach, it may act by qualified majority to suspend some of the Member State’s treaty rights. *See Treaty of Amsterdam, supra* note 27, art. F(1).

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

<sup>60</sup> *Id.* art. L.

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

<sup>62</sup> *See Commission Opinion on Application, supra* note 1, at 11.

<sup>63</sup> *See id.*

<sup>64</sup> *See id.* The “Velvet Divorce” was the peaceful split of Czechoslovakia in 1993 into two political entities, the Czech Republic and Slovakia. *See* Rett R. Ludwikowski, *Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe*, 3 *CARDOZO J. INT’L & COMP. L.* 73, 130–31 (1995).

assistance to the Czech Republic; building a framework for Czech integration; and fostering cultural cooperation.<sup>65</sup> The Europe Agreement only contains two references to human rights.<sup>66</sup> Specifically, Article 6 of the Europe Agreement includes respect for human rights as a part of the Europe Agreement.<sup>67</sup> The bulk of the Europe Agreement, however, focuses only on the five goals listed above.<sup>68</sup>

### B. Formation of Accession Strategies

In January 1996, the Czech Republic submitted its formal application for membership in the EU.<sup>69</sup> At the Amsterdam Summit in June 1997, the EU set its timetable for expansion.<sup>70</sup> In July 1997, Jacques Santer, President of the European Commission, announced "Agenda 2000," the European Commission's statement on its goals for the coming millennium.<sup>71</sup> At the same time, the European Commission presented its opinion on the Czech Republic's application for membership (Commission Opinion on Application).<sup>72</sup> The Commission Opinion on Application referred to the Copenhagen European Council's requirements for membership.<sup>73</sup> The Copenhagen European Council requires, *inter alia*, that applicants for EU membership guarantee human rights and respect for minorities.<sup>74</sup>

<sup>65</sup> See Europe Agreement, *supra* note 2, § 43.2680.

<sup>66</sup> See *id.* §§ 43.2710, 43.3982.

<sup>67</sup> See *id.* § 43.2710. The Community Declaration on Articles 6 and 117 of the Agreement provides that "the reference to the respect for human rights" is an "essential element of the Agreement." *Id.* § 43.3982.

<sup>68</sup> See generally *id.* Article 8 sets forth the establishment of a free trade area. See Europe Agreement, *supra* note 2, § 43.2722. Article 97 covers cultural cooperation. See *id.* § 43.3256. Title VIII covers financial cooperation. See *id.* §§ 43.3262-43.3292.

<sup>69</sup> See Commission Opinion on Application, *supra* note 1, at 9. TEU Article 49 permits any European state to apply for membership in the EU. See TEU, *supra* note 15, art. 49.

<sup>70</sup> See *Czech-EU Relations*, *supra* note 3.

<sup>71</sup> See generally Agenda 2000: For a Stronger and Wider Union, BULL. EUR. UNION, Supplement 5/97 (1997) [hereinafter Agenda 2000].

<sup>72</sup> See Commission Opinion on Application, *supra* note 1, at 9. At the same time the Commission issued its opinion on the Czech Republic's application, it also submitted opinions on the applications from Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. See generally Agenda 2000, *supra* note 71, at 95 n.1.

<sup>73</sup> See Commission Opinion on Application, *supra* note 1, at 9-10.

<sup>74</sup> See *EU Unveils Plans for New Members*, E. EUR. NEWSLETTER, Aug. 1997, at 160. The Copenhagen European Council criteria stipulate that:

- (1) the applicant country must have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- (2) it must have a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the

By December 1997, the EU made a binding decision to begin membership talks with the Czech Republic in early 1998 and to use an Accession Partnership as the pre-accession strategizing tool.<sup>75</sup> In March 1998, the Council Decision 98/267/EC set forth the "principles, priorities, intermediate objectives and conditions" for Czech accession.<sup>76</sup>

In response to the requirements of the Accession Partnership, the Czech Republic formulated its National Programme for the Preparation of the Czech Republic for Membership in the European Union (National Programme).<sup>77</sup> The National Programme contains EU recommendations for improvement in areas vital to accession, a timeline for achieving those goals, proposed action by the Czech Republic, estimated costs of implementation, and assistance required from the EU.<sup>78</sup> Although the National Programme serves as a guide for action by the Czech Republic in order to prepare for full membership in the EU, the National Programme does not bind the Czech Republic.<sup>79</sup> In addition, as the accession process continues, both the Czech Republic and the EU may find that unforeseen issues and complications will arise.<sup>80</sup>

