Fordham Law School
The Fordham Law School Institutional Repository

Crowley Mission Reports | Leitner Center for International Law and Justice

1-1-2005

The Children Left Behind: Roma Access to Education in Contemporary Romania

Aram A. Schvey
2004-2005 Fellow, Crowley Program in International Human Rights

Martin S. Flaherty
Leitner Family Professor of International Human Rights, Fordham Law School

Tracy E. Higgins
Leitner Family Professor of International Human Rights, Fordham Law School

Follow this and additional works at: http://ir.lawnet.fordham.edu/crowley_reports

Part of the Human Rights Law Commons

Recommended Citation
Schvey, Aram A.; Flaherty, Martin S.; and Higgins, Tracy E., "The Children Left Behind: Roma Access to Education in Contemporary Romania" (2005). *Crowley Mission Reports.* Book 3.
http://ir.lawnet.fordham.edu/crowley_reports/3

This Book is brought to you for free and open access by the Leitner Center for International Law and Justice at The Fordham Law School Institutional Repository. It has been accepted for inclusion in Crowley Mission Reports by an authorized administrator of The Fordham Law School Institutional Repository. For more information, please contact tmelnick@law.fordham.edu.

The Children Left Behind

Roma Access to Education in Contemporary Romania

Leitner Center
for International Law and Justice
AT FORDHAM LAW SCHOOL, NEW YORK CITY

The Children Left Behind

Roma Access to Education in Contemporary Romania

Leitner Center
for International Law and Justice

AT FORDHAM LAW SCHOOL, NEW YORK CITY

Aram A. Schvey

2004-2005 Fellow,
Crowley Program in
International Human Rights

J.D., Georgetown University
Law Center

M.A., Johns Hopkins University
School of Advanced
International Studies

A.B., Harvard University

Martin S. Flaherty

Leitner Family Professor of
International Human Rights,
Fordham Law School

Co-Director, Leitner Center for
International Law and Justice

J.D., Columbia Law School

M.A., M.Phil, Yale University

B.A., Princeton University

Tracy E. Higgins

Leitner Family Professor of
International Human Rights,
Fordham Law School

Co-Director, Leitner Center for
International Law and Justice

J.D., Harvard Law School

B.A., Princeton University

Introduction 2
Acknowledgements 4
Recommendations 5
Education Conditions for Roma Children: An Overview 7
Background 10

Part I Separate and Unequal: Roma Education in Romania 12
Evidence of Educational Inequality in Romania 12
The Romanian Education System 12
Forms of Discrimination 13
Governmental Response and Legal Framework 18
Domestic Legal Framework 21
Romanian Constitution 21
Human Rights Bodies 25

Part II Romania's Obligations Under International Law 26
Origins of the Right to Education 26
The Right to Education in International Law 28
The Universal Declaration of Human Rights 28
Declaration of the Rights of the Child 28
The International Covenant on Economic, Social, and Cultural Rights 29
Convention on the Rights of the Child 33
The Prohibition on Discrimination Under International Law 35
International Covenant on Civil and Political Rights 35
International Convention on the Elimination of All Forms of Racial Discrimination 36
Convention on the Elimination of All Forms of Discrimination Against Women 37
Convention Against Discrimination in Education 38

Part III Romania's Obligations Under European Law 39
Council of Europe Obligations: The Substantive Right to Education 39
Convention for the Protection of Human Rights and Fundamental Freedoms 39
European Social Charter 41
European Union Obligations 41
The Substantive Right to Education Under European Union Law 42
The Prohibition on Discrimination Under Council of Europe Law 44
The Prohibition on Discrimination Under European Union Law 44
Conclusion 46

ANNEX I: A Note on Terminology 48
ANNEX II: History of the Romanian Roma 49

Introduction

Braşov prides itself as the "favourite tourist destination in Romania."[1] A picturesque city nestled in Transylvania, Braşov is famous for its citadel, medieval fortifications, numerous churches, and nearby resorts. In addition, Braşov is home to the first school built in Romania, dating back to 1495.[2] The school is a beautiful two-story brick and plaster building with a shingled roof. The museum's docent proudly describes Romania's rich legacy of public education stretching back hundreds of years to the visiting tourists.

Only a few minutes from the scenic piazzas and manicured parks of downtown Braşov, however, lies an entirely different world—that of Zizin. Instead of cobblestone streets, people walk on washed-out dirt paths, their feet sinking six inches into the mud with every step. Instead of elegant stone mansions, one sees an enormous cluster of hastily-built wooden shacks. Instead of plaster walls and tiled roofs, sheets of plywood and corrugated aluminum fend off the winter chill. There is no electricity and no heating. Unemployment is nearly 100 percent.[3]

The grade school in this community could not be more of a contrast to the historic schoolhouse in Braşov. The building is unpainted dull, grey concrete. Few decorations are found inside, and in February the school is so cold that the children and teachers are wearing coats and hats indoors and are still shivering. One can see the warm vapors of the children's breath escaping their mouths as they answer the teacher's questions. Outside lies the school's outhouse—a wooden shed containing a long bench with five circular openings. Not surprisingly, the school children here are not ethnic Romanians but Roma.[4]

Sadly, the contrast between the model schoolhouse in Braşov and the Roma schoolhouse in Zizin is hardly an isolated occurrence. Instead, Roma children are nearly always educated in more poorly resourced schools than non-Roma children; they are nearly always educated by less-qualified teachers; and they are often treated differently—and worse—than non-Roma children by their principals, teachers, and classmates. While non-Roma children move ahead through Romania's education system, Roma children are too often left behind.

This Report begins with a synopsis of the problem. It then examines the roots of the plight of the Roma in general and of Roma children in particular. The Report then outlines the particular findings of the Mission and sets forth the relevant domestic, international, and European law. It concludes with several recommendations for improving Roma education in Romania.

This Report concludes a full-year project conducted by the Joseph R. Crowley Program in International Human Rights at the Fordham University School of Law. The 2004-2005 Crowley Fellow, Aram Schvey, taught a human-rights seminar on Roma Access to Education in Contemporary Romania. The course culminated in a two-week-long human-rights fact-finding mission to Romania. During the course of the mission, the students and faculty members traveled hundreds of miles across Romania and spoke to dozens of Roma and non-Roma students and parents, as well as teachers, principals, human rights advocates, government officials, and members of international organizations, such as UNICEF and the World Bank. The delegation was led by Aram Schvey and Professors Martin Flaherty and Tracy Higgins, and included Dean Nitza Escalera and the seven second-year law students enrolled in the seminar: Caroline Conway, Michael Eskenazi, JoAnn Kamuf, Gowri Krishna, Michelle Pallak, Katy Schuman, and Nakeeb Siddique.[5]

1 *See* City of Braşov Website, *available at* http://www.brasov.ro/tourism.php3; *see also* Instant Braşov, *available at* http://www.inyourpocket.com (noting that Braşov attracts more tourists than any other city in Romania).

2 *See* City of Braşov Website, *supra* note 1.

3 *See* Interview with Daniel Hristea, Executive Director, FAST Charity, Braşov, Feb. 25, 2005. Hristea indicated that after speaking with members of 140 *families*, he found only seven *individuals* who were employed. Some of the students attending the Zizin school are ethnic Hungarians. However, Hristea stated that most of the children are Roma. Moreover, the Roma children's classes are scheduled at a different time than the Hungarian children, meaning that the Roma children attend the school only with other Roma and have little interaction with the small number of non-Roma students.

4 The term "ethnic Romanians" is used to describe Romanians of the dominant ethnicity in Romania as opposed to ethnic minorities such as the Roma, Hungarians, or Ukrainians. Of course, the Roma and other minorities are legally citizens of Romania and therefore Romanian.

5 The students' comprehensive background papers, participation during the mission, and diligent retyping of notes were of great assistance in writing this Report.

Throughout the Romanian education system, Roma children are second, if not third-class citizens. Up to this point, the Romanian government has only taken partial steps to ensure that Roma parents send their children to school. Although *de jure* segregation is formally outlawed in Romania, a vast *de facto* system of segregation remains. Roma children often attend school in so-called "ghetto schools" where their classmates are overwhelmingly Roma.

In May 2005, the Crowley teams traveled to several Romanian cities, towns and unofficial Roma settlements. Locations visited include: Bucharest, Barbalesti, Craiova, Rimnea Vâlcea, Sibiu, Braşov, Sacele, Tarlungeni, Budila, Plenita, Petrosani, Iscroni, Valea Jiului, Hunedoara, Orăstie, Sebeş, Cluj-Napoca, Cojocna, Cihai, Bacău, Buhusi, Colonia Bistritei, Lugoj, Sângeorgiu de Mureş, Târgu Mures, Bahnea, Vaslui, Iaşi, Târgu Frumos, and Crucea.

Acknowledgements

The Crowley Program would like to thank a number of individuals and organizations for their generous assistance, without which the mission and this Report would not have been possible. First, we would like to thank Maria Gheorghiu of Asociaţia Ovidiu Rom ("Ovidiu Rom"), who accompanied Aram Schvey during his preliminary visit to Romania in February 2005 and was invaluable in setting up interviews with both governmental and non-governmental organizations. We would also like to thank Ovidiu Rom founder Leslie Hawke for her time, energy, and assistance. Second, we wish to thank Dezideriu Gergely of Romani Criss–Roma Center for Social Intervention and Studies ("Romani Criss") for his time and assistance in teaching us about the Romanian legal system, as well as for his suggestions about the mission. We also thank Costel Bercus, Magda Matache and the other members of Romani Criss for their invaluable assistance throughout the mission. A special thanks is also due to Senior District Judge Jack B. Weinstein, Eastern District of New York, who took time from his busy schedule to guest-teach a seminar about racial segregation in the United States and discuss his experiences with us. We would also like to thank officials at the Ministry of Education and Research, including State Secretary József Kötõ, Gheorghe Sarau, and Mihaela Zatreanu, for their assistance, as well as Eugen Crai at UNICEF. We would like to thank visiting Fulbright Professor Eleanor Roemer for organizing a conference on Promoting Human Rights for the Roma in Bucharest, as well as Romanita Iordache for generously sharing her contacts with the Crowley mission team.

Our gratitude is also extended to Florin Moisa and the Centrul de Resurse pentru Comunitatile de Romi (Resource Center for Roma Communities). He generously supplied a number of photos used in this report.

We would also like to thank our wonderful translators, Cezara David, Marian Mandache, and Marinel Marin, for tirelessly translating during countless hours of interviews, as well as for answering our numerous questions about Romanian and Roma life and culture. We also thank our drivers who tirelessly drove for hours at a time along roads that were less than optimal, as well as Michael Twum in Finance for processing our mission expenditures and Liliana Morales at Omega Travel for arranging our travel plans.

We would also like to thank the numerous teachers, principals, and members of governmental, non-governmental, and international organizations for taking the time to speak to us about Roma access to education in Romania. Their thoughts, insights, observations, feelings, and stories were invaluable in preparing this Report. Finally, and above all, we would like to thank the numerous Roma children who spoke to us frankly and openly about their experiences. It is their story we wish to tell, and their plight we wish to expose.

Common use of existing school premises and facilities as among Roma and non-Roma should be guaranteed.

Schools should work to educate non-Roma parents to combat misconceptions and racist attitudes toward the Roma and Roma children.

Schools should work to discourage the practice of child marriage, both through education of students and outreach to parents.

Recommendations

A. General

1. Romania merits commendation for having signed and ratified relevant international and European instruments guaranteeing a right to education and prohibiting racial discrimination. The government must nonetheless undertake aggressive steps to implement these obligations in a meaningful fashion.
2. The Ministry of Education and Research "Notification" on segregation issued April 20, 2004, should be promulgated as a legally binding Order. It should be disseminated widely and effectively to education officials, school inspectorates, principals, and parents.
3. More Roma teachers should be trained and hired both in general and for the purpose of teaching general classes on Roma history and culture as well as on the Romani language.
4. School inspectorates should train and employ Roma as school mediators.
5. Teachers should be trained in inclusive education to ensure an educational climate suitable for a multiethnic environment.
6. More remedial classes should be offered for children with learning difficulties.
7. Parents should be informed the benefits of inclusive education, to the purpose of discouraging parents who insist that their children be placed in segregated classes.

B. Segregated Schools

1. Common use of existing school premises and facilities as among Roma and non-Roma should be guaranteed.
2. The practice of sending Roma children to more distant segregated schools where schools with non-Roma majorities are closer should cease.
3. Provision should be made for transportation for Roma children to schools with a different ethnic majority, particularly for children from residentially segregated communities.
4. School authorities should facilitate students' transfer where balancing the Roma to non-Roma students ratio is required in a school.
5. Teachers should not be assigned to schools solely on the basis of preference and teacher examinations. An equitable proportion of high-qualified teachers should be insured at predominantly Roma schools.

C. Mixed Schools

1. *De facto* segregation by class or group in mixed schools should be acknowledged and remedied.
2. Conversely, mixed student classes should be established at all levels.
3. Schools should work to educate non-Roma parents to combat misconceptions and racist attitudes toward the Roma and Roma children.
4. Local schools should end the practice of assigning late-registering children to lower level classes, a procedure that works to penalize Roma children.
5. Students, especially Roma, who have not had the benefit of kindergarten should receive remedial instruction rather than be automatically assigned to lower level classes.
6. Mixed schools should institute programs that promote understanding of Roma history and culture, including through the curriculum.
7. School should develop outreach programs to inform Roma communities about the quality of education in mixed schools. They should also involve Roma parents in school decisions through regular visits to Roma communities.

D. Gender

1. Schools should work to discourage the practice of child marriage, both through education of students and outreach to parents.
2. Girls who do marry should be encouraged to stay in school. Efforts should be made to educate parents and spouses about the benefits of education.
3. School and government officials should engage in outreach with Roma parents to discourage the practice of arranged marriages as a basis for taking girls out of school.

E. Special Needs Education

1. The Ministry of Education and Research should compile accurate statistics on the proportion of Roma children in special needs schools or classes relative to the relevant local population.
2. Psychology examinations and examiners should control for socio-economic and cultural factors in testing Roma children.

F. Institutional and Legal Reform

1. Governmental Ordinance 137/2000 ("Ordinance 137") on the Prevention and Punishment of All Forms of Discrimination, while a significant step towards addressing discrimination, needs to be amended in several regards:
   a. The law should be supplemented with an explicit definition of indirect discrimination.
   b. The law should also sanction instruction to discrimination.
   c. Ordinance 137 should further provide that harassment is a form of discrimination.
   d. The law should provide for a shifting of the burden of proof once a *prima facie* case of discrimination has been established.
   e. It should go further in permitting non-government organizations ("NGOs") to represent victims of discrimination.
2. The National Council for Combating Discrimination ("NCCD") should be given greater authority to fulfill its mission and not be used as an obstacle for private plaintiffs.
   a. The NCCD should be rendered more independent of the government by placing it under the supervision of Parliament.
   b. The law should be clarified to allow plaintiffs alleging discrimination to go to court directly rather than first having to go through the NCCD.
   c. The fines that the NCCD is permitted to issue should be substantially increased from the current ceiling of $US500.
   d. The budget of the NCCD should be increased beyond the current $US650,000.
3. The Public Advocate, which has responsibility of investigating discrimination by public entities, should be given additional authority in several respects:
   a. The Public Advocate should be able to initiate investigations *sua sponte*.
   b. The office should also be able to issue sanctions against those agencies found to discriminate, rather than merely request that they cease and desist.

