European Union Policymaking in Candidate States:

Legislating Minority Rights in the Czech Republic and Romania

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The ten countries in Central and Eastern Europe (CEE) and the Baltics which signed Europe Agreements with the European Union[1] have been overhauling their political, economic, and legal systems since 1989 while simultaneously attempting to meet the myriad and complex requirements of European Union (EU) membership. "Rejoining Europe" has been the primary foreign policy objective of these countries since the collapse of communism and it is one goal that has unified most of their political parties and public opinion in the first decade of transition. In order to attain EU membership, however, candidate countries must abide by the terms of their Association Agreements, approximate their domestic law with over 80,000 pages of EU laws and regulations constituting the *acquis communautaire*, and generally accept European norms in restructuring their political, economic, and social systems. As a result, draft laws in these newly democratizing countries have been subject to review for compatibility with EU law, and a unique confluence of domestic and foreign policies has developed. This paper examines if and how the EU has affected policymaking in CEE candidate states in the contentious field of minority rights, where EU influence might be least expected.

The issue of minority rights, while not a traditional concern of the EU, has not escaped the EU's purview in its relations with CEE countries. As noted by the Romanian Institute for Human Rights, all of the Romanian Parliament's legislative activity, including in the "delicate and sensitive domain" of the observance and promotion of fundamental rights and freedoms, "has come under the symbol of the requirement of harmonizing and aligning Romanian legislation to the norms and normative standards of the European Union."[2] Since minority rights disputes have torn apart whole countries in CEE, the Council of Europe and the EU have been particularly concerned about resolving or preventing such disputes when possible, and thereby strengthening democracy and stability in the region. Both institutions have used membership as an incentive to enforce compliance with human rights norms and

[1]Europe Agreements (Association Agreements) were signed with Poland and Hungary (1991); Bulgaria (1992); Romania, Czech Republic, and Slovakia (1993); Estonia, Latvia, and Lithuania (1995); and Slovenia (1996).

agreements by candidate countries. The ability of international organizations to bring about changes in domestic human rights policies, however, has been mixed, and minority rights has been one of the most contentious and difficult issues of reform in the post-communist politics of CEE countries.

Although scholars have studied the influence of the EU on the laws and practices of Member States, systematic study of the EU's effects on the development and adoption of domestic policies in candidate states prior to membership has been very limited. Moreover, while policymakers and others have merely *assumed* a tremendous influence of the EU and other external actors on the consolidation of democracy in CEE, democratization and area studies literature continues to emphasize the overwhelming influence of *domestic* political, cultural, economic, and historical factors. In the following pages, I will assess if and how the EU has generated the protection of minority rights in candidate states, using the Czech Republic and Romania as case studies. Based on interviews, press reports, government statements, and public records, I examine the EU impact on the development of institutions, the content of legislation, the timing of reforms, and the process and character of domestic debate.[3] Focusing on the citizenship law and the Roma in the Czech Republic and language legislation and ethnic Hungarians in Romania, I consider two of the issues that have raised the most controversy in these countries. If analogous EU requirements and expectations have similarly affected the domestic reform processes of two diverse candidate states in the field of minority rights, results should have broad application to less contentious issues and to other CEE countries with Europe Agreements. Moreover, the findings may have implications for other countries that hope to join the EU and possibly for other regions with strong regional organizations.

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[2]Romanian Institute for Human Rights (Institutul Roman Pentru Drepturile Omului), "Raport cu privire la evolu ia protectiei i promovarii drepturilor omului în România în anul 1996," (Report concerning the evolution of protection and promotion of human rights in Romania in 1996), Bucharest, Romania, 1997, p.3-4, my translation.

[3]For an account of EU influence on other aspects and issues of the reform processes in the Czech Republic and Romania, see Melanie H. Ram, *Transformation through European Integration: A Comparative Study of the Czech Republic and Romania*, Ph.D. Dissertation, The George Washington University, 1999.

European Union Obligations

The protection of human rights and minority rights has been specifically addressed as a precondition for European Union membership by the Maastricht Treaty on European Union, the European Council meeting at Copenhagen, the Europe Agreements with the countries of Central and Eastern Europe, the European Union's Pact on Stability in Europe, and the European Union's second pillar--the Common Foreign and Security Policy (CFSP). Moreover, the Council of Europe, an organization which all EU candidate states must join, has the protection of human rights as its mandate and is the source of various human rights and minority rights Conventions.

The Maastricht Treaty on European Union, signed on 7 February 1992, declares that "the 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" (Art. F). Thus, as the European Commission made clear in its 1997 Opinions on the eligibility of each candidate state for EU membership, "observance of human rights is part of the *acquis communautaire*" and any state that wants to join the EU must first ratify the European Convention.[4] Human rights and minority rights protection were also specified by the "Copenhagen criteria." The first of three central EU membership criteria, outlined at the European Council meeting in Copenhagen in June 1993 is to demonstrate "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."[5]

Moreover, a European Council Declaration in May 1992 stipulated that "the Community must include a human rights clause in every Cooperation or Association Agreement it concludes with a

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[4]European Commission, "Agenda 2000: Commission Opinion on Romania's Application for Membership of the European Union," Brussels, 15 July 1997, DOC/97/18, sec. 1.2, p.15.

[5]European Council, "Conclusions of the Presidency, Copenhagen, 21-22 June 1993," DOC SN 180/93, 13.

member of the Conference on Security and Cooperation in Europe (CSCE)."[6] Thus, the requirement to respect human rights can be found in the 1993 Czech Republic-EU Association Agreement and the 1993 Romania-EU Association Agreement as the very first "General Principle":

> Respect for the democratic principles and human rights established by the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, inspire the domestic and external policies of the Parties and constitute essential elements of the present association.[7]

Since either Party to the Agreement may take "appropriate measures" if it believes the other Party "has failed to fulfill an obligation under the Agreement," the EU could use this human rights clause to justify suspension of the Agreement in the case of any human rights violations.[8]

The human rights policies of Central and Eastern Europe are also a principal concern of the Council of Europe. Through its special programs, the Council of Europe tries to bring the laws and institutions of these countries gradually "into conformity with European norms," which are reflected in Council of Europe conventions.[9] The EU expects candidate countries to become members of the Council of Europe and to comply with its standards and conventions regarding human rights. The two institutions exchange information and carry out some joint programs to support mutual goals, including the protection of minorities in CEE.[10] The EU candidate countries for their part recognize that criticism

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[6]This article was present neither in the Association Agreements with Hungary and Poland, nor in the original Agreement with Czechoslovakia, which were signed before May 1992. The Czech side strongly opposed including this clause when negotiating the new Europe Agreement for fear that the Czech Republic would be judged differently than Poland and Hungary. Vladimír Handl, "Translating the Czech Vision of Europe into Foreign Policy - Historical Conditions and Current Approaches," in *Monitoring Association and Beyond: The European Union and the Višegrád States*, Barbara Lippert and Heinrich Schneider, eds. (Bonn: Europa Union Verlag, 1995), 137.

[7]"Europe Agreement establishing an association between the European Economic Communities and their Member States, of the one part, and Romania, of the other part--Final Act," 19 Dec. 1994, *OJ* No. L 357 (31 December 1994); "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," *OJ*, No. L 360, 31 Dec. 1994, Art. 6.

[8]Michal Krejza, "The Association Agreement Between the European Community and the Czech Republic: Steps toward Czech Membership, 1990-1994" (Ph.D. dissertation, Charles University (Prague), 1994), 56.

[9]Council of Europe, *The Council of Europe and Human Rights*, (Strasbourg, 1991), 31.