### C. Recommendations for Czech Action in the Sphere of Human Rights

Specifically, the Accession Partnership calls for "further work on the integration of the Roma."<sup>81</sup> Although the Accession Partnership does not provide explicit guidelines for integration of the Roma, the Annex to the Accession Partnership suggests that some of the problems stem from the discriminatory application of the Czech Citizenship Law.<sup>82</sup> Furthermore, the Commission Opinion on Application

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EU; and (3) it must have the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

*Id.*

<sup>75</sup> See *Czech-EU Relations*, *supra* note 3.

<sup>76</sup> Council Decision on Accession Partnership, *supra* note 5.

<sup>77</sup> See generally Ministry of Foreign Affairs of the Czech Republic, *National Programme for the Preparation of the Czech Republic for Membership in the European Union* (visited Oct. 12, 1998) <<http://www.czech.cz/english/national.htm>> [hereinafter *National Programme*].

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

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

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

<sup>81</sup> See *Czech Republic: Accession Partnership*, 1998 O.J. (C 202) 14. In general, the EU views minority integration as necessary for democratic stability. See *Agenda 2000*, *supra* note 71, at 41-42.

<sup>82</sup> See *Czech Republic: Accession Partnership*, *supra* note 81, at 18.

cites access to jobs and housing as possible areas for improvement.<sup>83</sup> The Commission Opinion on Application notes that the Czech Republic has already made efforts to provide Czech language training to the Roma, but the EU has suggested that the Czech Republic make even stronger efforts to provide educational resources for the Roma.<sup>84</sup>

#### D. *Constitutional Human Rights Protections in the Czech Republic*

In the Czech Republic, the Charter of Fundamental Rights and Freedoms provides protection for human rights (Charter).<sup>85</sup> The Charter, *inter alia*, includes an anti-discrimination provision that protects minorities.<sup>86</sup> The Constitutional Act that authorized the creation of the Charter, however, was passed when the Czech Republic was part of Czechoslovakia.<sup>87</sup> Although the Czech Republic created a new constitution upon the split of Czechoslovakia, the new constitution does not include the text of the Charter; instead, the Czech Constitution explicitly recognizes the Charter as an "integral component of the constitutional system."<sup>88</sup> It is unclear, however, to what extent the Charter is legally similar to constitutional provisions.<sup>89</sup>

<sup>83</sup> See Commission Opinion on Application, *supra* note 1, at 19.

<sup>84</sup> See *id.* at 19–20.

<sup>85</sup> See Charter of Fundamental Rights and Freedoms, art. 1 § 2, *cited in* Henckaerts & Van der Jeught, *supra* note 5, at 478 n.25 [hereinafter Charter]. The creation of explicit human rights protection was a result of the lack of such protection under the communist government. See Osiatynski, *supra* note 1, at 112.

<sup>86</sup> See Charter, *supra* note 85, art. 3; Henckaerts & Van der Jeught, *supra* note 5, at 498.

<sup>87</sup> See Henckaerts & Van der Jeught, *supra* note 5, at 478.

<sup>88</sup> Ústavní zákon České republiky (Constitution of the Czech Republic) art. 3, *available at* <<http://www.czech.cz/english/constitution.htm>> [hereinafter Czech Constitution].

<sup>89</sup> See Henckaerts & Van der Jeught, *supra* note 5, at 478. When the Czech Constitution was created, a serious issue arose regarding whether to make the Charter part of the Constitution. See ERIC STEIN, CZECHO/SLOVAKIA: ETHNIC CONFLICT, CONSTITUTIONAL FISSURE, NEGOTIATED BREAKUP 290 (1997). Ultimately, the Charter was incorporated as part of the Czech "constitutional order." *Id.* at 291. Because the Charter was adopted by the Czechoslovak Constitutional Act, upon the split of Czechoslovakia into two states, that Act became an ordinary law rather than a constitutional law. See Henckaerts & Van der Jeught, *supra* note 5, at 478. Therefore, although the Czech Constitution incorporates the Charter, it is unclear whether the Charter receives the status of an ordinary law or a constitutional law. See *id.* This issue then becomes significant in the event a law is challenged for violating the Charter. The Constitutional Court has the power to hear cases arising from violations of Constitutional Acts or international treaties. See Czech Constitution, *supra* note 88, art. 87. Because it is unclear whether the Charter is a Constitutional Act or an ordinary law, it becomes unclear whether a remedy may be sought in the Czech Constitutional Court. Furthermore, because judges of the Constitutional Court are bound "only by constitutional laws and international treaties," it is unclear whether judges are bound by the Charter in the adjudication of disputes. *Id.* art. 88.