Education Conditions for Roma Children: An Overview

The Roma, historically known as Gypsies,[6] constitute the largest and most marginalized ethnic group in Europe.[7] While estimates of the number of Roma vary widely, most experts agree that 7 to 9 million Roma live in Europe in virtually every country from Spain to Romania[8]—representing a population larger than the populations of Iceland, Luxembourg, Slovenia, Estonia, Malta, Liechtenstein, Cyprus, and Ireland combined.[9] Despite their numbers, however, the Roma have remained a disenfranchised group that has been systematically discriminated against since their arrival in Europe from India during the Middle Ages.[10] Throughout Europe, Roma are disproportionately poorer, less healthy, and less educated than any other group.[11]

Romania is home to the largest group of Roma in Europe, estimated to be between 500,000 and 2.5 million.[12] A figure of slightly over 1 million is considered reliable by many experts,[13] corresponding to nearly 5 percent of the population.[14] The vast majority of Roma live "well below the standards of civilisation common to the rural or urban locality in which they reside."[15] Eighty percent of Romanian Roma are unemployed, and of those who are employed, the majority are unskilled.[16] By comparison, the national unemployment rate is between 6 and 7 percent.[17] Four in every five Romanian Roma live below the poverty line, compared to a national poverty rate of less than one-third.[18] Nearly two-thirds of Roma live below subsistence level, compared to less than one in six for the population as a whole.[19] In short, "Roma are the most prominent poverty risk group in many of the countries of Central and Eastern Europe. They are poorer than other groups, more likely to fall into poverty, and more likely to remain poor."[20]

According to the World Bank, the roots of Roma poverty are numerous: a legacy of governmental and private discrimination going back hundreds of years and continuing to the present, a lack of access to credit or capital, an over-dependence on welfare, a lack of documentation to prove identity or ownership of property, and an almost utter lack of access to social services, are all major factors.[21] No factor, however, is as critical as the Roma education gap.[22] The most comprehensive study of Romanian Roma revealed that in 1992, roughly one-quarter of Roma had no education whatsoever, only 3.9 percent had completed secondary school, and only 0.7 percent

6 Whether the word, "Gypsy," remains an appropriate term to refer to the Roma is a topic of considerable debate within Romania and within the Roma community. A discussion of the terms, "Roma" and "Gypsy," appears in Annex I, *infra*.
7 *See Gypsies Are 'Europe's Most Hated'*, (BBC News broadcast Apr. 26, 2005), *available at* http://news.bbc.co.uk/1/hi/uk/4486245.stm (last visited Aug. 5, 2006).
8 Dena Ringold et al., Roma in an Expanding Europe: Breaking the Poverty Cycle xiii (2005).
9 CIA World Factbook, *available at* http://www.cia.gov/cia/publications/factbook.
10 Viorel Achim, The Roma in Romanian History 7-26 (Richard Davies trans., Central European Univ. Press 2004)(1998).
11 *See, e.g.,* Ringold, *supra* note 8, at 2.
12 *See* Save the Children, Denied a Future?: The Right to Education of Roma/Gypsy & Traveller Children in Europe 300 (2001), *available at* http://www.asylumsupport.info/publications/savethechildren/denied/four.pdf; *see also* Ringold, *supra* note 8, at 2. The enormous range in estimates is due to difficulties in having Roma self-identify (hardly surprising given the legacy of discrimination they have endured) and in accurately surveying the Roma, who sometimes live in illegal settlements and have no identity papers.
13 *See* Save the Children, Denied a Future?, *supra* note 12, at 300; *see also* Achim, *supra* note 10, at 203 (noting that a comprehensive 1992 study estimated the number of Romanian Roma at 819,446 and 1,000,000). Roma rights non-governmental organizations tend to claim larger numbers. *See* European Roma Rights Center, Stigmata: Segregated Schooling of Roma in Central and Eastern Europe 28 (2004) (estimating the number of Romanian Roma as 1.8 to 2.5 million). The most recent Romanian census, conducted in 1992, puts the estimate of Roma at roughly 400,000 or 1.7 percent of the population. *See* Romani Criss, Respecting Human Rights in Romania: Roma Citizens and the State of Law 18 (2004).
14 *See* CIA World Factbook, *supra* note 9.
15 Achim, *supra* note 10, at 205.
16 *See id.* at 203.
17 *See* CIA World Factbook, *supra* note 9.
18 Save the Children, Denied a Future?, *supra* note 12, at 300.
19 *See* Achim, *supra* note 10, at 205.
20 Ringold, *supra* note 8, at 3.
21 *See, e.g., id.* at 4.
22 *See* Dena Ringold, *Education of the Roma in Central and Eastern Europe: Trends and Challenges, in* The Roma Education Resource Book 25 (2001).

had participated in post-secondary education.[23] While the 1989 revolution that toppled the regime of Nicolae Ceauçescu brought freedom from Communist oppression to Romania, Roma educational achievement has declined during the past fifteen years; nearly half of Roma children aged eight have not attended school or have interrupted their studies.[24] The failure of Romania to educate its Roma population stands in marked contrast to its success in educating the rest of the population: Romania's basic gross enrollment rate for children of compulsory school age rose from 93.6 percent in 1989 to 97.0 percent in 1999.[25] While education for non-Roma in Romania is improving, education for the Roma has been worsening.

A lack of education is both a result and a cause of Roma poverty. Children raised in poverty are less likely to attend school and are more likely to drop out of school than those raised in wealthier environments.[26] At the same time, there is a clear correlation between a lack of education and future poverty in successive generations: "[h]ouseholds headed by university graduates are much less likely to end up in poverty than others, while those with primary and narrow vocational training are at higher risk."[27] The fact that Romanian Roma have a substantially higher fertility rate than non-Roma makes the situation particularly alarming.[28] Nearly half of the Romanian Roma population is under the age of sixteen,[29] and according to the Minister of Education of one Central European country, every third child entering school is Roma.[30]

Throughout the Romanian education system, Roma children are second, if not third-class citizens. Up to this point, the Romanian government has only taken partial steps to ensure that Roma parents send their children to school. Although *de jure* segregation is formally outlawed in Romania, a *de facto* system of segregation remains. Roma children often attend school in so-called "ghetto schools" where their classmates are overwhelmingly Roma.[31] These schools are often poorly-built or even dilapidated and are often unpainted and lack modern heating or plumbing systems. And they are almost always worse than the closest non-Roma schools. The ethnic Romanian teachers assigned to such Roma "ghetto schools" are generally the least qualified in the system and are sometime apathetic, if not openly hostile, to their Roma students. In many cases, these poorly-resourced Roma schools are only minutes away from better-resourced schools catering to a primarily ethnic Romanian school body.

Those Roma children who are lucky enough to be sent to mixed Roma/Romanian schools frequently endure *de facto* segregation there. In numerous instances, including those personally witnessed by the mission's staff, various grades were divided into Romanian and Roma sections. For instance, the fifth grade might be divided into three classes: A, B, and C. While fifth grade classes A and B would be almost wholly ethnic Romanian and have top teachers, fifth grade class C would be almost wholly Roma and have a much less experienced teacher. Where the classes themselves are mixed, Roma children often sit in the back row and are taught by teachers who are either oblivious or hostile to the special needs of some Roma children.

Over the past several years, the plight of the Roma has begun to garner international attention, particularly now that Romania has acceded to the European Union.[32] Yet, despite several initiatives sponsored by the Romanian Ministry of Education and Research ("Ministry of Education"), the Open Society Institute, and the European Union, among others, a significant and persistent Roma education gap continues to exist. Despite legislation aimed at improving Roma educational achievement, Roma children still do not enjoy equality of education on par with non-Roma children. Many Roma do not attend school, and insufficient government efforts have been made to enforce compulsory education requirements. Those Roma who do attend school often do so in sub-par facilities, with insufficient materials, and are taught by unmotivated and under-

23 *See* Elena Zamfir and Catalin Zamfir, Ţiganii Între Ignorare şi Îngrijorare, *cited in* ACHIM, *supra* note 10. In contrast, higher education attendance in Romania as a whole has risen from 6.9 percent in 1990 to 16.3 percent in 1994. *See* SAVE THE CHILDREN, DENIED A FUTURE?, *supra* note 12, at 320.

24 Achim, *supra* note 10, at 206.

25 Save the CHILDREN, DENIED A FUTURE?, *supra* note 12, at 318.

26 *See* Ringold, *supra* note 22, at 28-29 (noting that "financial and opportunity costs, imperfect information on the benefits of education, limited choice and poor quality of educational services, substandard housing conditions at home that impede learning and studying, and poor health status" all contribute to Roma children's lack of education).

27 *Id.* at 28.

The most comprehensive study of Romanian Roma revealed that in 1992, roughly one-quarter of Roma had no education whatsoever, only 3.9 percent had completed secondary school, and only 0.7 percent had participated in post-secondary education. While the 1989 revolution that toppled the regime of Nicolae Ceauçescu brought freedom from Communist oppression to Romania, Roma educational achievement has declined during the past fifteen years; nearly half of Roma children aged eight have not attended school or have interrupted their studies.

qualified teachers who often make little attempt to reach out to their Roma pupils, whose poverty, culture, and in some cases, language, differentiates them from most ethnic Romanian students. In schools attended by both Roma and non-Roma children, *de facto* segregation of classes continues despite a recent notification sent to schools advising that such segregation is unlawful. In short, despite Romania's commitments under international, regional, and domestic law to provide for equality of education for all of its citizens, the Roma education gap has failed to narrow and, by some estimates, has widened since the collapse of Ceauçescu's regime. While the Romanian government—often as a result of EU or NGO pressure—has taken some steps to remedy the plight of Roma schoolchildren, the efforts have too often been underfunded or halfheartedly implemented with an eye towards appeasing EU officials or foreign donors. Now that Romania has acceded to the European Union, it remains to be seen whether the government will prioritize the rights of Roma children, or allow the *de facto* system of discrimination to continue.

28 *Id.* at 206-07.
29 *See id.* at 207.
30 *See* Ringold, *supra* note 8, at 1.
31 The term "ghetto" school is not used as a pejorative but merely to describe a predominantly Roma school. The same terminology is used by the European Roma Rights Center. *See* European Roma Rights Center, Stigmata: Segregated Schooling of Roma in Central and Eastern Europe 67 (2004).
32 Romania acceded to the European Union on January 1, 2007. *See Romania and Bulgaria Join the EU,* BBC News, Jan. 1, 2007, *available at* http://news.bbc.co.uk/1/hi/world/europe/6220591.stm (last visited May 15, 2007).

As this Report indicates, the Roma lag behind ethnic Romanians and other minorities in terms of opportunity and economic status. Indeed, "for the vast majority of Gypsies little has changed. Poverty, illiteracy and unemployment continue to present serious obstacles to advancement."

Background

A. The Roma: A Brief History

The historical experience of the Roma in Eastern Europe is almost uniformly tragic. No matter what region one considers, the majority population treated the Roma as inferiors and subjected them to cruel treatment. However, among the countries in which the Roma were maltreated, Romania ranks as the worst offender. David Crowe, a noted scholar of Roma history, has noted simply, "In the long course of the Gypsy experience in Eastern Europe, none has been worse than that in Romania."[33]

Although the blanket term "Roma" is used throughout this Report to describe an ethnic group whose ancestors migrated to Europe from India in the sixth century, it does not, in fact, refer to a homogenous community. In Romania, the term covers a number of various clans or *neamuri*.[34] There are more than a dozen *neamuri* in Romania, including the *căldărari, rudari, ursari, gabori, ţigani de mătase,* and *cocalari*.[35] Many of these *neamuri* derive from the members' ancient occupations. For example, as the name suggests, the *ursari* historically made their living by training bears (*ursus* being the Latin word for "bear"). Each neamuri has its own "socio-professional, linguistic, cultural, and lifestyle specificities."[36]

Beyond clan affiliation, there are urban and rural Roma; nomadic and sedentary Roma; Roma who speak Romani[37] (including several dialects) and those who do not; those who wear traditional clothing and those who do not; and Roma who are Orthodox, Protestant, Catholic, and Muslim.[38] While many Roma have darker skin, eyes, and hair than ethnic Romanians, not all do.

In light of their history of oppression in Romania and elsewhere, many Roma do not self-identify as being Roma. Viorel Achim, Senior Researcher at the Nicolae Iorga Institute of History, and an expert on the Roma, has identified five layers of self-identification within the Roma community:

33 David Crowe, *The Gypsy Historical Experience in Romania*, in THE GYPSIES OF EASTERN EUROPE 61 (1991).
34 *See* ACHIM, *supra* note 10, at 212.
35 *See id.* at 88-89, 212.
36 *Id.*
37 Romani is the ethnic language of the Roma. By contrast, Romanian is the national language of Romania.
38 *Id.* Although the stereotypical image of Roma is nomadic, most Roma are sedentary and either live in cities or in semi-permanent Roma settlements. Very few Roma continue to live in caravans. Ringold, *supra* note 8, at 3.
39 *See* ACHIM, *supra* note 10, at 212-13.

a) Roma who display all the traditional ethnic characteristics and who identify themselves as Roma in all contexts;
b) Roma who display all the traditional ethnic characteristics, and whom others identify as Roma, but who identify themselves as such only in an informal context, not in official-administrative contexts;
c) "Modernised" Roma, who thus no longer display the visible indicators of the traditional way of life, but who identify themselves as Roma, both in formal and informal contexts;
d) "Modernised" Roma, who tend no longer to identify themselves as Roma, or who do so on an intermittent basis, and whom others may or may not identify as Roma;
e) "Former Roma" who are completely integrated into the majority population and who no longer identify themselves as Roma.[39]

Yet despite the group's heterogeneity, there are similarities among Romanian Roma. All trace a common ancestry back to India. Virtually all share a common history of discrimination and oppression. The vast majority are poor and disenfranchised. And, of immediate relevance to this Report, most Roma children face substantial barriers to academic success.

The Communist era in Romania ended abruptly when a small uprising in Timisoara over the eviction of a Hungarian minister quickly escalated into a national revolution climaxing in the trial and execution of Ceauçescu and his wife on Christmas Day in 1989. A new democratic government was established, although Ion Iliescu, who succeeded Ceauçescu as President of Romania after winning 85 percent of the popular vote in 1990, was himself a former member of the Communist Party. Former Communists continued to dominate the Romanian government until 1996, when a fractious centrist coalition was elected. Iliescu returned to power in 2000 and ruled until late 2004, when a center-right coalition government composed of the Democratic Party, National Liberal Party, Romanian Humanist Party, and Hungarian Democratic Union of Romania took power. By virtually all accounts, the new government is more pro-Western and pro-reform than the previous Iliescu government which was widely accused of tolerating corruption.

Today's Romania is dramatically different from that of the Communist era. Romania is now a liberal democracy committed to the rule of law.[40] The Romanian State guarantees civil rights for all of its people, and its constitution forbids discrimination of any kind.[41] The Roma enjoy, at least on paper, full political equality, and are permitted to organize political parties and cultural associations as well as their own newspapers and journals.[42] Although there were a number of attacks on Roma communities in the early 1990's, such large-scale violence has not recurred in the past decade.[43]

Yet, as this Report indicates, the Roma lag behind ethnic Romanians and other minorities in terms of opportunity and economic status. Indeed, "for the vast majority of Gypsies little has changed. Poverty, illiteracy and unemployment continue to present serious obstacles to advancement."[44] Although *de jure* discrimination is outlawed, *de facto* discrimination remains widespread.