[10]See Council of Europe, "Assistance with the Development and Consolidation of Democratic Security: Co-operation and Assistance with the Countries of Central and Eastern Europe, Programme for 1997," SG/INF(97)2, Appendix 2, 169. See also Council of Europe, Report on the Implementation of the Joint Programme between the European Commission (PHARE Programme) and the Council of Europe, entitled "Minorities in Central European Countries and a Proposal for a New Joint Programme," Draft, Strasbourg, December 1997.

from the Council of Europe regarding minority rights or other human rights concerns could ultimately hurt their EU membership chances.

As stipulated in its Statute of 1949, "every Member of the Council of Europe must accept the principle of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms."[11] The Council of Europe considers the European Convention on Human Rights (ECHR) and the framework Convention for the Protection of National Minorities to be two of its three most fundamental texts, the obligations of which must be honored by all member states. According to the Council of Europe's Parliamentary Assembly, it is particularly important that member states and applicants comply with Recommendation 1201 (1993) regarding the rights of national minorities.[12] Although Council of Europe recommendations are not binding, the Council's Conventions are binding upon signatories. The ECHR has thus required many members of the Council of Europe to modify their national laws and practices.

When the European Stability Pact was signed in March 1995, it was intended to promote good neighborly relations between the CEE countries and to encourage them to resolve historical disputes over minorities and borders.[13] The large Hungarian population living outside Hungary (the overwhelming majority of which is in Romania) and the relations between the Baltic States and Russia were the two original concerns the Stability Pact was created to address.[14] Overall, human rights and particularly minority rights in CEE are of concern to the EU as partial proof of democracy and as an important element in maintaining peace and stability within countries and in the region by preventing cross border conflicts or massive emigration.

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[11]Asbjorn Eide, *International Protection of Human Rights* (Strasbourg: Council of Europe, July 1989): 33.
[12]Council of Europe, Directorate of Information, "Honouring of Commitments Entered into by Council of Europe Member States," 14 May 1995.
[13]Joe Cook, "Stability Pact Tries Hard to Encourage Good Behaviour between Neighbours," *European Dialogue*, no.1 (Mar-Apr. 1995), http://europa.eu.int/en/comm/dg10/infcom/eur_dial/index.html.
[14]Michel Arnould, "Stability Pact: Reassuring Minorities, Guaranteeing Frontiers," *Forum*, no. 2 (June 1995): 18.

Constitutional Reform and Steps toward the West

Minorities account for only about 7% of the Czech Republic's population, 4% of which are Slovaks and 2-3% Roma (gypsies). Romania, on the other hand, has a relatively large minority population, including the type of most concern to the EU—that of a neighboring country's ethnicity. Almost two million ethnic Hungarians live in Romania, constituting 7.8% of the population in 1997. Government legislation affecting the rights of Romania's Hungarian minority thus has important implications not only for Romania's democratic development, but also for the country's relations with its neighbor, and by implication for regional stability. The Roma or gypsies constitute another 5 to 7% of the Romanian population.

The EU played a role in minority rights in prospective member states on various levels and from the very start of their reform processes. First of all, the EU and the Council of Europe advised the candidate countries in the adoption of new constitutions that recognized human rights and provided extra-national guarantees of human rights protection. The new Constitution of the Czech Republic, adopted at the end of 1992 just before the split from Slovakia, protects human rights by making the Charter of Fundamental Rights and Freedoms (from 1991) a part of the country's constitutional order (according to Art. 3). Some people in the Czech Republic contend that Article 3 and Article 4 (which protects these rights and freedoms under judicial power) were included "by a form of compulsion from the Council of Europe and from West European intermeddlers, and in particular from Brussels and Strassburg," and did not result from discussion and debate by the Czech government and population.[15] In Romania, the Council of Europe also assisted the government in drafting a new Constitution and praised it as both "modern" and "democratic."[16] Several Articles in the Romanian Constitution protect human rights and minority rights.

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[15]Cass Sunstein, "A Constitutional Anomaly in the Czech Republic?" *East European Constitutional Review* 4, no. 2 (Spring 1995): 51.

[16]"Application by Romania for Membership of the Council of Europe," *Romanian Journal of International Affairs* 1, no. 4 (1995), Special Issue: "Romania and the Council of Europe," 90 (from Council of Europe, Parliamentary

Significantly, the constitutions in both countries give international treaties or conventions on human rights that they have ratified precedence over domestic law and note that such conventions are directly binding and applicable as part of national law.[17] As the Romanian Government emphasized in its response to the European Commission's 1997 Opinion, its constitution therefore makes it possible for the provisions of international treaties ratified by Romania, such as UN and Council of Europe Conventions, to be invoked directly in national courts.[18]

Gaining membership in the Council of Europe was the next important step towards EU membership for the candidate countries, by beginning to reintegrate them with Europe and certifying their democratic values. Czechoslovakia was admitted to the Council of Europe in February 1991 (and as the Czech Republic in June 1993), and in March 1992 signed the European Convention for the Protection of Human Rights, a treaty which any state wishing to join the European Union must first ratify. The Czech Republic also accepted the right of petition to the European Court of Human Rights, thus providing citizens an extra-national guarantee of human rights protection, and ratified the Framework Convention for the Protection of National Minorities in December 1997. Many Czech Roma have already availed themselves of the new opportunity to take their complaints to the European Court of Human Rights. Czech Foreign Minister Zieleniec considered Council of Europe membership was an important symbolic milestone that boosted his country's chances of EU membership. It meant "belonging to the oldest European organisation, which forms a kind of bridge to another institution—the European Union—where we hope to cast anchor soon," he pointed out.[19]

Assembly, Forty-Fourth Ordinary Session (Seventh Part) 27 September – 1 October 1993, *Official Report of Debates*, Vol. VI, Sittings 45 to 51, p. 1380-1412, Strasbourg 1994).

[17]"Constitution of the Czech Republic," 16 Dec. 1992, Art. 10; "Constitution of Romania," 21 Nov. 1991, Arts. 11, 20.

[18]Government of Romania, "Annex to the Point of View of the Government of Romania with regard to the Agenda 2000," (Bucharest, September 1997), 11.

[19]Josef Zieleniec, "Talking to the Chairman: A Meeting Place for Continental Co-operation," interview, *Forum*, (Dec. 1995): 6-8.

Romania applied for membership in the Council of Europe on 16 March 1990, less than three months after the country's December 1989 revolution. As the EU and Council of Europe had strong concerns at first over Romania's human rights and minority rights situation, the Romanian government initially had to focus on modifying the country's domestic laws "for impressing the Council of Europe," as one lawyer described it.[20] According to the Council of Europe, Romania was "subjected to the deepest possible scrutiny" in evaluating its application for membership, more than any past applicant, because it began "from the lowest possible base in the denial of human rights, lower even than that of the Soviet Union."[21] The Council of Europe supervised Romania for almost four years before offering the country full membership on 7 October 1993.

Given the importance of Council of Europe membership to Romania, particularly as a step towards the EU,[22] the government made a number of commitments to facilitate gaining admission. As a condition of membership, for example, Minister of Foreign Affairs Melescanu agreed in writing to the application in Romanian law and practice of the Council of Europe's Recommendation 1201 on minorities.[23] Upon accession to the Council of Europe, Romania signed the European Convention for the Protection of Human Rights and Fundamental Freedoms and accepted the rights of individual petition and compulsory jurisdiction. According to the Romanian Helsinki Committee, this could "be hoped [to] have a major impact both upon the Romanian victims and the national courts."[24] Many Romanians have already sought advice at the Council of Europe Information and Documentation Center in Bucharest on

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[20]Hora iu Dumitru, Lawyer and Parliament Advisor, Chamber of Deputies, interview by author, 8 Oct. 1997, Bucharest, Romania.

[21]Application by Romania for Membership of the Council of Europe," *Romanian Journal of International Affairs* 1, no. 4 (1995): 89-145. Special Issue: "Romania and the Council of Europe."