In addition to the Charter, the Czech Constitution explicitly provides that “[r]atified and promulgated international treaties on human rights and fundamental freedoms, whereby the Czech Republic is obligated, shall be directly binding and shall have precedence over the law.”<sup>90</sup> The Constitutional Court has the power to hear cases arising from violations of international treaties that the Czech Republic has ratified.<sup>91</sup> In this respect, it is important to recognize that the Czech Republic has ratified the ECHR.<sup>92</sup> Therefore, violations of the ECHR are recognized as violations of constitutional significance and may be brought before the Czech Constitutional Court.<sup>93</sup>

### E. *The Roma in the Czech Republic*

The Roma, originally from Northern India, came to Europe in the fourteenth century.<sup>94</sup> They were enslaved in Romania from the 1350s to 1856.<sup>95</sup> Throughout the period of Roma presence in Europe, they have been subject to expulsion, state-mandated killings, and hostility.<sup>96</sup> Roma women have also been raped and unwillingly sterilized.<sup>97</sup> Although the Roma did enjoy a modest degree of protection from the equalizing ideology of the communist state, once communism collapsed, anti-Roma feelings resurfaced.<sup>98</sup>

The Roma account for between two to three percent of the Czech population.<sup>99</sup> Many people in the Czech Republic do not consider the Roma to be “Czechs.”<sup>100</sup> Although some Roma speak Czech and were born in the Czech Republic, many Czechs still consider them outsiders.<sup>101</sup> Furthermore, the majority of the Czech population, according to public opinion polls, hold negative images and stereo-

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<sup>90</sup> *Id.* art. 10.

<sup>91</sup> *See id.* art. 87.

<sup>92</sup> *See* Note on ECHR, *supra* note 23, § 50.0015.

<sup>93</sup> Czech Constitution, *supra* note 88, arts. 10, 87.

<sup>94</sup> *See* Brown, *supra* note 5.

<sup>95</sup> *See* Fred Bertram, *The Particular Problems of the Roma*, 2 U.C. DAVIS J. INT’L L. & POL’Y 173, 175 (1996).

<sup>96</sup> *See id.* at 175–77.

<sup>97</sup> *See id.* at 176, 179. The forced sterilization program in the Czech Republic occurred as recently as the 1960s and 1970s. *See id.* at 179.

<sup>98</sup> *See id.* at 178–79.

<sup>99</sup> *See* Commission Opinion on Application, *supra* note 1, at 19. The total population of the Czech Republic is around ten million. *See id.* at 91.

<sup>100</sup> *See* LADISLAV HOLY, *THE LITTLE CZECH AND THE GREAT CZECH NATION: NATIONAL IDENTITY AND THE POST-COMMUNIST SOCIAL TRANSFORMATION* 64 (1996).

<sup>101</sup> *See id.* at 64–65.

types of the Roma.<sup>102</sup> This public sentiment, coupled with widespread discrimination, results in lower life expectancies and lower living standards for the Roma.<sup>103</sup>

Although the Czech Charter protects the rights of minorities, the Roma population continues to face unemployment, violence, and illiteracy.<sup>104</sup> As compared to the other ethnic groups in the Czech Republic, the Roma face a disproportionately higher rate of unemployment.<sup>105</sup> Following the collapse of state-mandated employment for the Roma, the Roma have faced considerable barriers to finding employment.<sup>106</sup> Public sector positions are openly denied to the Roma.<sup>107</sup> In addition, many employers' job advertisements explicitly state that Roma will not be hired.<sup>108</sup> Even after finding jobs, the Roma are the first to be laid off, or they are soon unemployed because the jobs are seasonal.<sup>109</sup>

In addition, violence against the Roma is widespread.<sup>110</sup> For example, skinhead attacks on the Roma are prevalent.<sup>111</sup> In addition to waging violent attacks on the Roma, skinheads also distribute hate pamphlets and racist music.<sup>112</sup> In the Czech Republic, more Roma have been killed as a result of hate crimes than the combined Roma victims in Bulgaria, Romania, and Slovakia.<sup>113</sup>

Finally, as fluency in the Czech language is a requirement for citizenship in the Czech Republic, illiteracy within the Roma population has created increased barriers for integration.<sup>114</sup> Although the Czech

<sup>102</sup> See Brown, *supra* note 5. Eighty-five percent of those polled believe that the Roma should be excluded from their neighborhoods; ninety-two percent believe that the Roma are criminals; and eighty-three percent believe that the Roma should not receive welfare benefits. See *id.*

<sup>103</sup> See Bertram, *supra* note 95, at 181.