40 As noted *infra*, at times, this commitment is greater on paper than in reality.
41 *See, e.g.*, Rom. Const. art. 4(2) ("Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin."), *available at* http://www.cdep.ro/pls/dic/site.page?id=339&idl=2.
42 *See* Helsinki Watch, Destroying Ethnic Identity: The Persecution of Gypsies in Romania 36 (1991).
43 *See id.* at 37-72.
44 *Id.* at 36.

I. Separate and Unequal: Roma Education in Romania

A. Evidence of Educational Inequality in Romania

Despite the broad array of international and regional obligations discussed *infra,* and notwithstanding domestic legal commitments, Romania has failed in important ways to provide meaningful educational opportunities to Roma children on a level equal to that enjoyed by most ethnic Romanian children. This Part describes and documents the various forms of educational discrimination faced by Roma children.

1. THE ROMANIAN EDUCATION SYSTEM

The legal framework of Romania's education system consists of the Constitution, Education Law ("Law 84/1995"), ordinary laws and ordinances, and policy decisions made by the Ministry of Education and Research ("MER").[45] Romanian Law on Education 84/1995, as amended, grants all Romanians equal access to education: "Citizens of Romania have equal rights to access all levels and forms of education, regardless of social origin and financial situation,… race, nationality."[46] Article 12, paragraph 2 of the law states that "The organization and content of the education cannot be structured by exclusive or discriminatory criteria, such as ethnicity."[47]

Since the 2003-2004 school year, education has been compulsory from ages six (the beginning of primary school) to sixteen.[48] Pre-primary education exists in some schools but is not compulsory.[49] At fourteen, students either continue to attend a *liceu* (high school) or a vocational program.[50] If the student graduates from the *liceu,* he or she may attend a university or other form of tertiary education.

Public pre-university education (including pre-primary, secondary, and post-secondary non-tertiary education) is controlled by the central MER through County School Inspectorates.[51] The MER is responsible for setting national educational policy, and the School Inspectors (the staff of the County School Inspectorates) are responsible for the quality of education in their respective county and oversee the hiring of teachers and the administration of examinations for pupils.[52]

Under the Communist period and into the 1990's, education (as well as virtually everything else) was largely controlled by the national government. However, in 1999, a policy of devolution was introduced, and since that year, control has gravitated away from the central MER and the School Inspectorates in favor of local town councils, mayors, and individual schools.[53] The decentralization of control of education coincided with increasing decentralization of school funding.[54] Financing for pre-university education comes from both the national and local governments.[55] While the MER pays teachers' salaries, virtually everything else is funded by local governments.[56] As school funding has become increasingly decentralized, disparities have emerged as smaller communities cannot afford the costs of education, including maintenance of school buildings, utilities, paper, and so on.[57] Particularly hard-hit are border towns and isolated areas that cannot generate sufficient revenue locally to adequately cover the costs of education.[58] A recent proposal would alter the school funding mechanism and ensure that

45 *See* Eurydice, The Information Database on Education Systems in Europe, The Education System in Romania (2002/2003), General Organisation of the Education System and Administration of Education, *available at* http://194.78.211.243/Eurybase/Application/frameset.asp?country=ro&language=en.
46 *See id.* ch. 2.3.
47 *See id.*
48 *See id.* ch. 2.5.
49 *See id.* ch. 3.
50 *See id.* ch. 2.4.
51 *See id.*
52 *See id.*; *see also* Interview with Florin Droc, Director Adjunct, Mark Twain International School, Former School Inspector, Sibiu County, 1997-2000, in Romania (Feb. 21, 2005).
53 *See* Interview with Florin Droc, *supra* note 52.
54 *See id.*
55 *See* Eurydice, *supra* note 45, ch. 2.4.
56 *See* Interview with Mihai Surdu, Director of Research, Transforma, in Romania (Feb. 20, 2005). Mr. Surdu is a respected sociologist who has written numerous articles and reports on school segregation in Romania.
57 *See* Interview with Florin Droc, *supra* note 52.
58 *Id.*
59 *Id.*
60 *See infra*.

each school receives a minimum sum to cover its costs; since it was not yet implemented at the time of the mission, this Report does not examine its potential effects.[59]

2. FORMS OF DISCRIMINATION

a. Overview

Formal, legally-mandated segregation is prohibited both by Romanian domestic law as well as applicable international law.[60] Nonetheless, Roma-rights organizations have documented a substantial level of *de facto* segregation, of three different forms.[61]

First, many Roma students attend predominantly Roma schools located in or near Roma communities.[62] Schools built in and around Roma areas naturally attract Roma students. Because a substantial amount of school funding is local, these schools also tend to be poorer than those in wealthier areas. The fact that the schools are predominantly Roma and poor often leads to the withdrawal of non-Roma students.[63] These *de facto* segregated schools "almost always offer lower standards of education when compared to schools where non-Romani children constitute the prevailing part of the student body. The physical infrastructure and the quality of teaching at these schools are usually poor, but more often deplorable."[64]

Second, where schools have mixed Roma and non-Roma student bodies, grade levels are often divided into several classes. Oftentimes these classes are segregated: several of the sections in a given grade will have almost only non-Roma students; others will have almost only Roma students.[65] These classes "are most often the result of racial discrimination."[66]

Third, Roma students are often significantly overrepresented in schools for children with special needs, learning disabilities, or mental handicaps.

Most Romanian government officials denied that any form of anti-Roma segregation existed in the school system.[67] Simona Lupu, an EU advisor working with the MER on education issues, noted that: "In terms of segregation, we were told at the county level that, 'this does not exist. It is not a problem. You are making it a problem.'"[68] Nonetheless, Lupu noted, "we saw there were segregated classes."[69] Some information suggests that the MER was not fully aware of the extent of segregation in Romanian classrooms. Sociologist Mihai Surdu notes that the MER gets information on student enrollment by district.[70] By way of example, Surdu indicated that the MER might receive information that in a district composed of five schools, that 20 percent of the students were Roma. This information might obfuscate the reality that four schools had no Roma students, and that the remaining school was 100 percent Roma.[71] Surdu has himself visited schools that have only Roma students, but the full extent of the problem is unknown.[72]

b. Roma Ghetto Schools

Officially, compulsory education in Romania is free and equally available to all students. And, as a matter of law, Roma ghetto schools do not exist, insofar as they do not have a legal personality different from other schools and were not created specifically for Roma students.[73] In reality, however, numerous schools exist where all or nearly all of the pupils are Roma.[74] *De facto* segregation of Roma students in ghetto schools is generally considered to have two causes: "residential segregation of Roma and withdrawal of non-Roma from schools where the percentage of Roma is high."[75]

According to the Romanian Institute for the Quality of Life, about one-third of the Romanian Roma population lives in homogenous Roma communities; about one-third live in mixed Roma/non-Roma communities; and another third live in

61 *See, e.g.*, European Roma Rights Center, *supra* note 31, at 12.
62 *See id.*
63 *See id.*
64 *Id.*
65 *See id.*
66 *Id.*
67 *See* Interview with Mihai Surdu, *supra* note 56.
68 Interview with Simona Lupu, Team Leader, Social Sector and Civil Society, EU Delegation of the European Commission in Romania, in Bucharest, Romania (June 2, 2005).
69 *Id.*
70 *See* Interview with Mihai Surdu, *supra* note 56.
71 *See id.*
72 *See id.*
73 Save the Children, Denied a Future?, *supra* note 12, at 321.
74 *See id.*; see *also* European Roma Rights Center, *supra* note 13, at 67-84.
75 European Roma Rights Center, *supra* note 13, at 67.

predominantly non-Roma communities.[76] On a county- by-county level, the percentage of schools with large Roma populations varies dramatically. For example, in Mehedinti county, one-third of schools have 50-70 percent Roma students while in Calara i county, only 1.5 percent of schools have a 50-70 percent Roma population.[77] With respect to predominantly Roma schools (defined as more than seventy percent Roma), the numbers also vary widely by county: 16.9 percent of schools in Sibiu County have more than seventy percent Roma students; in Braşov, Bacau, Vaslui, Covasna and Neamţ more than 10 percent of all schools are over 70 percent Roma.[78] Not surprisingly, predominantly Roma schools are usually located near Roma communities.[79]

While Roma ghetto schools are not legally distinct from other schools, a significant difference in quality exists. A prominent consultant working on an education project in Romania notes that: "The quality of the [predominantly] Roma schools is much worse than what exists in mixed schools or Romanian schools."[80] Bucharest-based sociologist Mihai Surdu goes a step further: the quality of schools that are predominantly Roma is *always* worse than mixed schools or schools that are predominantly non-Roma, "there is no exception."[81]

This difference in quality between schools with large Roma populations and those without large Roma populations is not simply a matter of qualitative observation. Schools with large Roma populations have triple the rate of unqualified teachers compared to rural schools as a whole.[82] Schools that are almost wholly Roma have five times the rate of unqualified teachers compared to rural schools as a whole.[83] When considering schools with more than seventy-five percent unqualified teachers, schools with large Roma populations are overrepresented by a factor of four; schools that are almost wholly Roma are overrepresented by a factor of ten.[84]

Needless to say, teachers are the most significant factor in determining the quality of education students receive. The Romanian system for assigning teachers is one reason why predominantly Roma schools receive disproportionately large numbers of unqualified instructors. Local authorities inform the county School Inspectorate of how many teachers they need.[85] Prospective teachers sit for examinations administered in each county to compete for the best schools.[86] Those who receive the highest marks choose the schools at which they would like to teach.[87] Teachers at predominantly Roma schools are looked at as "less than other teachers; they do more work and are not paid for it and have less prestige."[88] The "plum" teaching positions in wealthy areas are taken by those who score the highest on exams; those who are less qualified are assigned to the remaining schools. Consequently, unqualified teachers, often right out of high school, end up teaching in village schools.[89] The poor areas where these unqualified teachers teacher are usually areas that are predominantly Roma.[90]The teachers are not only unqualified but, as a general rule, are unmotivated since they have been assigned to what is considered a less prestigious and more difficult teaching environment. In some cases, the teachers are downright abusive to the Roma students. For example, at a predominantly Roma school at Colonia Britritei, a Roma student named Roxana indicated that teachers sometimes screamed at the students and called them "Gypsies" (using the pejorative Romanian term).[91] Some teachers call the Roma students "dirty" and "poor" and in some cases, teachers hit the students.[92] Similarly, at a school in Iaşi, for instance, when asked what they wish they could change about their school, Roma students unanimously replied, "the teachers."[93] When asked why, the students explained that the teachers did not understand Roma culture and that some made racist statements.[94] Another student said that

76 Romanian Institute for the Quality of Life Database, 1998, quoted in Mihai Surdu, *The Quality of Education in Romanian Schools with High Percentages of Romani Pupils*, Roma Rights: Quarterly Journal of the European Roma Rights Center 3-4/2002, *available at* http://www.errc.org/cikk.php?cikk=1628 [hereinafter Surdu, Quality of Education].
77 Romanian Ministry of Education and Research et al., The Participation to Education of the Roma Children 191 (2002).
78 *Id.*
79 *See* Surdu, *Quality of Education, supra* note 76.
80 Interview with Maria Andruskiewicz, Consultant, IMC Consulting, in Romania (May 31, 2005).
81 Interview with Surdu, *supra* note 56.
82 *See* Savelina Danova, *Patterns of Segregation of Roma in Education in Central and Eastern Europe, in* Separate and Unequal, Combating Discrimination Against Roma in Education 9 (2004).
83 *See id.*
84 *See id.*
85 Interview with Miralena Mamina, Programme Co-ordinator, Save the Children, in Romania (May 30, 2005).
86 *Id.*
87 *Id.*
88 Interview with Maria Koreck, Project on Ethnic Relations, in Targu Mureş, Romania (May 26, 2005).
89 Interview with Miralena Mamina, *supra* note 85.

Teachers are the most significant factor in determining the quality of education students receive. The Romanian system for assigning teachers is one reason why predominantly Roma schools receive disproportionately large numbers of unqualified instructors.

teachers said that "Gypsies lie, steal, and are dirty."[95]

Not surprisingly, academic achievement in Roma ghetto schools is substantially less than in other schools. For example, while nationwide the pass rate of the national exam granting a *diploma de capacitate* is 68 percent, the pass rate in predominantly Roma schools was less than 45 percent.[96] Roma-majority schools are also much more likely to be overcrowded and lack a school library.[97]

Romanian ghetto schools have emerged in part because of patterns of residential segregation—Roma-majority schools are located in or near largely Roma communities.[98] However, a closer examination of the location of Roma communities and Roma-majority schools reveals that residential living patterns do not tell the full story, and, in particular, indicate that residential patterns do not make the phenomenon of Roma ghetto schools a foregone conclusion. Research by sociologist Mihai Surdu found that, as of 1998, "more than half the schools with at least a 50 percent Romani student body were located less than three kilometers from neighboring schools of the same level with predominantly non-Romani children."[99] Nearly three-quarters of majority-Roma schools were less than five kilometers from schools with another ethnic enrollment.[100] These findings square with observations made during the Mission. For example, the Roma community of Zizin mentioned in the introduction was only a few minutes from downtown Braşov, yet few Romanians had ever visited it or were even aware of its existence.[101] Another partial cause of the emergence of Roma

90 Interview with Stefan Roman, Founder, Şansa Romani and Vice Principal, Targu Frumos School, in Romania (May 27, 2005). *See also* Interview with Carmen Crişan, Progress Foundation (Barbaleşti Education Center), in Romania (May 24, 2005) ("[T]he teachers who teach in the [predominantly Roma school] have received the lowest grades on the national exam.").
91 Interview with Roxana, Colonia Britriţei School, in Romania (May 25, 2005).
92 *Id.*
93 Interview with Roma students at Iaşi School, in Romania (May 26, 2005).
94 *Id.*
95 *Id.* Such candor should not be surprising, as these kinds of anti-Roma sentiments are shared by many, if not most, ethnic Romanians. Members of the Mission met with several Romanian law students enrolled at the prestigious University of Bucharest; upon learning of the Mission's topic, a number of the law students proceeded to recite familiar anti-Roma tropes.
96 *See* Surdu, *Quality of Education, supra* note 76, at 13.
97 *See id.* at 14.
98 Interview with Andruskiewicz, *supra* note 80; *see also* Danova, *supra* note 82, at 9.
99 Surdu, *Quality of Education, supra* note 76, at 11.
100 *Id.*
101 *See* Interview with Daniel Hristea, Executive Director, FAST Charity, in Braşov, Romania, (Feb. 25, 2005).

ghetto schools is the withdrawal of non-Roma students from schools where there are a substantial number of Roma students.[102]

c. Segregation in Mixed Schools

In addition to the existence of largely sub-standard Roma ghetto schools, there is another form of segregation which is far more subtle yet equally pernicious. This is the phenomenon of segregation within mixed schools.[103] In these cases, a school will have both Roma and non-Roma students. Each grade level is broken down into separate classes: the fourth grade might be broken down into IV-A (taught by teacher X), IV-B (taught by teacher Y), and IV-C (taught by teacher Z). In a typical case of segregation within a mixed school, classes IV-A and IV-B might be wholly or almost wholly non-Roma, while class IV-C might be almost entirely Roma.[104] Typically, class IV-A will have the most experienced teacher, while the least qualified teacher will teach class IV-C.[105] There is no difference in the curriculum between the various sections. The difference lies in the ethnicity of the students in the various sections.