[22]See for example Ion Iliescu, "Allocution du President de la Roumanie, Monsieur Ion Iliescu: A La Reunion du Conseil National Consultatif Pour L'Integration Euro-Atlantique--Bucharest, 28 Decembre 1994," in *Consilul National Consultativ pentru Integrare Euro-Atlantica*, (Guvernul Romaniei, Departmentul Pentru Integrare Europeana), vol. 13, 1995, p.23.

[23]Ion Iliescu, "Address on the Occasion of the Fourth Part of the 1994 Session of the Parliamentary Assembly, Strasbourg, October 4, 1994," *Romanian Journal of International Affairs* 1, no. 4 (1995): 25.

[24]*Human Rights Developments in Romania: The Activities of the Romanian Helsinki Committee* (APADOR-CH): 1996 Report (1996), 2.

taking a case to the ECHR, and thousands of complaints have been filed (most often regarding property issues).[25] In a society in which speaking out against the government and using the law for protection is a fairly new development, even the pursuit of such methods is an important step forward. Romania ratified the Convention on 20 June 1994, "in somewhat record time" according to Council of Europe Secretary General Daniel Tarschys.[26]

Romania also signed the framework Convention for the Protection of National Minorities on the day it was opened for signatures on 1 February 1995 (the same day Romania's Europe Agreement entered into force) and was the first country to ratify this Convention in May 1995.[27] President Iliescu did not miss the opportunity to emphasize that Romania's quick signing of the Convention was "clear evidence of the responsibilities to which our country commits itself in directly assimilating European standards in these very diverse domains."[28] Romania also signed the European Charter for Regional or Minority Languages in July 1995.

Minority Rights Institutions and NGOs

Some institutions were established in candidate countries as a first step towards the domestic protection of minority rights. In other cases, institutions were set up in response to criticism of the minority rights situation and were often modeled on institutions existing in EU Member States. Czech institutions for the protection of the Roma mostly followed the latter pattern. In 1992 a Council of

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[25]Council of Europe Information and Documentation Center representative, interview by author, October 1997, Bucharest, Romania; "Situa ia Recursurilor Individuale la Consiliul Europei la 30 Mai 1997," from Council of Europe, Bucharest, Romania.

[26]Daniel Tarschys, "Opening Address," *Romanian Journal of International Affairs* 1, no. 4 (1995): 34.

[27]Council of Europe, "Romania and the Council of Europe," 15 May 1997. Signing the Convention for the Protection of National Minorities was not without controversy. Romanian nationalist and President of the Romanian National Unity Party (PUNR) Gheorghe Funar had criticized the Convention as "a document designed to create concrete conditions for making Transylvania autonomous and later annexing it to Hungary." "PUNR Leader Urges Outlawing, Isolating UDMR," 5 August 1994, FBIS-EEU-94-174 (from Bucharest Radio Romania Network).

[28]Ion Iliescu, "Declara ia domnului Ion Iliescu, Pre edintele Romaniei, cu prilejul intrarii in vigoare a Acordului de asociere a Romaniei la Uniunea European : 1 Feb. 1995, Bucuresti," in *De la Essen la Cannes: Itinerarul Strategiei Romanesti de Integrare European* (Bucharest: Editura Academiei Romane, 1995), 50, my translation.

Minorities was established, which the government consulted on all minority issues, and both Chambers established standing committees on human rights and minority rights. The government made additional efforts to improve the situation of the Roma following the European Commission's Opinion of July 1997, and the Commission's more detailed concerns outlined in the Regular Report of November 1998 and October 1999. An Interministerial Commission for the Romani Community was established in October 1997 to coordinate government policy on the Roma. In August 1998, the new Zeman government specifically explained how it would improve Roma rights in its Policy Statement.[29] The following month, the government established the position of Commissioner for Human Rights and appointed a UN Human Rights Commission expert to the post. The Interministerial Commission from 1997 was expanded in December 1998 to 24 members (including 12 Roma representatives and 12 government representatives). According to the U.S. State Department's 1999 Human Rights Report on the Czech Republic, this Commission "has taken an increasingly active role in resolving disputes."[30] A Council for Human Rights was established in January 1999 to advise the government on human rights and propose appropriate legislation, while a twelve-member Council for Nationalities (including four Roma representatives) was created to advise the Cabinet on minority affairs. The government also proposed establishing a human rights Ombudsman who, "as in most EU Member States," would observe the protection of human rights and propose changes to legislation or initiate court proceedings when necessary.[31] Indeed, Parliament passed legislation in December 1999 to establish this position in 2000. In January 2000, the human rights commissioner unveiled a plan to establish an Office for Ethnic Equality and Integration of Romanies, as part of the government-proposed Plan of Romany Integration.

In Romania, minorities were given special rights of representation in Parliament early on, including fifteen seats reserved in the Chamber of Deputies. In addition, a Council for National

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[29]"Policy Statement of the Government of the Czech Republic," August 1998, Prague, Czech Republic, http://www.vlada.cz/dokumenty/prohlas.eng.htm.

[30]U.S. Department of State, "1999 Country Reports on Human Rights Practices: Czech Republic," Section 4 and 5.

[31]" Policy Statement of the Government of the Czech Republic," August 1998.

Minorities was created as early as April 1993, and since 1996 the coalition government included two ministers from UDMR (the Democratic Union of Hungarians in Romania, the party that represents the Hungarian minority).[32] One Minister from the UDMR party also heads a Department for the Protection of National Minorities.

The new government's decision in 1996 to include the UDMR in its coalition was a significant development, and was prompted in part by concern for Romania's international reputation. While the decision was only made possible by the election of the opposition in November 1996, the EU was likely the key reason, as President Constantinescu indicated: "the presence of the UDMR in the ruling coalition was brought about by the need to show Europe and the Hungarians a positive sign over the rights of minorities in Romania."[33] According to MP and Chairman of the Foreign Affairs Committee Victor Bostinaru, this decision was "good for Romania and [sets] a good example for Europe."[34] Radu Vasile, then Secretary General of PNTCD (the Christian Democratic National Peasant Party, the largest party in the ruling coalition), later Prime Minister, noted that "UDMR's presence in the government was a highly effective political solution, as it has projected a positive image of Romania abroad."[35] European aspirations also may have prevented the UDMR from leaving the coalition, despite often bitter disputes and several threats to leave. As a Romanian newspaper noted, there might be negative consequences for the coalition if the UDMR quit, because this party's presence in the government "can be considered the sole success achieved on the international plane by Romania since the November 1996 elections."[36] The

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[32]Council of Europe, "Overview of Forms of Participation of National Minorities," 29.

[33]UDMR President Belá Markó, on the other hand, rejects the UDMR being depicted as a "showpiece" and contends that the Romanian Democratic Convention-Social Democratic Union (CDR-USD) also needed his party's votes. S.P.A., "Belá Markó Answers President Constantinescu--UDMR is Not a Show Piece," *Adevarul* (Bucharest), 30 Oct. 1998, p. 3, as translated in "UDMR's Markó Rejects Constantinescu's Remarks," FBIS-EEU-98-303, 30 October 1998.

[34]Victor Bo tinaru, Member of Parliament, Chairman of Foreign Affairs Committee (Chamber of Deputies), interview by author, 28 Nov. 1997, Chamber of Deputies; Parliament of Romania, Bucharest.

[35]"PNTCD Official Warns UDMR Against Making 'Further Claim,'" FBIS-EEU-97-353, 19 December 1997 (from Bucharest Rompres).

[36]Bogdan Chirieac, "The Millstone of Extremism," *Adevarul* (Bucharest), 24 June 1998 (internet version), as cited in "US Mediation Sought in Ties With Hungary," FBIS-EEU-98-176, 25 June 1998, emphasis added.