<sup>104</sup> See Henckaerts & Van der Jeught, *supra* note 5, at 498.

<sup>105</sup> See Brown, *supra* note 5.

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

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

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

<sup>109</sup> See *id.*

<sup>110</sup> See Brown, *supra* note 5.

<sup>111</sup> See Henckaerts & Van der Jeught, *supra* note 5, at 498. For example, in September 1993, a dozen armed, masked skinheads forced four Roma into the Otava River. See *Skinheads Sentenced for Racially Motivated Murder*, CESKOSLOVENSKÉ NOVINY (New York), Oct. 30, 1998, at 3. Because the skinheads were throwing rocks at the Roma, thereby preventing them from coming out of the river, one of the Roma, 18 year-old Tibor Danihel, drowned. See *id.*

<sup>112</sup> See Brown, *supra* note 5.

<sup>113</sup> See *id.*

<sup>114</sup> See Henckaerts & Van der Jeught, *supra* note 5, at 498.

Republic has opened some pre-schools to help Roma children learn Czech, the Roma are placed in segregated schools.<sup>115</sup> Roma children are forbidden from taking academic subjects and must therefore take classes in vocational fields.<sup>116</sup> This segregation further harms the Roma by preventing them from taking jobs that require an academic background.<sup>117</sup>

#### F. Czech and EU Efforts to Integrate the Roma

In its National Programme, the Czech Republic responded to EU recommendations regarding integration of the Roma.<sup>118</sup> Within the National Programme, the Czech government contended that it does not apply its Citizenship Law discriminatorily against the Roma.<sup>119</sup> The Czech government has provided no further formal response to encourage integration of the Roma.

Although the Czech National Programme contained no specific plans to do so, the Czech Republic has taken some steps to protect the Roma.<sup>120</sup> The Czech Republic has begun to issue harsher sentences for racially motivated crimes.<sup>121</sup> On October 8, 1998, a court in the Czech Republic sentenced three men accused of murdering a Roma to prison terms of seven-and-one-half to eight-and-one-half years.<sup>122</sup> Originally, the men were issued much shorter sentences.<sup>123</sup>

The EU provides funding for Roma programs mostly through the Phare and Tacis Democracy Programme.<sup>124</sup> Other funding schemes for Roma programs include the Phare Lien Programme and the Civil Society Development Programme.<sup>125</sup> This funding has been used to support Roma educational centers and informational bulletins.<sup>126</sup>

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<sup>115</sup> See Brown, *supra* note 5.

<sup>116</sup> See *id.*

<sup>117</sup> See *id.*

<sup>118</sup> See *National Programme*, *supra* note 77.

<sup>119</sup> See *id.*

<sup>120</sup> See Written Question No. 2927/97 by Elly Plooij-Van Gorsel to the Commission. Discrimination against the Roma population in the Czech Republic and Hungary, 1998 O.J. (C 117) [hereinafter *Written Question*].

<sup>121</sup> See *Skinheads Sentenced for Racially Motivated Murder*, *supra* note 111, at 3.

<sup>122</sup> See *id.*

<sup>123</sup> See *id.* It is interesting to note, however, that the Czech court opened the case for resentencing only after Former Justice Minister Vlasta Parkanova lodged a complaint against the initial verdict. See *id.*

<sup>124</sup> See *EU Support for Roma Communities in CEECs*, RAPID, July 14, 1998.

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

<sup>126</sup> See *Written Question*, *supra* note 120.