Notwithstanding the release in April 2004 of a Notification from the Ministry of Education and Research to all School Inspectorates ordering an end to school segregation (*see* Notification section *infra*), members of the Mission witnessed what appeared to be segregated classrooms in several instances. An instructive example is School #17 in Craiova.[106] In first grade, there are sixty-nine students in total. However, the distribution of Roma is far from even. In I-A, eighteen of twenty-four students are Roma; in I-B, nine of the twenty-four students are Roma; and in I-C, all twenty-one students are Roma.[107] Similarly, in class IV-A, eleven of twenty-two students are Roma; in class IV-B, all eighteen students are Roma; and in class IV-C, three of twenty-four students are Roma.[108] Similar situations were witnessed in Targu Mureş[109] and Riminu Valcea,[110] and Roma rights organizations have documented segregated classes in Alexandria, Zimnicea, Gaboltov, Oradea, and elsewhere.[111]

One reason Roma children are placed in separate classes is because the parents of non-Roma children do not want their children in the same classes with Roma children.[112] In some cases the non-Roma parents are racist; in other cases they believe the Roma children are dirty or have diseases.[113] In other cases, the parents of non-Roma children do not want their children "mixing with a group that has historically been poor students."[114] Non-Roma parents are able to pressure schools into forming segregated classes by threatening to send their children to other schools. This threat carries weight because few mixed schools desire a larger proportion of Roma. In some cases, a substantial number of non-Roma parents have made good on such threats:

> We are losing children every year, because their parents don't want to let them study together with Roma. Only this year we lost 38 non-Roma pupils in the first grade who, although they live in the neighborhood and were registered by our teachers, prefer to enroll in other schools.[115]

In sum, school principals believe that "we have to consider the preferences of the [non-Roma] parents. Otherwise they go to other schools."[116]

Another reason Roma are put in separate classes is the registration policy followed by Romanian schools. Parents are required to register their children some months prior to the start of the academic term.[117] Classes are formed as the children are registered: first class "A" is formed, then "B", and so on.[118] Roma parents, some of whom do not know of the registration policy, and some of whom are seasonal migrant workers, often fail to register their children

102 *See* Danova, *supra* note 82, at 9.
103 Interview with Andruskiewicz, *supra* note 80.
104 Interview with Surdu, *supra* note 56; *see also* Interview with Lupu, *supra* note 68.
105 Interview with Gheorghe Sarau, Ministry of Education, in Romania, (May 30, 2005).
106 The following is based both on first-hand observation by members of the Mission as well as on Mihai Mitică and Ghiţa Marian, *Cercetare Privind Procesul Educaţional în Comunităţile de Rromi din Oraşul Craiova* (2005), at 5.
107 *See id.*
108 *See id.*
109 Mission visit to Sangeorgiu de Mureş School, May 26, 2005.
110 Mission visit to Gorano School, May 24, 2005.
111 *See* European Roma Rights Center, Stigmata, *supra* note 13, at 56-63.
112 Interview with Andruskiewicz, *supra* note 80.
113 *Id.*
114 Interview with Florin Moisa, Executive President, Resource Center for Roma Communities, Cluj (May 25, 2005).
115 Interview with Ancuta Florea, Vice-Director, School No. 4, Alexandria, *quoted in* European Roma Rights Center, Stigmata: Segregated Schooling of Roma in Central and Eastern Europe (2004), at 57.
116 Interview with Elena Otelea, Vice-Director, School No. 6, Alexandria, *quoted in* Danova, *supra* note 82, at 8.

One reason Roma children are placed in separate classes is because the parents of non-Roma children do not want their children in the same classes with Roma children. In some cases the non-Roma parents are racist; in other cases they believe the Roma children are dirty or have diseases.

by the deadline.[119] The late-registering students, who are oftentimes Roma, are placed in the "C" or "D" class.[120] Significantly, this policy of putting late-registering students in a separate class is a local, not national, policy.[121] But on the local level, parents can have a tremendous influence on school policy. Notwithstanding the local registration policies, parents often exert pressure on school officials to ensure that their child has the best teacher: "In every school you learn of good teachers and bad teachers; the non-Roma parents fight harder for the good teachers."[122] The prejudices of local school officials may also militate against distributing late registrants evenly among pre-formed classes. When asked why classes were not more evenly mixed, the Director of a school with segregated classes replied, "how effective would it be to have one or three Romanians learning with so many Roma?"[123] In contrast, most Roma parents want their children to learn with non-Roma students.[124]

Another justification for putting Roma children in separate classes is that the vast majority of Roma (unlike non-Roma) have not attended kindergarten: "Roma children will all be placed in one class when they begin elementary school because they did not attend kindergarten, and they are not properly socialized."[125] This is a substantial issue, because children who have attended kindergarten are not only used to sitting in a classroom, but also may already know how to read and write.[126] However, separating children who have had pre-school and those who have not is not pedagogically sound if the system does not allow for integration in later years.[127]

d. Special Schools and Remedial Classes

Prior studies of Roma education in Romania have found that disproportionate numbers of Roma are placed in special schools for the mentally handicapped as well as remedial classes within mainstream schools.[128] While this issue was beyond the scope of this Mission, we found such claims to be borne out on an anecdotal basis. For example, at School #12 in Cluj, Mission members visited three special education classes which were almost entirely populated by Roma students, even though Roma students only represented 43 percent of the student body.[129] When the School Director was asked whether the Roma were overrepresented in the special school, she replied: "It's all that the people outside Romania ask—for everyone here there's no

117 Interview with Director, School 17 (May 25, 2005); *see also* interview with Maria Gheorghiu, Asociaţia Ovidiu Rom (Feb. 19, 2005).
118 Interview with Maria Gheorghiu, Asociaţia Ovidiu Rom (Feb. 19, 2005).
119 Interview with Simona Lupu, Team Leader, Social Sector and Civil Society, EU Delegation of the European Commission in Romania (Feb. 21, 2005).
120 Interview with Liliana Preoteasa, Director-General for Pre-University Education (May 30, 2005); *see also* interview with Maria Gheorghiu, Asociaţia Ovidiu Rom (June 2, 2005).
121 Interview with Liliana Preoteasa, Director-General for Pre-University Education (May 30, 2005).
122 Interview with Florin Moisa, Executive President, Resource Center for Roma Communities, Cluj (May 25, 2005).
123 Interview with Director, School 17 (May 25, 2005).
124 Interview with Stefan Roman, Founder, ansa Romani and Vice Principal, Targu Frumos School, Targu Frumos (May 27, 2005); *see also* Rumyan Russinov, *Desegregation of Romani Education: Challenges and Successes, in* Separate and Unequal, Combating Discrimination Against Roma in Education 17 (2004).
125 Interview with Andruskiewicz, *supra* note 80.
126 Interview with Maria Gheorghiu, Asociaţia Ovidiu Rom (June 2, 2005).
127 Interview with Andruskiewicz, *supra* note 80.
128 *See, e.g.,* Danova, *supra* note 82, at 5-7; European Roma Rights Center, Stigmata: Segregated Schooling of Roma in Central and Eastern Europe 34-54 (2004).
129 Site visit to School 12, "Traian Darjan," Cluj, May 25, 2005.

racial distinction and everyone gets the same treatment."[130] A teacher later confided to Mission members that the special school classes are 100 percent Roma.[131]

There are several reasons why Roma are disproportionately placed in special schools. In some cases, Roma children "get no stimulation at home."[132] When psychology students examined the children, the conclusion was that "almost all of the Roma students were of limited intelligence."[133] In other cases, Roma students attend special schools because they receive free clothing and meals there (as opposed to regular schools, which provide neither).[134]

Members of the Romanian government were also aware of the special schools issue. When asked about special schools, the head of the Romanian National Agency for Roma replied: "This is segregation. This is very dangerous for these children, because it is not clear that they belong there. These shouldn't be segregated on the basis of ethnicity."[135] The Director-General for Pre-University Education noted that Roma children in special schools would oftentimes not attend the regular schools due to their extreme poverty.[136]

e. School Abandonment and Child Marriage

Some 20 percent of Roma children never attend school.[137] Among those who do, the drop-out rates are staggering. Some 20 percent of Roma drop out during primary school and another 40 percent drop out in high school; less than 1 percent ever attend university.[138] There are a variety of causes behind this high rate of school abandonment. The most substantial cause is, not surprisingly, the grinding poverty endured by most Roma: "[The] biggest reason for [Roma kids] not going to school is poverty."[139] A Roma government liaison stated the same thing: "Poverty is high here [among the Roma]. This automatically creates problems in abandonment."[140]

In addition to poverty, however, there are significant social issues that often interfere with education. A major issue is that of child marriage.[141] It is not uncommon in some Roma communities for girls in their early teens to marry.[142] "In general, if a girl gets married, she'll drop out…The main problem is the shame."[143] Not surprisingly, the child marriage disproportionately affects girls, since they are far less likely than boys to continue going to school once married.

In many Roma communities, the decision for a girl to marry rests with the family.[144] In order to avoid an arranged marriage, a Roma boy and girl might elope. Roma children and adults referred to this phenomenon as "boys stealing girls."[145] In order to avoid having a girl stolen by a boy, a girl's family will often prohibit her from attending school after she reaches her early teens.[146] For example, Mission members asked two Roma girls, aged fifteen and twelve, what they wanted to be when they grew up.[147] Chirasela wanted to become a singer but was aware that her parents would not allow this and that she would be forced to stay home and marry.[148] Similarly, Kataline wanted to become a ballerina, but also said she was aware that her parents would not allow this and would make her stay home and marry.[149]

B. Governmental Response and Legal Framework

In light of the existence of *de facto* school segregation being brought to light by members of the European Union and international non-governmental organizations like the Open Society Institute, the MER released a Notification on segregation ("Notification") on April 20, 2004.[150] Although the Notification was formally released by the MER, numerous interviewees indicated that the EU and international NGOs were the driving force behind its release.[151] Indeed, the Director-General of Pre-University Education admitted that it took an EU Phare project to

130 Interview with Dorina Stan, Director, School 12, "Traian Darjan," Cluj (May 25, 2005).
131 Interview with Editha Cauli, Teacher, School 12, "Traian Darjan," Cluj (May 25, 2005).
132 Interview with Florin Moisa, Executive President, Resource Center for Roma Communities, Cluj (May 25, 2005).
133 Interview with Florin Moisa, Executive President, Resource Center for Roma Communities, Cluj (May 25, 2005).
134 *See id.*; *see also* Interview with Liliana Preoteasa, Director-General for Pre-University Education (May 30, 2005).
135 Interview with Ilie Dinca, President, National Agency for Roma, in Bucharest, Romania (May 30, 2005).
136 Interview with Liliana Preoteasa, Director-General for Pre-University Education, in Romania (May 30, 2005).
137 Interview with Mihai Surdu, Director of Research, Transforma (Feb. 20, 2005).
138 *Id.*
139 Interview with Vaharill Moldoveanu, Inspector-General, Rimnicu Valcea, in Romania (May 24, 2005).
140 Interview with Nicolae Turcata, BJR Councilor, Targu Mureş, in Romania (May 26, 2005).
141 Interview with Ali Cranta, National Agency for the Protection of Children, in Romania (May 30, 2005).
142 Interview with Gabriel Andreescu, Helsinki Watch, in Romania (May 30, 2005).
143 Interview with Octav Filimon, Principal, School 3, Buhu i, in Romania (May 25, 2005).
144 *Id.*
145 *See, e.g., id.*; interviews with Roma children, Barbale ti School, in Amrasesti, Romania (May 24, 2005).

In addition to poverty, there are significant social issues that often interfere with education. A major issue is that of child marriage. It is not uncommon in some Roma communities for girls in their early teens to marry.

implement the Notification "because the ministry was not aware of the problem."[152]

The Notification begins with the MER indicating its commitment to ensure "equality in education by equal access to all forms of education but also by equal quality of education for all children, irrespective of their ethnic background or mother tongue."[153] The Notification also affirms that improving the quality of education for Roma children is a priority.[154]

The Notification notes that during the implementation of the Phare program, Access to Education for Disadvantaged Groups with a Focus on Roma, "cases of segregation in compulsory education have been identified in some schools, in the form of all Roma classes or schools."[155] It adds that "such instances have been brought to the attention of [the MER] and presented in the media by human rights NGOs."[156]

The Notification underlines that "segregation is a very serious form of discrimination," and that segregation "involves the intentional *or unintentional* physical separation of Roma from the other children in schools, classes, buildings, and other facilities, such that the number of Roma is disproportionately higher than that of non-Roma compared to the ratio of Roma school-aged children in the total school-aged population in the particular area."[157]

Separation based on ethnic criteria is harmful, according to the Notification, because it perpetuates prejudice among both the Roma and non-Roma; it leads to a sense of inferiority of Roma children; and results in high teacher turnover, and a high drop-out rate.[158] On the other hand, mixed ethnic and cultural classes promote tolerance and school achievement.[159]

Based on these findings, the Notification states

146 Interviews with Roma children, Barbale ti School, in Amrasest, Romania (May 24, 2005).
147 *Id.*
148 *Id.*
149 *Id.*
150 *See* Notification, Ministry of Education and Research, Office of the Secretary of State for Pre-University Department, Romania (Apr. 4, 2004), *available at* http://www.edu.ro/index.php/articles/c115/.
151 The interviewees who confided this information wished to remain anonymous, citing their ongoing relationship with the MER.
152 Interview with Liliana Preoteasa, Director-General for Pre-University Education, in Romania (May 30, 2005). The Phare program was an EU initiative designed to prepare candidate countries for EU accession by promoting human rights and the rule of law.
153 Notification, *supra* note 150, at 1.
154 *Id.*
155 *Id.*
156 *Id.* The reference to presentations in the media is apparently to the *Cehei* case described *infra*.
157 Notification, *supra* note 150, at 2 (emphasis added).
158 *See id.*
159 *See id.*

that "school inspectorates shall take all measures to promote the principles of inclusive education…where all children have equal access to quality education."[160] Further, school inspectorates are required to initiate an action plan aimed at eliminating segregation.[161] These action plans might include:

- Setting up mixed student groups at all education levels;
- Provision of transportation for Roma children to schools with a different ethnic majority, particularly for children from residentially segregated communities;
- Common use of existing school premises and facilities;
- Training and employing Roma school mediators;
- Remedial classes for children with learning difficulties;
- Promoting the Roma ethnic identity in mixed schools, including through the curriculum;
- Roma teachers in schools to teach the specific curriculum (Romani Language and History);
- Training teachers in inclusive education to ensure an educational climate suitable for a multiethnic environment;
- Facilitating students' transfer where balancing the Roma to non-Roma students ratio is required in a school;
- Informing the Roma communities of the quality of education in mixed schools and involving Roma parents in school decisions by regular visits to Roma communities;
- Informing all parents on the benefits of inclusive education, to the purpose of discouraging parents who requires their children to be included in classes where there are no Roma children or in all-Roma classes.[162]

The inspectorates are instructed to transmit to the MER a survey on the extent of segregation in each county as well as the action plan. The survey includes the name of the school, the village/town in which it is located, the number of schoolchildren and Roma schoolchildren in the town; the number of children and Roma children in the school, the number of schoolchildren and Roma schoolchildren in each class, the distance of each village to the nearest school, the reason why the distribution is what it is, and a proposed action.[163] The Notification instructs School Inspectors that:

> [F]or each instance where the number of rroma children is disproportionately higher than that of non-rroma compared to the ratio of rroma school aged population in the total school-aged population in the particular territorial administrative unit, the causes for the existing situation shall be presented, including the distance from the particular school to the nearest school, as well as the action taken to eliminate the segregation.[164]

The reports and action plans were due on May 28, 2004.[165]

The Notification is signed not by the Minister of Education, but by the Secretary of State of the MER's Office of Pre-University Education. Significantly, the MER elected to issue the document as a Notification, not as a more legally binding order. Simona Lupu noted that "it was discussed with the steering committee of the Phare project over whether it should be a notification or an order and they [the MER] gave a legalistic reason why it has to be a notification."[166] She added that "whether it's an order or a notification is less important than if schools take it seriously."[167]

As of the time of the Mission, the response to the Notification has been underwhelming. During an interview at the School Inspectorate in Sibiu nearly one year after the Notification was issued, the chief

160 *Id.*
161 *See id.*
162 Notification, *supra* note 150, at 2-3.
163 *See id.* at Annex.
164 *Id.*
165 *See id.* at 3.
166 Interview with Simona Lupu, Team Leader, Social Sector and Civil Society, EU Delegation of the European Commission in Romania, in Bucharest, Romania (June 2, 2005).
167 *Id.*
168 Interview with Constantin Christina, School Inspector—Sibiu, in Romania (Feb. 23, 2005).
169 *Id.*
170 Interview with Vaharill Moldoveanu, Inspector-General—Rimnicu Valcea, (May 24, 2005).
171 *Id.*
172 Interview with Anka Negrea, Institution for Teacher Training ("ITT"), in Braşov, Romania (May 24, 2005).
173 Interview with Mihai Surdu, Director of Research, Transforma, in Bucharest, Romania (May 27, 2005).
174 Interview with Eugen Crai, Project Officer—Education, UNICEF, in Romania (Feb. 22, 2005).