European Union was thus an important factor in the very design of the government, which had major implications for minority rights legislation and protection.

Besides government institutions protecting minority rights in the Czech Republic and Romania, financial and technical assistance through the EU's Phare program also enabled non-governmental organizations (NGOs) to support the protection of minority rights. In the Czech Republic, for example, the Phare program granted over 2.25 million Euro to local NGOs for Roma-related programs.[37] Romanian human rights organizations, such as the Romanian Helsinki Committee, also credit the Phare program as an important source of their funding.[38] These NGOs provide social, cultural, educational, and legal support for minority groups, attempt to improve public awareness, and independently monitor and criticize their government's actions regarding minority rights. The multitude of human rights-related NGOs that have proliferated in CEE candidate states are highly knowledgeable about their governments' international commitments and aspirations and provide an important internal force for change. Thus, indirectly through enabling the work of NGOs, the EU has also brought about change in minority rights in candidate states.

Legislation Affecting Minorities

There have been two minority rights issues in particular in the Czech Republic and Romania that were highly salient to the EU and garnered EU and international criticism, but were highly contested at home. In the Czech Republic, this issue was the citizenship law, a traditional issue of state sovereignty and in this case human rights of the Roma population. In Romania, certain minority rights laws affecting language rights of the Hungarian population, including the Education Law, were among the most

[37]For details, see "Enlargement Briefing: EU Support for Roma Communities in Central and Eastern Europe," European Commission, December 1999.

[38]*Human Rights Developments in Romania: The Activities of the Romanian Helsinki Committee (APADOR-CH): 1996 Report*, 96.

contentious. This analysis will demonstrate if and how the EU has induced changes on such controversial domestic issues beyond the economic realm.

The Roma in the Czech Republic

Initially, the EU did not express significant concern over any aspects of the Czech Republic's human rights and minority rights situation. The Commission acknowledged in its 1997 Opinion on the country's eligibility for commencing accession negotiations that "Slovaks who have chosen to remain in the Czech Republic have encountered no special difficulties in living there." The Opinion recognized, however, that the Roma experienced daily discrimination and were subject to racially motivated attacks. The Roma, moreover, did not have adequate police protection and were discriminated most notably under the citizenship law.[39]

The Citizenship Law

EU and international attention to the plight of the Roma in the Czech Republic was initially raised by the new citizenship law which entered into force when the Czech Republic became an independent country on January 1, 1993.[40] Soon after the citizenship law was adopted, it became apparent that the requirement for Slovaks living on Czech territory to demonstrate a clean police record for the previous five years in order to qualify for Czech citizenship mainly prevented the Roma from becoming citizens. This stipulation was a violation of international law, as it retroactively increased the penalty for a crime (to loss of citizenship) over the penalty that existed at the time the crime was

[39]European Commission, "Agenda 2000: Commission Opinion on the Czech Republic's Application for Membership of the European Union," *Bulletin of the European Union*, supplement 14/97 (Luxembourg: Office for Publications of the European Communities, 1997), 19, 20.

[40]Law on the Acquisition of Citizenship, Law No. 40 of the Czech National Council, adopted 29 Dec. 1992.

committed[41] and also violated the law of state succession. Some people believe the Czech law was specifically designed to exclude many Roma from attaining Czech citizenship.[42]

EU and U.S. officials immediately criticized the law for discriminating against the Roma population. The Czech government, however, countered that the issue was solely a matter of state sovereignty, and adamantly refused to amend it. When opposition Members of Parliament challenged the law in the Czech Constitutional Court in September 1994, the Court also ruled that the law was "in no way discriminatory." In early November 1994, Council of Europe Deputy Secretary General Peter Leuprecht visited Prague, and Czech Vice Premier Jan Kalvoda authorized a Council of Europe commission to review the citizenship law and offer recommendations. According to Leuprecht, the presidents of Estonia and Latvia had similarly asked the Council of Europe to conduct an expert study on their citizenship laws, after which they "sent the laws back to the Parliament, and changes were made."[43] But this response would have been highly unlikely in the Czech Republic. As head of the government's Council for Minorities, Hana Fristenka, explained in December 1994, "the political will to amend this law does not exist. The law simply will not be amended."[44]

President Václav Havel, often looked to as the moral voice of his country, noted that the law "genuinely does correspond to analogous laws in other states. I do not think amending it somehow is at present a burning question."[45] Prime Minister Klaus did not respond to the strong criticism from either

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[41]It violates Art. 11(2) of the Universal Declaration on Human Rights, art. 15(1) of the International Covenant on Civil and Political Rights, and art. 7(1) of the European Convention on Human Rights. Commission on Security and Cooperation in Europe, "Ex Post Facto Problems of the Czech Citizenship Law," September 1996, memorandum, 3.

[42]As noted by Ji ína Šiklová (Chair of Department of Social Work, Charles University) and Marta Miklusaková (coordinator of Roma projects for the United Nations Commission on Human Rights and member of Counseling Center for Citizenship, Czech Helsinki Committee), "Law as an Instrument of Discrimination: Denying Citizenship to the Czech Roma," *East European Constitutional Review* 7, no. 2 (Spring 1998). They add that "though officials now deny it, the Czech government must have been aware of the exclusionary potential of the new law."

[43]Ransall Lyman, "Mixed Reviews: A Human Rights Report on the Czech Republic," *Prague Prognosis Weekly*, 7 Dec. 1994, p.5, as cited in "Treatment of Gypsys Population Questioned," FBIS-EEU-95-005, 7 Dec. 1994.

[44]Ibid.

[45]Ibid.

the Council of Europe or the U.S. Helsinki Commission in 1995.[46] As Czech Deputy Minister of the Interior Martin Fendrych explained to the Helsinki Committee in 1996, "we hold the stipulation of conditions for granting citizenship as an *exclusive* domain of national legislation."[47] Ji í Payne, chairman of the Foreign Affairs Committee in Parliament agreed, stating "I am convinced that [international] critics of the law don't understand exactly how it is in our country."[48]

Despite the clear and vocal opposition to any changes in the citizenship law for three years, the government approved an amendment to the law on 7 February 1996. The Czech Parliament adopted the amendment on 26 April 1996, with the support of 130 of the 136 deputies present. The amendment removed the most criticized element of the law—the "no criminal record" requirement. The restrictions in the government's draft amendment, excluding those having served two or more years in jail, were removed.[49] As a Prague newspaper acknowledged, "the amendment--authored by a member of the ruling coalition Civic Democratic Party (ODS)--indicates a major policy turnaround for the right-wing party."[50]

The amendment to the Czech citizenship law was a direct response to European criticism and pressure and fear of the issue threatening the country's EU membership objective. Ji í Payne, who drafted the amendment (and had earlier strongly opposed any changes to the law), told reporters that it was "designed to bring the citizenship application procedures closer to the European model."[51] A member of the Helsinki Citizens Assembly human rights organization believes "growing international pressure, catalyzed by the sharp reprimand from the Council of Europe in 1994, is almost certainly the

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[46]Emma McClune, "Government Moves to Change 'Racist' Law," *Prague Post*, 20 Feb. 1996, p.1, as cited in "Czech Republic: Amended Citizenship Law Approved," FBIS-EEU-96-053, 20 Feb. 1996.

[47]Letter from Deputy Minister of Interior Martin Fendrych to Helsinki Commission Chairman Christopher H. Smith, June 30, 1996 (unofficial translation provided by the Ministry), emphasis added, as cited in Commission on Security and Cooperation in Europe, "Ex Post Facto Problems of the Czech Citizenship Law," note 18.

[48]McClune, "Government Moves to Change 'Racist' Law,"1.