### III. EU LAW AND THE CZECH ACCESSION PARTNERSHIP: MOVEMENT TOWARD INCREASED ACTION IN THE SPHERE OF HUMAN RIGHTS?

Currently, the EU treaties contain no provisions that authorize EU institutions to act directly in the sphere of human rights.<sup>127</sup> Therefore, the EU cannot require Member State action that focuses solely on human rights.<sup>128</sup> Although the ECJ has required Member States and EU institutions to conform to human rights standards, those requirements were only imposed when the Member State action or EU legislation fell within the scope of the EU treaties.<sup>129</sup> Because of the treaty limitations, EU action in the sphere of human rights has been severely curtailed.<sup>130</sup>

Although the EU may set forth the standards and conditions for accession, the EU, in its accession negotiations, has specifically chosen to address the Czech Republic's treatment of the Roma.<sup>131</sup> These human rights protections are severely needed, but the EU has carved out an area of influence that it does not have over its current Member States.<sup>132</sup>

Human rights violations, mostly unchecked by the EU, still occur in Member States.<sup>133</sup> The United Kingdom's notorious record before the ECHR is an example of the abuses that go unprotected by both Member State and EU laws.<sup>134</sup> For example, Northern Ireland's political situation has exacerbated several human rights issues.<sup>135</sup> If the EU cannot patrol human rights violations within its own boundaries, how can it enforce human rights standards in other countries?

The Czech Republic currently provides some human rights protections to its own citizens.<sup>136</sup> Most notably, the Czech Republic has acceded to the ECHR—the European treaty that the ECJ has slowly incorporated into its jurisprudence.<sup>137</sup> These protections are similar

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<sup>127</sup> See *supra* notes 9–21, 53–61 and accompanying text.

<sup>128</sup> See *id.* See also *supra* notes 35–52 and accompanying text.

<sup>129</sup> See *supra* notes 35–52 and accompanying text.

<sup>130</sup> See *supra* notes 9–21, 35–61 and accompanying text.

<sup>131</sup> See *supra* notes 81–84 and accompanying text.

<sup>132</sup> See *supra* notes 6–8 and accompanying text.

<sup>133</sup> See Stever, *supra* note 7, at 969. Within the past thirty years, Italy, Turkey, and Great Britain have received the highest number of human rights complaints. See *id.* at 969 n.320.

<sup>134</sup> See IAN WARD, *THE MARGINS OF EUROPEAN LAW* 144 (1996).

<sup>135</sup> See Stever, *supra* note 7, at 969–70. Specifically, Northern Ireland has problems with due process, violence against human rights, and prisoners' rights. See *id.* at 970–71.

<sup>136</sup> See *supra* notes 85–93 and accompanying text.

<sup>137</sup> See Note on ECHR, *supra* note 23, § 50.0015.

to those implemented by the Member States.<sup>138</sup> Although the EU has declared that the Czech Republic must address the Roma situation, it has not established the guidelines for doing so.<sup>139</sup> Outside of the ECHR and Charter provisions, further efforts by the Czech Republic may require legislative action. The EU may not impose a requirement of this nature on any Member State.<sup>140</sup>

Finally, the Treaty of Amsterdam seeks to take a cautious step toward increased protection of human rights in the EU.<sup>141</sup> Although the Treaty of Amsterdam moves in a direction toward greater human rights monitoring, the Treaty of Amsterdam fails to authorize EU institutions to pass human rights legislation.<sup>142</sup> With current ECJ rulings and the Treaty of Amsterdam provisions, human rights still remain on the periphery.<sup>143</sup>

The question thus remains: What further steps will the EU take to protect human rights? The EU has already incorporated ECHR provisions into its jurisprudence, and the Treaty of Amsterdam now authorizes EU action against Member States for serious human rights violations.<sup>144</sup> With the EU's current position on Czech accession, will the EU take bolder strides into the area of human rights?

#### IV. SUGGESTIONS FOR FURTHER ACTION

##### A. *EU Treaty Amendment Authorizing Human Rights Monitoring and Legislation*

To better protect human rights, the EU could adopt a treaty amendment authorizing EU institutions to monitor human rights and enact human rights legislation.<sup>145</sup> A treaty provision of this nature would allow EU institutions to direct Member States to deal with human rights issues in a manner similar to the EU's recommendation to the Czech Republic regarding Roma integration.<sup>146</sup> A treaty amendment would also establish human rights as an area in which the EU

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<sup>138</sup> See *supra* note 23 and accompanying text.

<sup>139</sup> See *supra* notes 81–84 and accompanying text.

<sup>140</sup> See *supra* notes 6–8 and accompanying text.

<sup>141</sup> See *supra* notes 53–61 and accompanying text.