School Inspector stated that he did not know about the Notification or the requirement that each School Inspectorate submit a survey on the extent of segregation in the county and an action plan.[168] Instead, he claimed that all classes in Sibiu county were already mixed, and that the county was a "model of tolerance."[169]

School Inspectors in other parts of the country gave similar answers. When asked whether the Roma situation had changed at all since the Notification, the Inspector General in Rimnicu Valcea replied: "No, we didn't need the notification."[170] When asked about whether he believed the Roma and non-Roma enjoyed equality, he replied: "In this county, there are no such problems, no discrimination."[171] In Braşov, none of the school principals did anything when they received the Notification, according to Anka Negrea of the Institution for Teacher Training.[172]

Apparently the lack of a response is typical: "[T]here are signs that the notification is not taken so seriously."[173] Eugen Crai, a UNICEF Project Officer working in Romania, estimated that at least half of all School Inspectorates failed to submit any reply as required by the Notification.[174] The Director-General for Pre-University Education at the MER noted that only eleven School Inspectorates responded by the deadline—"a very poor response."[175] By May 2005—a year after the deadline—twenty-eight School Inspectorates responded.[176] She candidly admitted, however, that "many [School Inspectorate] couldn't care less about our notification."[177] Gheorghe Sarau, the author of many of the pro-Roma initiatives at the MER, gave an even less optimistic viewpoint: "We are at the same stage as we were when [the Notification] was issued on April 20, 2004."[178] Even if some School Inspectors are aware of the Notification, most school principals are not: in a straw poll of ten school principals, none had heard of the Notification.[179]

Part of the problem may be that the Notification was not released as an Order—a more binding legal document. Gheorghe Sarau in the Minorities Department of the MER, agreed: "The Notification should have been an Order, and I asked for it to be an Order."[180] He added, "The only solution will be once there is an Order."[181] Others take a different view: "it didn't matter whether it was an Order or a Notification: the key is enforcement."[182] The MER did not exercise sufficient supervision over the School Inspectorates, forcing the Inspectorates to comply with the Notification.[183] Another problem may be bureaucratic: it is unclear whether the Notification actually reached all School Inspectors and principals.[184]

C. Domestic Legal Framework

1. ROMANIAN CONSTITUTION

According to the 1991 Romanian Constitution (as amended in 2003), Romania is:

> [A] democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.[185]

The Romanian Constitution is based upon the principle of separation of legislative, executive, and judicial powers, and is based upon the constitution of the French Fifth Republic. The parliament is bicameral and includes a Senate (137 seats) and Chamber of Deputies (332 seats).[186] Romania is divided into forty counties plus the municipality of Bucharest. The central government is represented in each county by a Prefecture; each county also has its own county council. Within the various counties, each city or village has its own local council.[187]

175 Interview with Liliana Preoteasa, Director-General for Pre-University Education, Ministry of Education and Research, in Romania (May 30, 2005).
176 *Id.*
177 *Id.*
178 Interview with Gheorghe Sarau, Department of Minorities, Ministry of Education and Research, in Bucharest, Romania (May 30, 2005).
179 Interview with Andruskiewicz, *supra* note 80.
180 Interview with Sarau, *supra* note 178.
181 *Id.*
182 Interview with Eugen Crai, Project Officer—Education, UNICEF (May 31, 2005).
183 *Id.*
184 *Id.*
185 Rom. Const. art. 1(3).
186 *See* Economist Intelligence Unit, *Romania: Political Structure*, (2006), *available at* http://www.economist.com/countries/Romania/profile.cfm?folder=profile-Political%20Structure.
187 *See* Dezideriu Gergely, Public Interest Law Initiative, Columbia University School of Law, Romania—Political Situation, Legal Framework, Human Rights and Minority Protection, Presentation at Fordham University School of Law (Feb. 16, 2005).

Like many countries,[188] Romania's constitution incorporates international law into domestic law. Article 11 of the Romanian Constitution states:

> (1) The Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is a party to.
> (2) Treaties ratified by Parliament, according to the law, are part of national law.
> (3) If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.[189]

According to the Romanian Constitution, duties under international treaties are also duties under domestic law. Thus, the failure to live up to the commitments described above therefore breaches Romania's obligations not just to other States but also to its own people.

Beyond implementing international guarantees, the Romanian Constitution also includes several non-discrimination provisions. Article 4(2) states that: "Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin." Article 6 explicitly recognizes the rights of national minorities:

> (1) The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.
> (2) The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.

In addition, Article 16 states that: "Citizens are equal before the law and public authorities, without any privilege or discrimination." and adds that "No one is above the law." As noted *supra,* Article 11 includes a self-execution provision, making all ratified treaties, including human rights treaties, a part of national law.

The Romanian Constitution also includes specific language guaranteeing the right to education:

> (1) The right to education is provided by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and postgraduate improvement.
> (2) Education at all levels shall be carried out in Romanian. Education may also be carried out in a foreign language of international use, under the terms laid down by law.
> (3) The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.
> (4) State education shall be free, according to the law. The State shall grant social scholarships to children or young people coming from disadvantaged families and to those institutionalized, as stipulated by the law.
> (5) Education at all levels shall take place in state, private, or confessional institutions, according to the law.
> (6) The autonomy of the Universities is guaranteed.
> (7) The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.[190]

188 *See, e.g.,* Fr. Const. art. 55; F.R.G. Basic Law art. 25; S. Afr. Const. ch. 1, § 39(1)(b), ch. 14. The U.S. Constitution, for example, states that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and *all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;* and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI (emphasis added). The direct applicability of international treaties has been undermined somewhat by the doctrine of non self-execution. *See* David N. Cinotti, *The New Isolationism: Non-Self-Execution Declarations and Treaties as the Supreme Law of the Land,* 91 Geo. L.J. 1277 (2003). In Romania, no such doctrine exists. *See* Rom. Const. art. 11.

189 Rom. Const. art. 11. The Romanian Constitution came into force in 1991 following the overthrow of the Ceauçescu regime. It was revised in 2003 pursuant to Law No. 429/2003. The revision came into effect on October 29, 2003.

190 Rom. Const. art. 32.

191 Governmental Ordinance 137/2000 entered into force through Law 48/2002. *See* Gloria Jean Garland, Legal Director, European Roma Rights Centre, *Fighting Discrimination through the Courts,* Legal Commentary (2003), *available at* http://www.errc.org/cikk.php?cikk=1434.

192 Dezideriu Gergely, *Anti-Discrimination Legislation in Romania: Moving Toward Enforcement and Implementation, in* Separate and Unequal, Combating Discrimination Against Roma in Education 87 (2004), *available at* http://ww.pili.org/2005r/content/view/350/53.

193 *See id.* at 87. The Race Directive is discussed *infra* at note 419.

2. HUMAN RIGHTS BODIES

a. Ordinance 137 and the National Council to Combat Discrimination

The cornerstone of Romanian anti-discrimination law is Governmental Ordinance 137/2000 on the Prevention and Punishment of All Forms of Discrimination (the "Ordinance").[191] Ordinance 137 forbids discrimination by public authorities, "legal entities subject to private law, or private individuals on grounds of race, nationality, ethnic origin, religion, language, sex, or sexual orientation."[192] In passing the Ordinance, Romania was the first European government to comply with the requirements of the Race Directive.[193] In so doing, Romania hoped to demonstrate to the EU its respect for human rights and its eagerness to harmonize with EU standards.[194] The anti-discrimination legislation not only forbade discrimination but also established a body to implement the legislation. That body, the National Council for Combating Discrimination ("NCCD"), did not begin to function until late 2003.[195]

According to its 2004 Activity Report, the NCCD is:

> [The] specialized body of the central public administration […] under the subordination of the Government, which ensures the observance of the principle of equality established by the Constitution of Romania, by the internal legislation in force and by the international documents which Romania is a part too [sic].[196]

Under Romanian law, the NCCD is authorized to "ascertain and to sanction discrimination deeds on one hand and to adopt affirmative measures to prevent and combat discrimination, on the other."[197]

Ordinance 137, as implemented through Law 48/2002, was a significant first step, but an incomplete one. Romanian human rights lawyers have noted a number of deficiencies in the law.[198] First, the law lacks an explicit definition of indirect discrimination.[199] Second, the law does not provide for a shifting of the burden of proof once a *prima facie* case of discrimination has been established.[200] Third, the law does not go far enough in permitting human rights organizations to represent victims of discrimination.[201] Finally, the body created to vindicate the right of non-discrimination, the NCCD, is itself not sufficiently independent from the government or political arena.[202]

The insufficiency of Ordinance 137 was noted not only by the Romanian human rights community, but also by the European Union in its 2002 Regular Report of the European Commission on Romania's Progress Towards Accession.[203] In order to remedy these shortcomings, amendments were adopted as Governmental Ordinance 77/2003. These amendments:

> [I]nclude provisions on indirect discrimination, provide for aggravating circumstances in cases where discrimination is based on two or more criteria, make implicit reference to victimization, extend the competencies of the NCCD to mediating conflicts generated by acts of discrimination, offer specialized assistance to victims of discrimination, increase the fines imposed for violations of the provision, and spell out the obligation of physical or juridical persons to submit all the necessary evidence required by the NCCD in the course of its investigations.[204]

Although the amendments substantially improved Romania's anti-discrimination law, a number of problems remain. A broad array of Romanian human rights and Roma rights organizations submitted a letter to the President of the Human Rights and Minorities Commission of the Romanian Senate on October 31, 2003, outlining some of the remaining problems. Problems that remain include the fact that

194 *See id.* at 87.
195 *See id.* at 88.
196 Nat'l Council to Combat Discrimination, Activity Rep. 2004 1, *available at* http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_(monitoring)/2._monitoring_mechanism/3._state_reports_and_unmik_kosovo_report/2._Second_cycle/2nd_SR_Romania.asp.
197 *Id.*
198 *See generally* Gergely, *supra* note 192.
199 *See id.* at 89.
200 *See id.*
201 *See id.* Gergely notes that while the law on its face appears to permit human rights non-governmental organizations to appear in court on behalf of aggrieved plaintiffs, "Romanian courts have sought ot limit the range of cases with NGO involvement." *Id.*
202 *See id.* at 90.
203 *Cited in id. at* 90-91.
204 *Id.* at 91.

the present law does not:

- sanction the instruction to discrimination;
- stipulate that harassment is a form of discrimination; and
- does not include a reversal of the burden of proof once a *prima facie* case of discrimination has been presented.[205]

Other Romanian human rights activists have noted other impediments to bringing cases before the NCCD, including the fact that the NCCD's procedures are not clear and not well-publicized, that funds for legal aid are not generally available, and that the NCCD's enforcement powers are insufficient.[206] The notion that the NCCD's procedures remain unclear was bolstered by the admission of the NCCD's President that it "remains a debate" whether plaintiffs alleging discrimination must file suit through the NCCD or can go to court directly.[207] The President's view was that the NCCD was an optional step.[208]

The NCCD is empowered to sanction both public institutions and private actors.[209] The NCCD prepares a file when either a case of discrimination is presented to it or if it becomes aware, *sua sponte,* that a case of discrimination exists.[210] The NCCD Steering Board then determines whether to investigate or solve the problem through mediation.[211] If the Board decides to investigate, a Steering Board member is assigned to the case and writes a report that is presented to the full seven-member Board.[212] A majority vote is needed to impose sanctions.[213] Currently the NCCD may impose sanctions ranging from US$50 to US$500, although there is talk of increasing the maximum fine.[214] Defendants may appeal the NCCD decision to the courts, although the NCCD's decisions have been upheld in 80 to 85 percent of cases.[215] As with much else in Romania, scarce resources have an adverse impact on the functioning of the system. The annual budget of the NCCD is approximately US $650,000, a sum the Present of the NCCD says is "not enough."[216] Indeed, he noted that "the biggest barrier is the lack of resources to conduct proper investigations, for example, we do not have enough cars."[217] He also noted the lack of space[218] and personnel as problems.[219] At the time of the Mission, no Roma worked at the NCCD, although it was expected that one would be hired soon.[220]

The NCCD's independence is also an issue. The Deputy Public Advocate noted that while the NCCD President was highly competent, he is also "very politically partisan—always on the side of the ruling party, whichever that might happen to be."[221] The President of Liga Pro Europa, a human rights NGO, went so far as to say that "the NCCD protects the political interests of the party in power."[222]

An EU advisor working with the NCCD noted that the NCCD President and Steering Board are both appointed by the Prime Minister.[223] According to the advisor, the NCCD President has never met with the Prime Minister, and noted that the Prime Minister's office never responds to NCCD reports.[224] A current proposal would remove the NCCD from Prime Minister's supervision and put it under the control of Parliament. The EU advisor noted that this might make the NCCD more politicized, not less.[225]

With regard to educational segregation, the NCCD has dealt with three cases.[226] In one case, the allegations lacked enough proof to proceed.[227] In