[49]Some criticism continued because the amendment to the law allowed, but did not require, the Ministry of Interior to waive the criminal record requirement.

[50]McClune, "Government Moves to Change 'Racist' Law,"1.

[51]Ibid.

reason behind the ODS's change of heart."[52] Some Czech scholars give the Council of Europe even greater credit: "Although nongovernmental organizations criticized the law as early as 1994 as retroactively discriminatory toward one minority, the government started a dialogue on the subject only when the Council of Europe handed down its recommendations."[53] Other observers recognized that the Czech government became more responsive when the country's broader goals were at stake: "Only in the last two years, when awareness of the [Roma] problem extended beyond national boundaries and affected the interests of the majority of the population, did the Czech government start to look for a long term policy to address minority problems.[54] Ladislav Body, the only Roma representative in Parliament, expressed his approval with the adopted amendment in general, especially considering the difficult political circumstances. He noted as well that the government's "compromise" on this issue was a result of intense international pressure.[55]

The Council of Europe considered the amendment a positive step, but vowed to keep an eye on future developments.[56] Following further criticism of the application of the citizenship law in the European Commission's 1998 Regular Report and elsewhere, another amendment to the law was adopted in July 1999, making it easier for Slovak citizens residing in the Czech Republic to gain Czech citizenship. The Commission's 1999 Regular Report praised this amendment which it said would have a positive impact on the Roma.

Usti nad Labem

In October 1999, the Roma of the Czech Republic once again drew international attention when the town of Usti nad Labem built a wall dividing the Roma in city apartment buildings on one side of the

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[52]Ibid.
[53]Šiklová and Miklusaková, "Law as an Instrument of Discrimination."
[54]See also František Turnovec, ed., *Czech Republic: Facing Reality* (Prague: CERGE UK, 1998), 15.
[55]Stephanie Baker, "Roma Still Face Uphill Battle in Czech Republic," *RFE/RL*, 30 May 1996, http://www.rferl.org/nca/features/1996/05/F.R.U.96053018292890.html.
[56]Ibid.

street from the non-Roma residents in four adjacent family homes who had complained of noise and garbage.[57] An issue that might have been resolved at the local or national level was once again played out in the international arena, with the Czech government's response following Council of Europe and EU criticism. Usti nad Labem mayor Ladislav Hruska condemned the foreign intervention on the issue: "As mayor, I am not ruled by foreign demands, but consider as the priority the societal demands of the town's citizens who obey the laws of the Czech Republic."[58] Yet in this case the Czech government quickly condemned the wall following the criticism, and even the Czech Parliament voted for its removal.[59]

In immediate response to the building of the wall by the city district, European Commissioner for EU expansion Guenter Verheugen called it a violation of human rights that would hurt the Czech Republic's reputation as a civilized democracy, and said the EU would require the Czech government to quickly resolve this issue.[60] Again, Czech officials took some offense to the interference into their domestic affairs, especially as the federal government played no role in building the wall. As Vaclav Klaus responded to Verheugen's criticism, "we have said it a thousand times that the Czech Republic was building no wall in Usti. I would like the EU gentlemen to listen to this." As Klaus explained, the wall was being built by "one city council" to resolve a complicated issue of human relations, and he "would be very disappointed if someone wanted to make an international affair out of this."[61] The chairwoman of the Czech Senate's human rights committee also called Verheugen's reaction to the wall "exaggerated."[62]

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[57]The town had decided in May 1998 to build the wall, but it was not built until October 1999.

[58]"Usti Nad Labem/Maticni street," http://www.romove.cz/romove/usti-en.html.

[59]Under Czech law, a dispute between the federal and local government can be decided by Parliament.

[60]"Czech Official: Government Must Deal with Romany Wall," Prague CTK, 14 Oct. 1999, FBIS Transcribed Text, FBIS-EEU-1999-1015.

[61]"Czech FM Jan Kavan Talks to Verheugen Over Usti Statement," Prague CTK, 14 Oct. 1999, FBIS-EEU-1999-1014.

[62]'Czech PM Zeman Would Demolish Fence in Maticni," Prague CTK, 14 Oct. 1999, FBIS-EEU-1999-1014.

While Prime Minister Zeman explained to the Chamber of Deputies that the EU was highly critical of the wall, he made an effort to point out that the EU was not the only reason the wall should be removed: "we don't want the wall to disappear [just] because of the European Union, we want that wall to disappear for our sake."[63] With the continued criticism of the wall from the federal government, the Parliament, and the EU, the town eventually dismantled the wall in November 1999 in return for a state subsidy. The case of the wall in Usti again demonstrates the extensive EU influence over highly controversial minority rights issues in candidate states. It is unlikely that the government would have paid so much attention to the wall, or that the town would have removed it so quickly, if it had not been for the international criticism, and the connected threat to the Czech Republic's EU membership.

The Czech citizenship law and the continued attention to Roma rights in the Czech Republic is but one example of how the EU, as well as the Council of Europe, has kept a low priority issue in the public eye, induced the government to reform its legislation despite strong differences of opinion, and encouraged additional steps to reduce discrimination and improve the situation of the Romani minority. Some discrimination against the Roma in the Czech Republic has continued, especially in employment, education, and housing.[64] Nonetheless, the Czech Republic has established a number of institutions and programs for protecting the Roma and attention to the Roma situation has greatly increased as EU attention to the issue has increased. According to former MP (now Foreign Minister) Jan Kavan, the EU also had some impact on racism in the country through its criticism of the citizenship law.[65] Stronger penalties added in 1995 to a law to combat racism (also influenced by the EU) probably also had some impact on the number of racially motivated crimes, which in 1997 fell to almost half of the high in

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[63]"Czech Romany Activists Agree to End Wall Protests," Prague CTK, 12 November 1999, FBIS Transcribed Text, FBIS-EEU-1999-1112.

[64]For a summary of the key problems confronted by the Roma in Central and Eastern Europe, see Melanie H. Ram, "The Roma in Central and Eastern Europe," policy paper, International Research and Exchanges Board (IREX), March 2000. Details on their situation in the Czech Republic can be found in the U.S. State Department's Annual Country Reports on Human Rights Practices, released by the Bureau of Democracy, Human Rights, and Labor.

[65]Jan Kavan, former Member of Parliament, SSD (Czech Social Democratic Party) and SSD Foreign Affairs Spokesperson, interview by author, 14 November 1996, Center for Democracy, Prague, Czech Republic.

1995.[66] Although there remains much to be done, the Czech Republic has taken important steps in improving the situation of the Roma. Despite indignation over foreign interference, the Czech government has eventually succumbed to international criticism on Roma rights issues. The EU membership objective appears to be the major reason for this.

Hungarian minority rights in Romania

Unlike in the Czech Republic, the protection of minority rights in Romania was a considerable concern of the EU from the start, and observers did not expect minority issues to be resolved quickly. In fact, longstanding ethnic conflicts between Romanians and the Hungarian minority had erupted in violence in Tirgu Mures in March 1990. Tensions between the Romanian and Hungarian populations in Romania arose not only on ethnic grounds but also on territorial issues, with nationalist Romanians suggesting that Hungary intends to reannex Transylvania or that the Hungarian minority wishes to secede from Romania.[67] Since Hungarian activists considered President Iliescu "anti-Hungarian," their expectations of improvements in minority rights were heightened after the election of the opposition in November 1996.[68]

NGOs, as well as Members of Parliament, often use the Council of Europe and the European Union as their justification for supporting or opposing specific legislative reforms in Romania. A 1996 appeal by the Romanian Helsinki Committee to reject a legislative proposal modifying the Romanian penal code is typical of this approach:

> First, it would violate the Constitution and consequently undermine the rule of law. On the other hand, as some articles run counter to the provisions of the European Convention on Human Rights,

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[66]Turnovec, ed. *Czech Republic: Facing Reality*, 15 (data from Police, Czech Republic, *MF Dnes*, 14 Nov. 1998).
[67]See, for example, description of letter by Gheorghe Funar, President of the Romanian National Unity Party (PUNR), as cited in "PUNR Leader Urges Outlawing, Isolating UDMR," FBIS-EEU-94-174, 5 Aug. 1994 (from Bucharest Radio Romania Network).
[68]See for example, Belá Markó (UDMR Chairman), interview by Janos Gyarmath, "RMDSZ Never Makes Unprincipled Compromises," *Magyar Nemzet* (Budapest), 21 Nov. 1996, p. 5, as translated in "Romania: Ethnic Hungarians See 'Cause for Hope,'" FBIS-EEU-96-227, 21 Nov. 1996; "Romania: Ethnic Hungarian Official on New Government, EU Integration," FBIS-EEU-96-234, 2 Dec. 1996 (from MTV Television Network, Budapest).