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

<sup>143</sup> See *id.* See also *supra* notes 35–52 and accompanying text.

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

<sup>145</sup> See Stever, *supra* note 7, at 975–76.

<sup>146</sup> See *supra* notes 81–84 and accompanying text.

could adopt legislation that would harmonize Member State laws.<sup>147</sup> Because of the ECHR's status within the EU and the retention of different Member State laws regarding human rights protections, human rights are treated inconsistently among the Member States.<sup>148</sup> The EU could remove such inconsistencies if it adopts a human rights focused treaty amendment.<sup>149</sup>

This approach, however, raises several issues. First, the EU must define the parameters of its human rights protection.<sup>150</sup> As the ECJ has done, the EU could look to Member State constitutions and the ECHR for guidance.<sup>151</sup> Second, such a treaty amendment might meet great resistance from Member States.<sup>152</sup> Because treaty amendments must be ratified by each Member State, such a provision could easily fail.<sup>153</sup>

### B. *EU Treaty Amendment Authorizing EU Accession to the ECHR*

The EU could also adopt a treaty amendment that would enable it to accede to the ECHR, thereby making ECHR provisions directly applicable to the EU institutions and the Member States.<sup>154</sup> Because the ECJ has already suggested that general principles of EU law are informed by ECHR provisions, and EU treaties explicitly mention the ECHR, accession would only require further recognition of ECHR principles within the EU framework.<sup>155</sup> Accession to the ECHR, however, raises several structural impediments.<sup>156</sup>

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<sup>147</sup> See Stever, *supra* note 7, at 982–84.

<sup>148</sup> See WARD, *supra* note 134, at 144.

<sup>149</sup> See *id.*

<sup>150</sup> See *id.* at 142.

<sup>151</sup> See *id.* at 143–44.

<sup>152</sup> See, e.g., Flaherty & Lally-Green, *supra* note 9, at 264 n.74 (discussing potential ratification problems for the Treaty of Amsterdam). Although the specific objections Member States might raise to a human rights provision are rather speculative, it is important to note that each Member State responds differently to new treaty provisions. See *id.* For example, the French are concerned that the Treaty of Amsterdam may conflict with the French Constitution. See *id.* As occurred with the ratification of the TEU, the Danish government continues to face anti-Europe sentiment. See *id.* On the other hand, Sweden and Germany have already overwhelmingly approved the Treaty of Amsterdam. See *id.*

<sup>153</sup> See Flaherty & Lally-Green, *supra* note 9, at 264 n.74.

<sup>154</sup> See Stever, *supra* note 7 at 975–76.

<sup>155</sup> See *supra* notes 35–61 and accompanying text.

<sup>156</sup> See *supra* notes 150–53, 157–59 and accompanying text.

First, the ECHR is only open to members of the Council of Europe.<sup>157</sup> Because the EU is not a state, the EU cannot become a member of the Council of Europe.<sup>158</sup> Second, the ECJ has already noted that the EU could not accede to the ECHR absent a treaty amendment authorizing EU action in the sphere of human rights.<sup>159</sup>

C. *The EU Should Adopt a Treaty Amendment Authorizing Human Rights Monitoring and Legislation*

Despite the problems raised above, the EU should adopt a treaty amendment authorizing human rights monitoring and legislation.<sup>160</sup> Using the Czech Republic as an example, it is obvious that there are situations that require further human rights protection.<sup>161</sup> The EU's stance toward Roma integration presents an example of how the EU can use its influence to demand greater human rights protection.<sup>162</sup> The problem, however, is that as soon as the Czech Republic achieves full EU membership, the EU may no longer demand further protection absent a finding that the Czech Republic has seriously and persistently breached human rights.<sup>163</sup> In order to further monitor human rights and ensure that EU citizens receive consistent protection across the several Member States, the EU must authorize institutional action in the sphere of human rights.<sup>164</sup>

The ECJ has already begun to require Member States to respect human rights as defined by Member State constitutions and the ECHR.<sup>165</sup> Clearly, the EU should be able to develop guidelines for human rights protections that Member States will accept because each Member State has already signed and ratified the ECHR.<sup>166</sup> Providing human rights protections directly in the EU treaties will also allay fears from Member States that power has been taken away from

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<sup>157</sup> See PHELAN, *supra* note 10, at 123 n.243. ECHR Article 66(1) explicitly requires that states acceding to the ECHR be members of the Council of Europe. See ECHR, *supra* note 10, art. 66(1).