205 *See* Center for Legal Resources, Statement to the President of the Human Rights and Minorities Commission of the Romanian Senate, (Oct. 31, 2003), *available at* http://www.crj.ro/files/DocumentPozitieEngl.pdf.
206 *See* Romaniţa Iordache and Andreea Tabacu, *Not Yet Viable: Anti-Discrimination Action in Romania,* 1-2 Roma Rights, (2003), *available at* http://lists.errc.org/rr_nr1-2_2003/noteb6.shtml.
207 Interview with Csaba Ferenc Asztalos, NCCD President (June 2, 2005) [hereinafter June 2, 2005 Interview with Asztalos].
208 *Id.*
209 Interview with Corina Nicoleta Macoveanu, NCCD Steering Board Member (June 2, 2005).
210 June 2, 2005 Interview with Asztalos, *supra* note 207.
211 *Id.*
212 *Id.*
213 *Id.*
214 *Id.*
215 June 2, 2005 Interview with Asztalos, *supra* note 207.
216 Interview with Csaba Ferenc Asztalos, NCCD President (Feb. 22, 2005) [hereinafter Feb. 22, 2005 Interview with Asztalos].
217 June 2, 2005 Interview with Asztalos, *supra* note 207.
218 *Id.*
219 Feb. 22, 2005 Interview with Asztalos, *supra* note 216. The NCCD has approximately forty employees, including the Steering Board.
220 Interview with Jos de Graaf, EU Twinning Advisor to the NCCD (June 3, 2005).
221 Interview with Vasile Burtea, Deputy People's Advocate (May 31, 2005).
222 Interview with Smaranda Enache, Co-President, Liga Pro Europa–Targu Mureş (May 26, 2005).
223 Interview with Jos de Graaf, EU Twinning Advisor to the NCCD (June 3, 2005).
224 *Id.*
225 *Id.*

another case, dealing with schools in Cehei, the NCCD found that discrimination existed. In Cehei, two school buildings existed side-by-side. The large one housed Romanian students, and a smaller annex housed Roma students.[228] While the large building was in good condition, the smaller annex lacked heat and even a door.[229] By all accounts, the teachers teaching the Roma students showed little interest in their students, and the Roma building was dirty.[230] Indeed, the disparity between the learning environment of the Romanian children and the Roma children was so great that the Cehei school was featured on a Romanian news exposé.[231] The NCCD found that the conditions at Cehei constituted a discriminatory practice, and gave the school a warning.[232] Eventually the school was sanctioned after mediation failed.[233] In a third case, Roma children were moved from one village school to another.[234] The Roma students were not integrated into classes with Romanian children at the new school but were instead all put into a class together, in part because the teachers did not want Roma students in their classes.[235] The NCCD ruled that this did not constitute discrimination because the Roma were grouped together because of their "social problems" and not by virtue of their ethnicity.[236]

b. The Public Advocate

In addition to the NCCD, Romania has a Public Advocate led by an Ombudsman. The Public Advocate's role is to address alleged discrimination by the State, not private individuals.[237] The Public Advocate is divided into four sections: human rights, national minorities, cults/religions, and male/female equality.[238] The department on national minorities is led by a Roma, Vasile Burtea.[239] Unlike the NCCD, the Public Advocate can only deal with cases brought before it and cannot conduct *sua sponte* investigations.[240] The Public Advocate's staff numbers roughly seventy in Bucharest plus an additional ninety people around the country.[241] A large percentage of the staff are lawyers, which Mr. Burtea called "dysfunctional": "[I]n order to make a proper investigation, we need social workers, sociologists, and psychologists. We don't make legal investigations, but we make social investigations."[242]

When the Public Advocate receives a petition, it generally asks a local official (sometimes the one accused of wrongdoing) to investigate.[243] If there is a substantial difference between the petition and the local investigation, the Public Advocate's office may conduct its own investigation; however, less than one percent of all petitions are investigated by the Public Advocate's office.[244] Only one or two percent of investigations concern anti-Roma discrimination.[245]

Significantly, the Public Advocate does not have the power to sanction those accused of discrimination; it can only ask individuals or agencies to desist in their action.[246] According to Burtea, this has been a significant problem. While in other parts of the world a recommendation to a public authority from the Public Advocate would carry substantial weight, in Romania "local politicians take pride, and get favorable media coverage, for refusing to abide by the Ombudsman's recommendations."[247]

226 Feb 22, 2005 Interview with Asztalos, *supra* note 216.
227 During the interview, President Asztalos did not specify the nature of this case.
228 *See* Gergely, *supra* note 192, at 93-95.
229 *Id.*
230 *See id.*
231 Presentation of Dezideriu Gergely, Fordham Univ. School of Law, Jan. 12, 2005.
232 *See* Gergely, *supra* note 192, at 95.
233 June 2, 2005 Interview with Asztalos, *supra* note 207.
234 Feb. 22, 2005 Interview with Asztalos, *supra* note 216.
235 *Id.*
236 *Id.*
237 Interview with Vasile Burtea, Deputy People's Advocate (May 31, 2005).
238 *Id.*
239 *Id.*
240 *Id.*
241 *Id.*
242 *Id.*
243Interview with Vasile Burtea, Deputy People's Advocate (May 31, 2005).
244 *Id.*
245 *Id.*
246 *Id.*
247 *Id.*

II. Romania's Obligations Under International Law

The conditions documented in the preceding section persist despite guarantees of equality and access to education in international, regional, and domestic law. This Part described the relevant legal framework for evaluating potential human rights violations.

In the context of Roma access to education, several types of international obligations exist. With respect to subject matter, the relevant treaty instruments are of two kinds: treaties guaranteeing the substantive right to education, and treaties prohibiting discrimination against minorities. With respect to the sources of the obligations, the treaty instruments are also of two kinds: multilateral/global treaties, and European treaties/obligations originating from the Council of Europe and from the EU.[248]

A. Origins of the Right to Education

In the twentieth century, the Socialist conception of human rights fully embraced a right to education and made the State supreme in providing it. Thus, the Soviet Constitution of 1936 provided that:

> Citizens of the U.S.S.R. have the right to education. This right is ensured by universal, compulsory elementary education; by education, including higher education, being free of charge; by the system of state stipends for the overwhelming majority of students in the universities and colleges; by instruction in schools being conducted in the native language, and by the organization in the factories, state farms, machine and tractor stations and collective farms of free vocational, technical and agronomic training for the working people.[249]

The constitutions of other socialist countries, including Romania, included similar language.

While never embracing economic and social rights with the same zeal as the Socialist bloc, the Western bloc accepted education as a basic human right. Thus, President Roosevelt wrote in his 1944 State of the Union address that:

> In our day these economic truths have become accepted as self-evident. We have accepted, so to speak a second bill of rights, under which a new basis of security and property can be established for all—regardless of station, race, or creed. Among these are [...] the right to a good education.[250]

The importance of education was only underscored by World War II (where the atomic bomb, a scientific breakthrough, brought an end to the conflict) and post-war scientific competition with the Soviet Union. By the mid-1950's, the government's role in education was central, as the U.S. Supreme Court noted in *Brown v. Board of Education,* the seminal case that ended *de jure* segregation in U.S. schools:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is

248 Although Romania is not yet a member of the European Union at the time of publication, it plans on acceding in 2007. *See Romania Spells Out EU Ambitions,* Agence France-Presse, Jan. 5, 2005, *available at* 2005 WL 56024653.
249 Soviet Const. (1936) art. 121.
250 President Franklin Delano Roosevelt, Eleventh Annual Message to Congress (Jan. 11, 1944), *quoted in* Henry J. Steiner & Philip Alston, International Human Rights in Context 243 (2d ed. 2000).
251 *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).
252 United Nations Educational, Scientific and Cultural Organization ("UNESCO"), *World Education Report 2000: The Right to Education—Towards Education for All Throughout Life* 97 (2000), *available at* http://www.unesco.org/education/information/wer/PDFeng/wholewer.PDF.
253 Civil and political rights are generally classified as negative rights while economic, social, and cultural rights are generally classified as positive. Negative rights require that the government refrain from certain activities, such as imprisoning citizens without trials. Positive rights require that the government undertake an affirmative action, such as providing adequate health care or housing. *See, e.g.,* A. Gerwin, *Are All Rights Positive?*, 30 Phil. & Pub. Aff. 321 (2002).
254 Vienna Declaration, Second World Conference on Human Rights in Vienna, *quoted in* Steiner & Alston, *supra* note 250, at 237.
255 *Id.*
256 United Nations Committee on Economic, Social and Cultural Rights, *1993 Statement to the Vienna World Conference, quoted in* Steiner & Alston, *supra* note 250, at 238.

> required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.[251]

In light of the importance of education by the mid-twentieth century, the right to education was enshrined in Article 26 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. The first sentence of Article 26 states that "Everyone has the right to education." Notably, while countries debated the content of the rest of Article 26 (which spells out what the specific requirements are), no State ever questioned the first sentence, indicating that by 1948, governments took it for granted that education was a basic human right.[252]

In contrast to "first-generation" civil and political rights, the right to education is a "second-generation" economic, social, and cultural right.[253] As a theoretical matter, civil/political rights and economic/social/cultural rights are "universal, indivisible and interdependent and interrelated."[254] Consequently, the "international community must treat human rights globally in fair and equal manner, on the same footing, and with the same emphasis."[255] In reality, however, States have been far more apt to honor negative civil and political rights than positive economic, social, and cultural rights. The United Nations Committee on Economic, Social and Cultural Rights noted in 1993, for example:

> The shocking reality…that States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.[256]

There are several reasons why States have tended to abrogate their responsibilities under economic/social/cultural rights treaties. The first is that economic/social/cultural rights generally have a far greater economic cost than civil/political rights. For example, providing adequate food, shelter, and health care to all requires a far greater government expenditure than not arbitrarily arresting people, or even providing an attorney to those accused of serious crimes. Second, influential Western States, and the United States in particular, have generally rejected economic/social/cultural rights as incompatible with free market capitalism.[257]

Significantly, the right to education is an exception to this trend. Indeed, as the salience of the phrase: "Everyone has the right to education," in various drafts of the Universal Declaration of Human Rights suggests, the right to education is more firmly entrenched and respected than most other economic, social, and cultural rights. The reason, it appears, is that the understanding of people that it is the government's duty to ensure the education of children significantly predates any international treaty instrument codifying that duty. In addition, the infrastructure necessary for providing education, such as schools, teachers, and an educational bureaucracy, predates the relevant human rights instruments. Most importantly, effective compliance existed before the treaties came into existence, including in States of the Western Hemisphere.[258] In other words,

257 Critics of economic/social/cultural rights have argued that the massive state intervention that would be required to honor these rights would not only distort free markets but actually lead to a diminution of civil/political rights. The experience of the communist states of the past and of Zimbabwe and Venezuela today adds some credence to this argument. *See, e.g.,* David P. Forsythe, *Socioeconomic Human Rights: The United Nations, The United States, and Beyond,* 4 Hum. Rts. Q. 433 (1982).

258 The United States, for example, has given short shrift to most economic/social/cultural rights, with an emphasis being placed on the negative nature of government-guaranteed rights. *See, e.g., De Shaney v. Winnebago County Dept. of Social Services,* 489 U.S. 189, 195-96 (1989) ("The [Due Process] Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without 'due process of law,' but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text. Like its counterpart in the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment was intended to prevent government 'from abusing [its] power, or employing it as an instrument of oppression.…'" (Rehnquist, C.J.) (citations omitted)). However, state governments have been responsible for educating children since the late nineteenth century. *See, e.g.,* Organization for Economic Cooperation and Development, *Starting Strong: Early Childhood Education and Care* 182 (2001) *available at* http://www.oecd.org/dataoecd/43/58/1942386.pdf (describing public education as a responsibility of the states).

States were providing children's education before the Universal Declaration of Human Rights or any other international human rights instrument created an internationally-understood duty to do so, in contrast to other economic/social/cultural rights."[259]

B. The Right to Education in International Law

1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 26 of the Universal Declaration of Human Rights represents the first enunciation of an internationally-recognized right to education. The first drafts of Article 26 did not contain any wording regarding the content or purpose of education.[260] Given the then-recent experience of World War II and the Holocaust, however, several delegates to the Commission on Human Rights suggested that the Declaration specify the role of education in promoting racial and religious tolerance.[261] Such language was eventually added to Article 26:

> Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.[262]

The Universal Declaration of Human Rights thus underscores that education is essential not only for the purpose of developing the human mind, but also for the promotion of racial and religious tolerance and by extension, the maintenance of international peace and security.

In addition to outlining the purpose of the right to education, Article 26 imposes affirmative duties on States. According to Article 26, governments have differing responsibilities depending on the level of education:

> Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.[263]

During the *travaux préparatoires,* the terms "free" and "compulsory" were discussed together because of the reluctance of members of the Commission on Human Rights to make education compulsory if it were not also free.[264] Notably, the term "compulsory" was meant to apply both to the State as well as to society, including parents.[265] Thus, the duties imposed by the Declaration to ensure the education of children are incumbent on both States and individuals.[266]

In addition to articulating a substantive right to education, the Universal Declaration of Human Rights guarantees that this and all other substantive rights in the Declaration will be enjoyed on a non-discriminatory basis: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[267]

2. DECLARATION OF THE RIGHTS OF THE CHILD

The Declaration of the Rights of the Child, like the Universal Declaration of Human Rights, is a resolution passed by the General Assembly and is therefore does not represent a legal commitment binding on all States. Nonetheless, the two documents represent an emerging norm that governments have an international legal duty to provide for the education of the young. Principle 7 of the Declaration of the Rights of the Child states in relevant part:

> The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal

259 Universal Declaration of Human Rights, G.A. Res. 217A art. 24, U.N. GAOR, 3d Sess., U.N. Doc A/810 (Dec. 10, 1948), *available at* http://www.un.org/Overview/rights.html.
260 *See* UNESCO, World Education Report 2000, *supra* note 252, at 102.
261 *See id.*, at 103.
262 Universal Declaration of Human Rights, *supra* note 259, art. 26(2).
263 *Id.* art. 26(1). Elementary education refers to basic education for children; fundamental education refers to basic or remedial education for adults. *See* UNESCO, *World Education Report 2000, supra* note 252, at 98.
264 *See* UNESCO, *World Education Report 2000, supra* note 252, at 99.
265 Thus lead drafter Professor Réne Cassin stated that the term compulsory "should be interpreted to mean that no one (neither the State, nor the family) could prevent the child from receiving elementary education." *Quoted in* UNESCO, World Education Report 2000, *supra* note 252, at 99. Similarly, the Soviet diplomat noted that "[t]he concept contained in [the word "compulsory"] was closely linked with the concept of the right to education. It pre-supposed that the obligations of society correspond to the rights of every human being to free education." *Quoted in id.*

The Universal Declaration of Human Rights underscores that education is essential not only for the purpose of developing the human mind, but also for the promotion of racial and religious tolerance and by extension, the maintenance of international peace and security.

> opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.
>
> The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.[268]

Principle 7 reiterates the Universal Declaration of Human Rights' requirement that elementary education be both free and compulsory. More significant, however, is the exhortation that the responsibility for the best interests of the child lies primarily with the parents, as well as with the State. The notion of parental responsibility, though discussed during the Universal Declaration of Human Rights' *travaux préparatoires,* was not codified in the final document. In contrast, the Declaration of the Rights of the Child firmly entrenches a duty with individual parents to ensure that their child receives the education which the State must provide.

Like the Universal Declaration of Human Rights, the Declaration of the Rights of the Child also includes a non-discrimination clause:

> The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.[269]

3. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

The International Covenant on Economic, Social, and Cultural Rights ("ICESCR") is the most comprehensive multilateral treaty guaranteeing a plethora of economic, social, and cultural rights. The treaty entered into force in 1976; Romania ratified it on January 3 of that year.[270] It therefore represents a legal obligation that is binding upon the Romanian state.

Article 13(1) of the ICESCR sets forth the conceptual framework and purpose of the right to education:

> The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.[271]

266 It should be noted that the Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations. It is not, therefore, an enforceable treaty as such. However, the Declaration is significant insofar as it indicates what international standards are. Moreover, as examined *infra*, most treaties (which are, of course, binding) concerning the right to education borrow language directly from the Declaration.

267 Universal Declaration of Human Rights, *supra* note 259, art. 2.

268 Declaration of the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., U.N. Doc. A/4354 (Nov. 20, 1959), *available at* http://www.unhchr.ch/html/menu3/b/25.htm.

269 *Id.* Principle 1.

270 *See* Office of the United Nations High Commissioner for Human Rights [hereinafter UNHCHR], *Status of Ratifications of the Principal International Human Rights Treaties* 9 2004), *available at* http://www.unhchr.ch/pdf/report.pdf.