> Romania will be regarded as a country that does not respect its commitments and the international treaties it has signed. Moreover, the modification of the Penal Code *at such a time* and under such circumstances *would clearly undermine Romania's credibility as a country able to take upon itself the responsibility of Euro-Atlantic integration.*[69]

The Hungarian minority also benefited from the availability of international human rights documents to justify or support their objectives. For example, the UDMR, the Hungarian minority party, continually referred to the Council of Europe's Recommendation 1201 in demanding special rights.[70]

The Education Law

The Education Law, according to former Prime Minister Victor Ciorbea, was one of the "burning issues" of Romanian society because of its important implications for minority and language rights.[71] An examination of these rights in Romania exemplifies how the Council of Europe and the European Union influenced the debate and resolution of a controversial domestic issue. Laws affecting the use of minority languages were directly influenced, even "triggered" by European Union requirements, according to Romanian human rights observers.[72] While this was strictly a domestic issue, Romania's EU objective influenced this debate every step along the way.

The Education Law underwent several amendments and lengthy, contentious debates before being finally confirmed. In 1994, many Hungarians strongly criticized the Romanian government and the Education Law because of its restrictions on teaching in the Hungarian language and establishing a Hungarian university. They represented these restrictions as a violation of their rights. As expressed in a

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[69]"Appeal of the Romanian Helsinki Committee regarding the legislative proposal for the modification of the Penal Code," 13 September 1996, the Board of APADOR-CH, emphasis added, quoted in *Human Rights Developments in Romania: The Activities of the Romanian Helsinki Committee (APADOR-CH): 1996 Report*, 9.

[70]As noted by Monica Macovei, Human Rights Lawyer and Consultant, interview by author, 20 October 1997, Bucharest. See also, for example, reference to Recommendation 1201 and various international (especially European) agreements in "Invatamintul pentru minoritatile nationale in Romania," http://www.netsoft.ro/proeuro/document/invmin.htm.

[71]"Romania: Ciorbea Wants 'More Adequate' Ties With Hungarian Ethnics," 18 December 1997, FBIS-EEU-97-352 (from Bucharest Rompres).

Hungarian-language newspaper, "the legislature adopted, and continues to adopt laws that gravely violate fundamental human and civil rights. . . . The law on education takes first place among these measures."[73]

The Romanian Parliament passed a new Education Law on 25 July 1995, just one month after the government submitted its application for membership in the European Union. Not merely the timing, but the presentation of the law reflects the intention to placate any EU criticism. The Romanian Government's Public Information Department produced a glossy pamphlet in English entitled "The New Education Law in Romania: One of the Most Democratic in Europe."[74] In this document, the government sets forth the details of the law, emphasizing its democratic nature and European inspiration:

> [The law] seeks to be modern, to combine the most democratic provisions that exist in similar laws of European nations with the tradition and specific traits of the Romanian school, considering the existing situation in Romania. It is in accordance with all the international documents Romania has signed.[75]

EU criticism of the law was acknowledged in the introduction of the document, but attributed to misinformation and Hungarian bias:

> Before the law was promulgated, the European Parliament, acting on an initiative of Mr. Otto von Habsburg, issued a Resolution on the protection of minority rights and human rights in Romania. Mr. von Habsburg is a well-known staunch supporter of the Hungarian interests and he . . . misinformed [the European MPs] by submitting to them inaccurate data . . . and an old, obsolete education Bill.[76]

In response to the alleged misinformation, the publication intended to provide "a clear and accurate image of this law and of the democratic and humanistic principles underlying it."[77] Government

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[72]Nicolae Stefanescu-Draganesti, President, The League for the Defence of Human Rights (L.A.D.O.), interview by author, 15 Oct. 1997, Bucharest; Ion Iacos, Romanian Helsinki Committee Center for Human Rights, interview by author, 16 Oct. 1997, Bucharest.

[73]Jozsef Gazda, "Viewpoint: Under the Pretext of the Romanian Hungarian Basic Treaty," *Romaniai Magyar* (Bucharest), 2 August 1994, p.3, as translated in "Minority Newspaper on Treaty with Romania," 2 August 1994, FBIS-EEU-94-170.

[74]This was one of only two documents the poorly named Public Information Department had available in 1997.

[75]Government of Romania, Public Information Department, "The New Education Law in Romania: One of the Most Democratic in Europe," 1.

[76]Ibid.

[77]Ibid.

officials proudly cited the Council of Europe's commissioner for minorities, who evaluated the law as "elaborated on Western standards, guaranteeing all ethnic groups the right to have an education in their native language."[78] As the document stated, only the Hungarian minority leaders were not satisfied with this law.[79]

The production of the Education Law pamphlet demonstrates not only the need the government saw to satisfy the EU (perhaps even more so than the Hungarian minority in Romania), but also the deep understanding they had developed of international expectations and European norms. The full text of the Romanian law was included in this pamphlet, juxtaposed with excerpts from European agreements (the Council of Europe Framework Convention on the Protection of National Minorities and the European Charter for Regional or Minority Languages) and even Hungarian legislation. According to the government, the new Education Law was guided by specific European and international legal requirements, including the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and Recommendation 1201/1993 of the Parliamentary Assembly of the Council of Europe.[80]

It is clear that EU approval of the Romanian law was eagerly sought, both to improve EU membership chances and to quell domestic criticism of the law from the Hungarian minority, mutually reinforcing goals. Just as the government defended its domestic legislation in an international arena, the Hungarian minority party (UDMR) similarly carried out its criticism of the law in external fora. For example, UDMR sent students to protest the law at the Council of Europe's Parliamentary Assembly in Strasbourg.[81]

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[78]"Constitution Watch: Romania," 23.
[79]"The New Education Law in Romania."
[80]Ibid., 36.
[81]"Constitution Watch: Romania," *East European Constitutional Review* 4, no. 4 (Fall 1995), 23.

The November 1996 elections marked an important turning point in minority rights in Romania, as the new government appeared much more responsive to Hungarian concerns. Yet, the Hungarian minority continued to criticize the 1995 education law due to its remaining limits on teaching in minority languages, and this law remained their primary concern after elections. At UDMR representative György Tokay's confirmation hearing for the new position of Minister for National Minority Affairs, he was questioned for five hours, mainly about his party's expectations regarding Hungarian education and language issues.[82]

The government revised the minority language provision of the Education Law again in 1997, this time just before the EU was to issue its Opinion on Romania's eligibility for accession negotiations. The amendment gave national minorities the right of education in their mother tongue at all levels from primary to university education and opened the possibility of establishing a Hungarian-language university. The UDMR (which had become part of the government coalition) supported the new Education Law. The opposition parties, however, in particular the Party of Social Democracy (PSDR) and the Romanian National Unity Party (PUNR), strongly opposed the law because it would expand minority rights. Thus, passing the Education Law in Parliament would have been very difficult, as it required two-thirds of the votes, more than the number guaranteed by the ruling coalition.[83] The government submitted the proposed amendment to the Senate Education Commission at the end of June 1997, but then withdrew it and instead issued an emergency ordinance (No. 36) on 10 July 1997 to bypass likely protracted debates in Parliament. Even agreement on the Ordinance required considerable compromise and long negotiations among the coalition parties.[84]

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[82]György Tokay, "Well-Intentioned Minority Protection," interview by Istvan Zsehranszky, *Romaniai Magyar* (Bucharest), 16 December 1996, p.1, 3, as translated in "Romania: New Minister on Protection of Minorities," 16 December 1996, FBIS-EEU-97-013.