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

<sup>159</sup> See Opinion 2/94, *supra* note 26. This impediment then implicates the problem of generating unanimous support from the Member States. See *supra* notes 152–53 and accompanying text.

<sup>160</sup> See *supra* notes 145–53 and accompanying text.

<sup>161</sup> See *supra* notes 94–117 and accompanying text.

<sup>162</sup> See *supra* notes 81–84 and accompanying text.

<sup>163</sup> See *supra* note 58 and accompanying text.

<sup>164</sup> See *supra* notes 145–49 and accompanying text.

<sup>165</sup> See *supra* notes 35–52 and accompanying text.

<sup>166</sup> See *supra* note 23 and accompanying text.

Member State courts without the EU's assurance that the usurped power will not be used to violate human rights.<sup>167</sup> Finally, EU authorization in this area will finalize the increasing inclusion of human rights protections in EU treaties and enhance the deeper unification envisioned by President Jacques Santer's "Agenda 2000."<sup>168</sup>

The EU could enforce compliance with a treaty amendment authorizing human rights monitoring and legislation in several ways. First, as some EU treaty provisions allow Member State citizens to bring actions against those who violate treaty provisions, the EU could create a treaty provision that expressly grants clearly defined rights to such an extent that the treaty provision would have direct effect.<sup>169</sup> Creating a treaty provision that has direct effect would therefore require that Member State courts protect the rights of individuals created by the treaty provision.<sup>170</sup> Next, the Commission could play an active role in ensuring Member State compliance by bringing enforcement actions pursuant to Article 226 of the EC Treaty.<sup>171</sup> Finally, the EU institutions could use their Article 249 powers to issue regulations, directives, or decisions that require Member States to enact human rights protection.<sup>172</sup> Utilizing these measures would require Member States to conform to such legislative acts, thereby securing uniformity with respect to human rights.<sup>173</sup> By using the several measures listed above, the EU, Member States, and EU citizens could each participate in the enforcement of human rights without imposing

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<sup>167</sup> See Stever, *supra* note 7, at 983–84.

<sup>168</sup> See *supra* note 71 and accompanying text.

<sup>169</sup> See Case 26/62, *van Gend en Loos v. Nederlandse Administratie der Belastingen*, 1963 E.C.R. 1. In *van Gend en Loos*, a Dutch national challenged a Dutch law reclassifying ureaformaldehyde, claiming that the law violated Article 12 [now Article 25] of the EC Treaty. See *id.* The ECJ held that because Article 12, prohibiting an increase in customs duties on imports, expressly grants rights and clearly defines them, an individual can invoke that treaty provision against other individuals, Member States, and EU institutions. See *id.*

<sup>170</sup> See *id.*

<sup>171</sup> See EC TREATY, *supra* note 9, art. 226. The Treaty of Amsterdam renumbered the EC Treaty when it entered into force on May 1, 1999. See Note on the Citation of Articles, *supra* note 18. Citations in this Note to the EC Treaty reflect this renumbering. Article 226 authorizes the Commission to address a Member State's failure to fulfill a treaty obligation by submitting a reasoned opinion to the Member State for review. See *id.* If the Member State does not comply with the Commission's opinion, the Commission may then institute an ECJ action against the Member State. See *id.*

<sup>172</sup> See EC TREATY, *supra* note 9, art. 249. Article 249 authorizes the Parliament, Council, and Commission to jointly adopt regulations, directives, and decisions in order to carry out treaty provisions. See *id.*

<sup>173</sup> See *id.*

substantially different enforcement schemes than those that are already granted by the EU treaties.<sup>174</sup>

#### CONCLUSION

The Czech Republic currently stands poised to take the final step toward full integration into the EU. EU concerns about the Czech Republic's treatment of its Roma, however, present a barrier to accession. Although encouraging protection of minorities is a laudable effort by the EU, the EU has yet to adopt a treaty amendment that would authorize it to take similar actions toward its own Member States. With current inconsistencies in Member States' treatment of human rights, the EU must consider how far it is willing to go to encourage a deeper harmonization of Member State laws. As EU recommendations to the Czech Republic serve as examples of increased EU action in the sphere of human rights, the EU should take the next step and authorize EU institutions to monitor and legislate directly in this area.

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<sup>174</sup> See *supra* notes 169–73 and accompanying text.