271 International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, 6 I.L.M. 360 [hereinafter ICESCR], *available at* http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

Article 13(2) then establishes differing governmental obligations depending on the level of education at issue:

> The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
> (a) Primary education shall be compulsory and available free to all;
> (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
> (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
> (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
> (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.[272]

Like Article 26 of the Universal Declaration of Human Rights, the ICESCR codifies an educational hierarchy. Primary education must be both free and compulsory to everyone,[273] while secondary education should be generally available and progressively made free. Unlike the Universal Declaration of Human Rights, the ICESCR also mentions higher education, which must be accessible to all on a meritocratic basis and should be progressively made free. The ICESCR also includes non-discrimination language similar to that found in the Universal Declaration of Human Rights:

> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[274]

At first blush, the ICESCR would appear to be, in the context of the right to education, a more comprehensive and legally binding version of the earlier Universal Declaration of Human Rights and Declaration of the Rights of the Child. However, the entire text of the Covenant, including Article 13, is modified by Article 2(1), which states:

> [E]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.[275]

This Article contains two critical qualifications: "First, the obligation of states parties…is recognized to be subject to the availability of resources…[and] second, the obligation is one of progressive realization."[276] Unlike the International Covenant on Civil and Political Rights, whose obligations are immediate,[277] the ICESCR potentially allows States to invoke resource constraints or the principle of progressive realization to defer or avoid their obligations under the treaty.

In light of the ambiguity of Article 2(1), and its potential to undermine the very object of the Covenant, the Committee on Economic, Social &

272 *Id.*
273 The term "primary education" in the ICESCR has the same meaning as "elementary" education in the Universal Declaration of Human Rights.
274 ICESCR, *supra* note 271, art. 2(2).
275 *Id.*
276 Steiner & Alston, *supra* note 250, at 246.
277 *See* International Covenant on Civil and Political Rights ("ICCPR") Mar. 23, 1976 art. 2(1), 999 U.N.T.S. 171, *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant…."). *See also id.* art. 2(2)(stating that each State Party must "take necessary steps…to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."). *Id.*; Committee on Economic, Social & Cultural Rights General ("CESCR") Comment 3: The Nature of States Parties Obligations, ¶ 9, U.N. Doc. E/1991/23, Annex III at 86 (1991), [hereinafter Comment 3] *available at* http://cesr.org/low/generalcomment3 (last visited Aug. 5, 2006)("the obligation [in the ICESCR to achieve the progressive realization of the Covenant's goals] differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights").
278 The Committee on Economic, Social & Cultural Rights is charged with monitoring State compliance in the implementation of the ICESCR. *See* Office of the High Commissioner for Human Rights, Fact Sheet No. 16 (Rev.1), The Committee on Economic, Social and Cultural Rights, http://www.unhchr.ch/html/menu6/2/fs16.htm (last visited Aug. 5, 2006).

Cultural Rights[278] has issued a detailed Comment ("Comment 3") explicating the nature of the obligations of States Parties under the Article.[279] Although Comment 3 itself is not directly binding on parties to the ICESCR, it represents the definitive interpretation of the Covenant and is therefore entitled to substantial deference.

Conceptually, Comment 3 acknowledges that "full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time."[280] However, it goes on to draw a distinction between the obligation of States Party to "take steps…to the maximum of its available resources" and the obligation to "achiev[e] progressively the full realization of the rights recognized in [the ICESCR]."[281] Examining the language of the treaty in English, French, and Spanish, the Comment explains that "while the full realization of the relevant rights may be achieved progressively, steps towards [sic] that goal must be taken within a reasonably short time after the Covenant's entry into force."[282] The Comment adds that such steps must be "deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."[283] Consequently, although the ends of the ICESCR may be reached over time, States have a duty to move "as expeditiously and effectively as possible towards that goal."[284]

According to Comment 3, however, States are not only required to take deliberate and concrete steps; they are also required to meet a minimum core obligation, including provision of essential foodstuffs, health care, shelter, and "the most basic forms of education."[285] A State that fails to do this is "*prima facie*, failing to discharge its obligations under the Covenant." If no such minimum core obligation existed, the Committee noted, the ICESCR would be "largely deprived of its *raison d'être*."[286] This minimum core obligation must, in particular, extend to vulnerable groups: "[E]ven in times of severe resources constraints…the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes."[287]

While Comment 3 notes in passing that the provision of basic education constitutes a core minimum obligation under the ICESCR, Comment 13 examines the right to education under the Covenant in depth.[288]

Comment 13 underlines that education is "both a human right in itself and an indispensable means of realizing other human rights."[289] In this, Comment 13 echoes Article 26 of the Universal Declaration of Human Rights which posits education as a means of promoting respect for human rights as well as tolerance and global peace. But Comment 13 goes beyond this, and also emphasizes the importance of education in achieving the goal of development, a human right that was not recognized in 1948 when the Universal Declaration of Human Rights was proclaimed: "Education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."[290] Beyond development, education is a means of achieving other "third generation" rights, such as the protection of the environment.[291]

Comment 13 echoes Comment 3 in framing primary education as a minimum core requirement of the ICESCR. States must prioritize primary education for all, and "[t]he obligation to provide primary education for all is an immediate duty of all States parties."[292] Elsewhere, the Comment states that "States must prioritize the provision of free primary education" and have "an obligation to take concrete steps towards achieving free secondary and higher education."[293]

Comment 13 itself does not specify what "free" means, but instead cross-references Comment 11,[294] which concerns the plans of action required under

279 *See generally* Comment 3, *supra* note 277.
280 *Id.* ¶ 9.
281 ICESCR, *supra* note 271, art. 2(1).
282 Comment 3, *supra* note 277, ¶ 2.
283 *Id.*
284 *Id.* ¶ 9.
285 Id. ¶ 10.
286 *Id.*
287 Comment 3, *supra* note 277, ¶ 12.
288 *See generally* CESCR Comment 13: The Right to Education (Article 13), 21st Sess., U.N. Doc. E/C.12/1999/10 (1999) [hereinafter Comment 13], *available at* http://cesr.org/generalcomment13 (last visited July 25, 2006).
289 *Id.* ¶ 1.
290 *Id.*
291 *See id.*
292 *Id.* ¶ 51.
293 *Id.* ¶ 14.
294 *See* Comment 13, *supra* note 288 (referencing General Comment 11 concerning the meaning of "free").

ICESCR Article 14.[295] Comment 11, in turn, states that the requirement that primary education be free is "unequivocal" and that neither the child, the parents, nor the guardians may be charged for primary education.[296] Comment 11 goes on to note that both direct *and* indirect fees are prohibited under the ICESCR:

> Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect.... Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category. Other indirect costs may be permissible, subject to the Committee's examination on a case-by-case basis.[297]

Even a cursory reading of Comment 11 reveals that its prohibition on fees for primary education is nothing less than sweeping. It covers not merely tuition, but indirect costs, including those which from a legal standpoint are not required. Comment 11's conception of "compulsory" is similarly broad, making both the State and parents responsible under the ICESCR for sending their children to school: "[N]either parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education."[298]

While the Universal Declaration of Human Rights, Declaration of the Rights of the Child, and ICESCR all include general prohibitions on discrimination, Comment 13 specifically applies these prohibitions to the field of education. Critically, Comment 13 states:

> The prohibition against discrimination enshrined in article 2(2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.[299]

As applied to Article 13, the non-discrimination language of Article 2(2) thus represents a non-derogable norm. Under the plain language of the Comment, a lack of resources is no excuse for permitting any form of discrimination within the education system. *De facto* inequality that results from disparate spending may violate the Covenant,[300] as would the failure of a State to take affirmative measures to address *de facto* educational segregation.

The anti-discrimination language does not prohibit affirmative measures designed to promote the equality of disadvantaged groups. Thus, Comment 13 specifically permits "[t]he adoption of temporary special measures intended to bring about *de facto* equality for men and women and for disadvantaged groups," so long as those measures are rescinded once equality has been achieved.[301] Later, Comment 13 goes so far as to state that: "States parties are obliged to ensure that an educational fellowship system is in place to assist disadvantaged groups."[302] In some cases, separate educational facilities are permissible so long as they are not designed to further discriminatory goals.[303] Education can and should be culturally relevant to the community.[304]

As noted above, ICESCR Article 14 includes a reporting requirement whereby States must inform the Committee on Economic, Social & Cultural Rights of their progress in achieving the goal of compulsory and free primary education. With respect to anti-discrimination efforts, however, the bar is raised. Comment 13 requires that States "closely monitor education" including "all relevant policies, institutions, programmes, spending patterns and other practices—so as to identify and take measures to redress any *de facto* discrimination."[305] Educational data "should be disaggregated by the prohibited grounds of discrimination."[306] The failure to "maintain a transparent and effective system to monitor conformity with Article

295 Article 14 of the ICESCR requires that States report on their efforts to comply with Article 13:

> Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

296 *See* CESCR General Comment 11: Plans of Action for Primary Education (Article 14), 20th Sess., ¶ 7, U.N. Doc. E/C.12/1999/4, CESCR (1999) [hereinafter Comment 11], *available at* http://cesr.org/generalcomment11.

297 *Id.*

298 *Id.* ¶ 6.

299 Comment 13, *supra* note 288, ¶ 31.

300 *See id.* ¶ 35, 59.

301 *Id.* ¶ 32.

302 *Id.* ¶ 53.

The Declaration of the Rights of the Child includes a non-discrimination clause: The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

13(1)" in and of itself constitutes a violation of the ICESCR.[307]

Finally, Comment 13 sets forth a rubric by which to measure whether the State in question is honoring its obligations under Article 13 of the ICESCR. According to the Comment, education must be: (a) available, (b) accessible, (c) acceptable, and (d) adaptable.

Availability of education means, *inter alia,* there are "functioning educational institutions and programmes" in "sufficient quantity within the jurisdiction of the State party."[308] Educational facilities must have adequate sanitation, safe drinking water, trained teachers receiving domestically competitive salaries, proper teaching materials, and in appropriate cases, library or computer facilities.[309]

Accessibility of education means that educational institutions are accessible to everyone. An education system is considered accessible if it is free of *de jure* and *de facto* discrimination, if it is physically accessible to students, and if it is economically accessible to students.[310]

Acceptability of education means that the substance of education, including the teaching methods and curricula, is acceptable in quality and relevance to the students.[311]

Adaptability of education means that the educational program is flexible enough to adapt to the needs of various communities and "respond to the needs of students within their diverse social and cultural settings."[312]

4. CONVENTION ON THE RIGHTS OF THE CHILD

The Convention of the Rights of the Child ("CRC") is

303 *See id.* ¶¶ 32-33.
304 *See* Comment 13, *supra* note 288, ¶ 9, *quoting* World Declaration on Education for All ("[p]rimary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community."). World Declaration on Education for All, Mar. 9, 1990, art. V, ¶ 2, *available at* http:// www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml This statement is particularly relevant with respect to Roma children, who have a culture and needs that are different from those of ethnic Romanians.
305 Comment 13, *supra* note 288, ¶ 37.
306 *Id.*
307 *Id.* ¶ 59.
308 *Id.* ¶ 6(a).
309 *See id.*
310 *See id.* ¶ 6(b).
311 *See id.* ¶ 6(c).
312 Comment 13, *supra* note 288, ¶ 6(d).

the definitive treaty instrument protecting the internationally-recognized rights of children.[313] The CRC builds upon previous international agreements recognizing the unique rights of children. Indeed, its perambulatory clauses specifically cite the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, and the ICESCR, as well as the 1924 Geneva Declaration of the Rights of the Child.[314] It entered into force on September 2, 1990; Romania ratified the treaty on October 28, 1990.[315] Like the ICESCR, the CRC is a binding international commitment that Romania is obliged to honor.

Article 28 of the CRC tracks the language of the ICESCR in setting forth various levels of obligations to correspond with differing levels of education; like the ICESCR, the CRC embraces a standard of progressive realization of the right to education:

> States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
>
> (a) Make primary education compulsory and available free to all;
>
> (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
>
> (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
>
> (d) Make educational and vocational information and guidance available and accessible to all children.[316]

In addition, the CRC for the first time addresses school abandonment, and mandates that States "take measures to encourage regular attendance at schools and reduction of drop-out rates."[317]

The CRC also tracks the language of earlier international instruments on the purposes of education, including "the development of the child's personality, talents and mental and physical abilities" and "the development of respect for human rights and fundamental freedoms."[318] However, the CRC goes beyond earlier instruments by stating that education must also foster "the development of respect for the child's…cultural identity, language and values" as well as for "the national values of the country in which the child is living" and "the country from which he or she may originate."[319] Education must not merely teach a child about his or her own cultural identity, it must also be multicultural and teach a child about "civilizations different from his or her own"[320] and promote a spirit of friendship "among all peoples, ethnic, national and religious groups and persons of indigenous origin."[321]

The CRC includes broad anti-discrimination language similar to that found in the ICESCR:

> States Parties shall respect and ensure the rights set forth in the present Convention to each child…without discrimination of any kind, irrespective of the child's or his or her parent's …race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.[322]

In addition, it includes special protection for children from ethnic or linguistic minorities to "enjoy his or her own culture" and "to use his or her own language."[323]

The body charged with monitoring compliance with the CRC, the Committee on the Rights of the Child, has issued several Comments that interpret the CRC. As with the Comments of the Committee

313 The Convention on the Rights of the Child itself defines a child as anyone under the age of eighteen (unless majority is attained earlier under local law). *See* Convention on the Rights of the Child, Nov. 20, 1989, U.N. Doc. A/RES/44/25 [hereinafter CRC], *available at* http://www.unhchr.ch/html/menu3/b/k2crc.htm.
314 *See id.* pmbl.
315 Office of the UNHCHR, *supra* note 278.
316 CRC, *supra* note 313, art. 28(1).
317 *Id.* art. 28(1)(e).
318 *Id.* art. 29(1)(a),(b).
319 *Id.* art. 29(1)(c).
320 *Id.*
321 *Id.* art. 29(1)(d).
322 *Id.* art. 2(1).
323 *Id.* art. 30.
324 *See* Committee on the Rights of the Child ("Comm. Rts. Child"), General Comment 1 (2001), *available at* http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2001.1.En?OpenDocument [hereinafter Comm. Rts. Child, Comment 1]. General Comment 5 on General Measures of Implementation of the Convention on the Rights of the Child ("CRC") also mentions the role of education in passing. For instance, while discussing Article 2, the general anti-discrimination clause, Comment 5 notes that "[a]ddressing discrimination may require… educational measures to change attitudes." Comm. Rts. Child, General Comment 5 (2003), *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/3bba808e47bf25a8c1256db400308b9e/$FILE/G0345514.pdf.

on Economic, Social & Cultural Rights interpreting the ICESCR, the Comments of the Committee on the Rights of the Child do not constitute binding international law. They are, however, the definitive interpretations of the Convention and are therefore entitled to substantial deference.