[83]Catalin Dimofte, "Government Ordinances Galore," *In Review Romania* (July/Aug. 1997): 11.

[84]György Tokay, interview by Gina Artenie, "How Many Romanians Know What 'Stolnic' Means in Romanian?" *Cotidianul* (Bucharest), 6 October 1997, p. 1, as translated in "UDMR Official Views Disputed Law Amendment," 9 October 1997, FBIS-EEU-97-282.

The government's Emergency Ordinance on local administration (No. 22, amending Law No. 69) approved on May 26, 1997, also was a major decision on minority language rights. It declared the right to use minority languages to conduct business in the public institutions of communities where at least 20% of the population belongs to this minority. This law had also been changed to harmonize it with the Council of Europe's European Charter for Regional or Minority Languages, the European Charter of Local Self-Government, and Recommendation 1201.[85] The progressive changes in the law were made during a three-day Council of Europe Parliamentary Assembly meeting in Bucharest which coincided with a visit of Hungary's President. This took place less than two months before the European Commission was to issue its Opinion.

The Romanian government received positive reviews from abroad with the adoption of these two Emergency Ordinances in 1997. The Hungarian Minister of Education and Culture, for example, congratulated his Romanian counterpart and the Romanian government for "the successes they have achieved in mother-tongue education."[86] Otto von Habsburg, the European MP cited by the former government as critical of the 1995 Education Law also expressed his approval of the changes: "Your new cabinet has made a very good impression, especially through the way it treats minorities."[87] The Romanian government asked the Council of Europe to monitor the new legislation and assist with its implementation.[88] The European Commission's Opinion also recognized the recent reforms.

The Emergency Ordinances, however, remained "bitterly contested" by Romania's opposition parties, and the government could not prevent subsequent debates in Parliament to amend them.[89] By September 1997, the Senate Education Commission had reopened discussion of Art. 120 of the

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[85]"Romania: Mother Tongue to Be Used in Local Administration," FBIS-EEU-97-146, 26 May 1997 (from Rompres, Bucharest). See "Recommendation 1201," Art. 7, par. 3.

[86]"Hungary: Education Minister Sends Note to Romanian Counterpart," FBIS-EEU-97-192, 11 July 1997, (from Duna TV, Budapest, 10 July 1997).

[87]"'Your President is an Excellent Man,' Says Otto Van Habsburg," *Romania Libera*, 8 Sept. 1997, No.16, p.2.

[88]Council of Europe, "Assistance with the Development and Consolidation of Democratic Security: Cooperation and Assistance with the Countries of Central and Eastern Europe, Programme for 1997," n.d., SG/INF(97)2, 73.

[89]"PRM Opposes Education Law Changes as Excessive," FBIS-EEU-97-196, 15 July 1997 (from Rompres).

Education Law, and UDMR representatives walked out in protest against efforts to overturn the improvements brought about by the emergency ordinance. On 16 December 1997, over strong objections of President Constantinescu, the Romanian Senate voted 105 to 19 for important limitations to the government decree amending the Education Law, including ruling out the establishment of a minority-language university or faculty. By the end of 1998, a compromise seemed likely after a threat by UDMR to leave the government was not carried out. In 1999, the Education Law was again amended to reflect the original Ordinance, establishing minorities' right to education in their mother tongue at all levels of education as well as the possibility to establish state universities.

Romania's September 1997 response to the European Commission's Opinion lists among the country's achievements in the reform of public administration "the establishment, *conforming to European norms*, of the law on national minorities on the use of their language in communication with the administration, in the regions where there are more than 20% of citizens from the respective minority."[90] This conforms with Recommendation 1201 of the Council of Europe which states that "in regions inhabited by a substantial number of persons belonging to a national minority, they are entitled to use their mother tongue in their relations with administrative authorities" (Art. 7, par. 3).

Thus, there was an attempt in Romania over many years and several government administrations to use the Council of Europe and international human rights documents as models and to create an education law that would be approved by the Council of Europe and the European Union. After the 1996 elections, the new government made strong overtures towards the EU (and the Hungarian minority) by inviting the UDMR into the government, and it received high praise from abroad for doing so. The government made efforts to resolve the education law issue in such a way as to retain international approval, which required it to issue emergency ordinances to ensure the law would be adopted. When parliamentary debate on amending the emergency ordinance began, and the UDMR several times

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[90]Government of Romania, "Opinion du Gouvernement de la Roumanie Concernant L'Agenda 2000," Sept. 1997, 6, my translation, emphasis added.

threatened to leave the government coalition, government officials recognized that Romania's international reputation and EU ambitions would be severely hurt if they did not achieve a compromise with UDMR. Domestic debates on reform of legislation on wholly domestic issues were carried out by all parties in an international arena, as well as a domestic one; the government, minority groups, and all parties saw the need to convince the EU that their particular stance on these issues was the correct one. Thus, the European Union, as adviser, critic, source of norms, and incentive, has affected the way in which the Romanian government has dealt with the most difficult issues in minority relations.

Limits to EU Influence

In the debates over some of the most controversial post-communist legal reforms in both the Czech Republic and Romania, the EU influenced the political debates and policies, as demonstrated by the above cases. However, there are certain limits to the EU's influence. First, NGOs and minority rights representatives themselves play an important role. The more activist minority groups are more successful at using the EU membership objective as a tool to attain greater rights. The European Commission's criticism of the Czech Republic's treatment of the Roma was cautious at first, especially due to insufficient information on their actual situation, or even their numbers.[91] The Roma themselves, moreover, were little organized or politically active, so they were slow to advance this issue to their government's or the EU's attention. As Šiklová and Miklusaková note, the Czech government did not even know if the Roma would prefer government efforts to strengthen their cultural identity or to better integrate or assimilate them into the rest of society.[92]

Second, the mixed record of minority rights protection in EU Member States and the lack of set standards on how to address a number of practical minority issues has made reform more difficult.

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[91]As the Opinion states, "a better knowledge of the social situation of the Roma (level of unemployment, health indicators, level of education, etc.) would make it easier to [make] the appropriate decisions." European Commission, "Opinion on the Czech Republic," 19.

[92]Šiklová and Miklusaková, "Law as an Instrument of Discrimination."

These issues include minority language education, group rights versus individual rights, and autonomy versus integration. Activists and even government officials who looked to the West to provide easy answers to tough issues were often frustrated. Both those who support minority rights and those who oppose certain provisions looked for and found European laws to justify their particular stance.

Third, effects are limited by the EU's own degree of interest and pressure. As the EU did not consider the Roma a threat to regional stability, addressing their situation did not at first appear to be an urgent matter. According to a representative of the European Commission Delegation in the Czech Republic, the official EU view at the end of 1996 was that there was no problem with the Czech Citizenship Law and that the human rights situation in the Czech Republic was sufficient for membership.[93] In the European Commission's Opinion of July 1997, criticism of Czech treatment of the Roma is also not particularly strong. After citing some types of discrimination, the Opinion recommends merely that the "already substantial efforts of the Czech authorities in the cultural sphere . . . must be stepped up in the future."[94] The report concludes that "there are no major problems over respect for fundamental rights. . . The Czech Republic presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights, and respect for and protection of minorities."[95] Moreover, "the Czech Republic has introduced various internal rules designed to ensure respect for human rights and the rights of minorities. Such protection is also afforded by various international conventions."[96]

Little attention was paid to the Roma issue until many Roma began seeking asylum in Western Europe, and EU Member States began to recognize that indeed the Roma pose a potential threat to cross-border stability and to their own countries in a united Europe if their rights are not protected at home. The European Commission's annual Regular Reports have become noticeably more detailed and

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[93]Legal Expert, Delegation of the European Commission, interview by author, 25 Nov. 1996, Delegation of the European Commission, Prague, Czech Republic.
[94]European Commission, "Opinion on the Czech Republic," 19-20.
[95]Ibid., 20.

informed each year about the problems the Roma confront and have now made specific improvements in Romani rights a more explicit condition of the Czech Republic's EU membership. It is notable that while the controversy of the Czech citizenship law took years to be reformed in a way that all sides accepted, the Usti nad Labem situation in 1999 was resolved in only a year and the wall removed little more than a month after it was built. EU attention to the Roma has been heightened in recent years, and therefore so has that of the Czech government. As the Czech Republic fulfills other conditions for membership and the date of accession appears closer, it is possible that the EU may further increase its attention to minority rights. As the head of the European Commission delegation in the Czech Republic stated in July 2000, "the protection of minorities will soon be one of the most important conditions for the admission of candidate countries."[97]

EU attention to the Hungarian minority in Romania, on the other hand, was initially quite strong. Romania was originally one of the countries of greatest concern to the international community regarding minority rights, and improvement in the Hungarian minority rights situation was one of the first explicit requirements for Council of Europe and EU membership for Romania. This resulted in quite dramatic gestures in Romania, where outside observers expected little advancement and feared an outbreak of violence. The signing of the friendship treaty with Hungary in 1996 under the neo-communist Iliescu government and the inclusion of the Hungarian minority party in the government coalition in 1997 were major accomplishments spurred in large part by the EU incentive (as well as NATO in the case of the Treaty). For all of Romania's transition difficulties, improvement in the country's human rights situation from the most dismal level in 1989 has been steady and dramatic, and relations with ethnic Hungarians in Romania have improved considerably. In general, Romanian human rights observers also agree that the extent of actions of the Romanian government on human rights issues

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[96]Ibid., 17.

[97]"Czech Republic: Protection of minority rights condition for EU entry—EC envoy," Prague CTK, 28 July 2000, FBIS-EEU-2000-0729.

has tended to depend on the human rights agenda of the European Union; the issues the government most readily addressed were those that the EU considered especially important.[98]

Fourth, the objective of membership must remain attainable in order to provide any real incentive for reform. Because the EU has such a strong influence over the minority rights agenda in candidate states, it is important that the "second wave" countries such as Romania continue to see the benefits of continually making compromises and sacrifices. As observers have noted, some difficulties arose in Romania's reforms around the middle of 1997:

> In the first half of 1997, the reform--including the issue of minorities--started with a great impetus. Later, however, a brake was put on it, and it seemed that the reforms have even been reversed in some areas. From this point of view, 1998 was much more difficult.[99]

While accelerated reforms at the start of 1997 were certainly in part a result of the new government elected at the end of 1996, the EU may hold some responsibility for the later slowdown as well. While preparation for the EU's July 1997 Opinion provided a major impetus for reforms at the beginning of the year, the rejection by both the EU and NATO in the middle and end of 1997 was a source of considerable disillusionment in the country. Nationalist parties used the opportunity to boost their cause, as all of the country's sacrifices for its international aspirations had borne little fruit. According to public opinion polls, nationalist parties gained considerable popularity in Romania only in 1998,[100] and the country came close to electing an ultra-nationalist President in the latest elections. With the reelection of Iliescu as President in 2000, some policy changes may be expected, but as long as EU membership remains the priority objective of the government (which it has so far), the domestic policy can not sway too far on issues critical to EU membership. If the European integration process were to slow down, however, this would have a tremendous negative impact on the remaining candidate states.

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[98]As noted, for example, by Iacos, interview by author, 16 Oct. 1997.

[99]Belá Markó, interview by Tibor Bogdan, "Worrying Nationalism: Belá Markó Would Again Vote for Membership in the Romanian Government Coalition," *Magyar Hirlap* (Budapest, internet version), 31 Dec. 1998, as translated in "Romania: UDMR Chairman Markó Views 1998, 'Rise' of Nationalism," FBIS-EEU-98-365, 31 Dec. 1998.

[100]Ibid.

Fifth, in both the Czech Republic and Romania, the resolution of minority rights issues to appease Western critics also advanced the so-called democratic deficit. New rights were granted and protected, as dictated from abroad, with the effect of bypassing public opinion, moving power from the local to the federal level (antithetical to the EU's subsidiarity principle) and from the Parliament to the President. This can be seen in Romania's case by the use of Emergency Ordinances to comply with EU requirements and in the Czech case in Usti nad Labem, although the decisions made by the central authorities supported the EU's requirements. There remains a danger of an anti-EU backlash if the EU imposes too many unpopular reforms on the candidate countries, but so far such a reaction has been surprisingly limited.

Finally, changing racist attitudes among the general populations in post-communist countries is beyond the short-term power of the EU. Anti-Roma prejudice is deeply ingrained in much of the population of the Czech Republic (and elsewhere), and Hungarian-Romanian divisions have a long history. Education, more experience with integration and equality under the law, and at least a generation will likely be necessary before discrimination will greatly diminish. In the case of the Roma, improvements in their own education and employment opportunities will also change perceptions among the general population. Increasing knowledge and understanding of Western norms and expectations on minority rights in these countries, however, is already beginning to change popular attitudes.

Conclusion

Overall, the European Union has had a number of significant direct and indirect effects on the protection of minority rights in both the Czech Republic and Romania, as evidenced by the above cases. First, new protections and international obligations were added to the constitutions of both countries, ceding a part of their sovereignty to international law. Second, Council of Europe membership conditions required certain legislative reforms and the signing of various international treaties, including the European Convention on Human Rights and Fundamental Freedoms (with the rights of individual

petition and compulsory jurisdiction) and the framework Convention for the Protection of National Minorities. These agreements on minority rights added new obligations for their governments and gave their citizens new means of protecting their rights outside of the national arena. They also served as important sources of European norms on minority rights and a basis for domestic legislation. Moreover, they gave NGOs and minority rights activists an important and effective tool to promote changes in domestic legislation. Third, the Czech and Romanian governments established institutions to protect minority rights in response to EU criticism or expectations. Fourth, the EU enabled the activities of various NGOs in the field of minority rights. Finally, as evidenced by the citizenship and language laws, domestic legislation has been revised in response to international or EU criticism, despite domestic opposition.

In the field of human rights, in the areas in which the European Union has expressed interest and concern, the Czech and Romanian governments have made significant efforts to conform to EU expectations, despite at times massive opposition. While negotiations on these issues often took years, both governments eventually made major controversial decisions intended to boost the country's chances of joining the EU. Importantly, the EU criticism encouraged domestic discussion and Parliamentary debate on issues that might have otherwise been ignored or delayed even longer. The governments' decisions were often made directly following EU criticism or prior to the submission of annual EU evaluations. Thus, in both the Czech Republic and Romania, the European Union influenced the agenda, the domestic debate, and the timing and content of legislation on issues central to consolidating their new democracies and maintaining stability. The EU impact has been demonstrated even years before any guarantee of future EU membership. Similar responses to EU membership requirements and expectations are likely to be found in all of the candidate countries.