General Comment 1 to the CRC examines the aims of education in Article 29 of the Convention.[324] As a preliminary matter, the Comment embraces an expansive definition of "education" as "far beyond formal schooling."[325] Instead, it includes "the broad range of life experiences and learning processes" that let children "develop their personalities, talents and abilities and to live a full and satisfying life within society."[326] While the goals of promoting ones own culture as well as an appreciation for other cultures might seem contradictory, "the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference."[327] Indeed, children can "[play] a unique role in bridging many of the differences that have historically separated groups of people from one another."[328] Thus, the importance of education is circular—parents teach children to respect and embrace different cultures, and children can in turn help parents bridge the gap between cultures.[329] In short, education is a "reliable and enduring antidote" to racism, xenophobia, and ethnic hostility.[330] Consequently "[e]ducation should…be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena."[331]

While the Comment does not embrace any particular curriculum it mandates that children be taught about the history of racism and in particular, how it manifests itself within the community.[332] In particular, the focus should not be on racism of "others" but of the racism of the child's own community.[333] Children should also be taught to respect difference and to challenge prejudice of any kind.[334] On a more general note, educational pedagogy should focus on the inherent dignity of each child and enable each child to express his or her views freely.[335]

The Comment's instructions on how the education-related aspects of the CRC should be interpreted are expansive. According to the Comment, "[t]his seems to have led many States parties to assume that it is unnecessary, or even inappropriate, to ensure that the relevant principles are reflected in legislation or in administrative directives."[336] The Comment warns that, however, that "[t]his assumption is unwarranted," and goes on to explain that without official endorsement in law or policy, the rights enshrined in the CRC will not effectively inform education policy.[337] Consequently, all States should formally incorporate the principles of the CRC and Comment 1 into legislative enactments and policies.[338]

C. The Prohibition on Discrimination Under International Law

In examining whether Roma children are being denied equal access to education in Romania, two questions are raised. The first is whether they are receiving a proper education, a right guaranteed under the international treaty instruments examined above. The second and related question is whether they are being denied an education by virtue of *de jure* or *de facto* discrimination.[339]

1. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights ("ICCPR") is the definitive treaty instrument outlining the civil and political rights enjoyed by all people. Romania ratified the Covenant on March 23,

325 Comm. Rts. Child, Comment 1, *supra* note 324, ¶ 2.
326 *Id.*
327 *Id.* ¶ 4.
328 *Id.*
329 *See id.* Indeed, many of the activities that brought Roma and non-Roma families together were centered around children, such as school sports matches or cultural fairs.
330 *See* Comm. Rts. Child, *supra* note 324, ¶ 11.
331 *Id.*
332 *See id.*
333 *See id.*
334 *See id.*
335 *See id.* ¶ 8.
336 Comm. Rts. Child, *supra* note 324, ¶ 17.
337 *Id.*
338 *See id.*
339 This section only covers several of the major international legal instruments protecting minority rights, particularly those that mention education. There are many other instruments, some of a non-binding character, that protect ethnic and other minorities. *See, e.g.,* Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1993), *available at* http://www1.umn.edu/humanrts/instree/d5drm.htm.

1976, and it entered into force on the same day. It therefore constitutes a binding legal commitment on the government of Romania.

The ICCPR does not generally extend substantive rights (such as the right to education) to people.[340] It does, however, prohibit States from engaging in various forms of discrimination. As a general matter, Article 26 guarantees the equal protection of law to all citizens regardless of, *inter alia,* birth or social origin.[341] The ICCPR also ensures that all citizens have access to public services.[342]

Of particular relevance to this Report is the ICCPR's guarantee that children not be deprived of any right by virtue of social origin or birth: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."[343] While not directly relevant to education, Article 27 allows members of ethnic, religious, or linguistic minorities "to enjoy their own culture, to profess and practice their own religion, or to use their own language."[344]

2. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") grew out of the civil rights movement of the 1960's and prohibits racial discrimination.[345] The term "racial discrimination" is exceptionally broad:

> [A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[346]

The ICERD does permit affirmative action measures to be taken so long as they are not continued after their objectives have been met.[347] The ICERD prohibits racial discrimination generally and also specifically highlights areas in which equality before the law is particularly important. Included in these areas is the right to education.[348]

Of particular relevance are two General Recommendations to the ICERD. As with the Comments to the ICESCR and CRC, the Recommendations are not legally binding, but as the authoritative interpretation of the ICERD, the Comments of the Committee on the Elimination of Racial Discrimination are entitled to substantial deference.

General Recommendation 29 ("Recommendation 29") examines discrimination on the basis of descent.[349] With regard to education, Recommendation 29 recommends that States:

> Ensure that public and private education systems include children of all communities and do not exclude any children on the basis of descent;
> Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;
> Combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities;
> Take necessary measures in cooperation with civil society to educate the population as a whole in a spirit of non-discrimination and respect for the communities subject to descent-based discrimination;
> Review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights.[350]

340 International Covenant on Civil and Political Rights, *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.
341 *See id.* art. 26.
342 *See id.* art. 25.
343 *Id.* art. 24(1).
344 *Id.* art. 27.
345 International Convention on the Elimination of All Forms of Racial Discrimination, *available at* http://www.unhchr.ch/html/menu3/b/d_icerd.htm.
346 *Id.* art. 1(1).
347 *See id.* art. 1(4).
348 *See id.* art. 5(e)(v).
349 Committee on the Elimination of Racial Discrimination, General Recommendation 29 (2000), *available at* http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f0902ff29d93de59c1256c6a00378d1f?Opendocument.
350 *Id.* ¶¶ 44-48.
351 Committee on the Elimination of Racial Discrimination, General Recommendation 27 (2000), *available at* http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b?Opendocument.
352 *See id.* ¶¶ 17-26.

The importance of education is circular—parents teach children to respect and embrace different cultures, and children can in turn help parents bridge the gap between cultures. In short, education is a "reliable and enduring antidote" to racism, xenophobia, and ethnic hostility.

The Recommendation goes beyond previous human rights documents insofar as it explicitly extends to private actors. In addition, it recommends that States vet textbooks to ensure that they do not reinforce prejudices.

General Recommendation 27 ("Recommendation 27") specifically concerns anti-Roma discrimination.[351] In addition to containing general recommendations that States do their utmost to combat anti- Roma discrimination, Recommendation 27 contains a number of recommendations specific to education.[352] Of particular importance is the effort to reduce school abandonment, particularly among Roma girls.[353] Recommendation 27 also urges States to undertake efforts to increase the pool of Roma educators and assistants.[354] Like Recommendation 29, Recommendation 27 urges that States revise their curricula to be more inclusive.[355] With regard to *de facto* school segregation, Recommendation 27 takes the middle ground—urging States to do their utmost to end segregation while still keeping the door open to the idea of bilingual or Romani language education.[356]

3. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") is a comprehensive treaty setting forth the international human rights of women.[357] The treaty entered into force on September 3, 1981; Romania ratified it on February 6, 1982. It is therefore a binding legal

353 *See id.* ¶ 17 ("To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities."). *See also id.* ¶ 22 ("To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women.").

354 *See id.* ¶ 23 ("To take urgent and sustained measures in training teachers, educators and assistants from among Roma students."); *see also id.* P 24 ("To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.").

355 *See id.* ¶ 26 ("To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them.").

356 *See id.* ¶ 18 ("To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.").

357 Convention on the Elimination of All Forms of Discrimination Against Women, *available at* http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm.

obligation upon the Romanian State.

CEDAW bans discrimination against women in every field, including education.[358] Discrimination includes "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in…any…field."[359] States are obligated not only to abolish discrimination against women, but also "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."[360] CEDAW plainly extends to *de facto* discrimination against women; the intentions of the perpetrators are irrelevant. The State's obligation extends beyond merely promulgating anti-discrimination legislation; rather, States must abolish any custom that has the effect of discriminating against women.

4. CONVENTION AGAINST DISCRIMINATION IN EDUCATION

The Convention Against Discrimination in Education ("CADE") synthesizes the substantive and positive right to education and the procedural and negative right not to be discriminated against.[361] CADE was adopted on December 14, 1960; Romania ratified the treaty on July 9, 1964.[362] It therefore represents a legally binding commitment on the government of Romania.

CADE is extremely broad in its application. Like CEDAW, CADE's definition of discrimination covers both *de jure* and *de facto* actions:

> For the purpose of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
>
> (a) Of depriving any person or group of persons of access to education of any type or at any level;
>
> (b) Of limiting any person or group of persons to education of an inferior standard;
>
> (c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
>
> (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.[363]

Consequently, CADE's ambit extends to both purposeful discrimination as well as actions which have the mere effect of impairing equality of treatment. The obligation not to discriminate extends to both laws and unofficial administrative practices.[364]

In addition, the CADE emphasizes the importance of allowing members of national minorities to carry on "their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language…."[365] However, this prerogative of minorities may not be exercised in a way which prevents the minorities from "understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty."[366]

358 *See id.* art. 10 ("States Parties shall…ensure [women] equal rights with men in the field of education….[T]his equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training.").
359 *Id.* art. 1.
360 *Id.* art. 2(f).
361 *See* Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 6193, *available at* http://www.unhchr.ch/html/menu3/b/d_c_educ.htm.
362 *See* State of Ratifications: Convention against Discrimination in Education, *available at* http://portal.unesco.org/education/en/ev.php-URL_ID=27481&URL_DO=DO_TOPIC&URL_SECTION=201.html.
363 *See* Convention against Discrimination in Education, art. 1(1). Separate facilities for the two sexes or for religious or linguistic reasons are permitted under Article 2.
364 *See id.* art. 3(a).
365 *Id.* art. 5(c).
366 *Id.* art. 5(c)(i). This clause has the potential to undermine the rest of the Convention. Education which prevents minorities from "understanding the culture and language of the community as a whole" is relatively open-ended, and the term "which prejudices national sovereignty" is left undefined.
367 The Council of Europe ("COE") was founded in 1949 and is the oldest political organization on the continent. Headquartered in Strasbourg, France, the COE's membership includes 46 countries, roughly half of which are in Central and Eastern Europe. Five States, including the United States and Japan, enjoy observer status. The primary purpose of the COE is to defend human rights, democratic institutions, and the rule of law. Since its inception, the COE has implemented a whopping 200 binding treaties and conventions on a myriad of topics from the protection of human rights to the placement of au pairs. Romania has been a member of the COE since October 1993. *See* Council of Europe, *About the Council of Europe, available at* http://www.coe.int/T/e/Com/about_coe (last visited July 22, 2006).
The COE's political components include the Committee of Ministers, Parliamentary Assembly, and the Congress of Local and Regional Authorities. From a human rights perspective, however, the most important COE body is the European Court of Human Rights ("ECHR"). The ECHR was estab-

III. Romania's Obligations Under European Law

In addition to its obligations under international law, Romania also has concomitant obligations under European transnational law. There are two sources of European law: the Council of Europe[367] and the European Union.[368]

A. Council of Europe Obligations: The Substantive Right to Education

1. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention") represents the most significant human rights treaty of the COE. It was signed on November 4, 1950, and entered into force on September 3, 1953.[369] Romania ratified the European Convention on June 20, 1994.[370] It therefore constitutes a legally binding obligation upon the Romanian government.

The perambulatory clauses of the European Convention hearken back to the then-recent Universal Declaration of Human Rights. Indeed, the European Convention's purpose is "to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration."[371] Significantly, however, the European Convention as originally drafted did not protect the right to education, despite its inclusion in the Universal Declaration of Human Rights. It was only in 1952 that States Party signed Protocol 1 which included an expanded list of rights.[372]

Article 2 of Protocol 1 contains the European Convention's guarantee of a right to education:

> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.[373]

Significantly, the right to education under the European Convention is far more limited than it is under the Universal Declaration of Human Rights. Of the two sentences, only the first deals with the right of children to education; the second guarantees the right of *parents* to have their children educated in a manner that is in accordance with their religious or philosophical principles. Moreover, the European Convention's guarantee of the right to education is a negative one—it is an obligation of the government not to deny children the right to an education. The European Convention does not by its literal terms affirmatively require governments to provide an education, although such a requirement could be read into Article 2 in light of the European Convention's references to the Universal Declaration of Human Rights. However, while the Universal Declaration of Human Rights spells out the purpose of education as well as the fact that primary education must be free and compulsory, the European Convention is silent.

The European Convention also contains a

lished by the Convention for the Protection of Human Rights and Fundamental Freedoms (examined *infra*). Under the Convention and its protocols, States as well as individuals may bring complaints against States Party to the ECHR, which has the authority to issue binding decisions. *See* Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocol No. 11, Nov. 4, 1950, arts. 19-51, Europ. T.S. No. 155, *available at* http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf [hereinafter European Convention].

368 The European Union was formally created by the Maastricht Treaty of 1992, but its origins date to 1951, when the European Coal and Steel Community ("ECSC") was created. The six founding ECSC members agreed to entrust decisions regarding each nation's coal and steel industries to be made by a supranational authority called the "High Authority," Based on the ECSC's success, the six States decided to create two additional supranational entities: the European Atomic Energy Community ("EURATOM") and the European Economic Community ("EEC"). EURATOM served as a supranational authority to regulate the member states' nuclear industries; the EEC was originally intended as a customs union to provide for the free movement of goods, capital, services, and people. In 1967, the ECSC, EURATOM, and the EEC merged into a single entity later to be known as the European Community with a single Commission, Council of Ministers, and European Parliament. During the next two-and-a-half decades, the European Community grew in membership to include nearly all Western European States, including the United Kingdom. The Maastricht Treaty transformed the European Community into the European Union, adding the goal of political and social integration as well as economic integration. *See* European Union, *The History of the European Union,* http://europa.eu.int/abc/history/index_en.htm (last visited July 22, 2006).

369 The European Convention has been amended and now includes several protocols. *See* European Convention, *supra* note 367.

370 *See* Council of Europe, *Romania and the Council of Europe, available at* http://www.coe.int/T/E/Com/About_Coe/Member_states/e_rou.asp#TopOfPage (last visited July 22, 2006).

371 *See* European Convention, *supra* note 367, pmbl.

372 *See id.* Protocol 1. Protocol 1 entered into force on May 18, 1954.

373 *See id.*

prohibition on discrimination. Article 14, while not providing a substantive right in and of itself, guarantees that individuals are able to enjoy the substantive rights enumerated in the European Convention and its Protocols on a non-discriminatory basis:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without 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.[374]

A government's denial of the right to education to a particular minority group, such as the Roma, would thus implicate both Article 14 and Protocol 1, Article 2.

Given the brevity and vagueness of Protocol 1, Article 2, it is hardly surprising that relatively few cases regarding its interpretation have reached the ECHR. One of the seminal cases involving Protocol 1, Article 2, is the *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium,* decided in 1967 ("Aspects").[375] *Aspects* concerned the right of linguistic minorities in Belgium to have schools teaching classes in the region's minority language. While a full analysis of the prolix decision is beyond the scope of this Report, the ECHR's analysis of Protocol 1, Article 2, is relevant. In particular, the ECHR noted that at the time Protocol 1, Article 2 was signed, "all member States…possessed…and still do possess, a general and official education system. There neither was, nor is now, therefore, any question of requiring each State to establish such a system, but merely of guaranteeing to persons…the right…to avail themselves of the means of instruction."[376] Thus, although Protocol 1, Article 2 does not specifically mandate that governments provide an education system, the ECHR found that such a duty is implied by the historical context in which Protocol 1, Article 2 arose.

In 2000, the European Roma Rights Center, a prominent Roma non-governmental organization, filed suit against the Czech Republic, alleging that Roma students were systematically segregated into special schools for the mentally handicapped within the Czech education system.[377] The case, *D.H. and Others v. Czech Republic,* represented the first significant challenge to alleged anti-Roma discrimination in schools.[378] In May 2005, five years after the application was first filed, the ECHR agreed to hear the case.[379]

On February 7, 2006, the European Court of Human Rights released a decision.[380] In it, the Court rejected the plaintiffs' claims. It noted that the mere fact that Czech education policy led to large numbers of Roma students being enrolled in the special school system did not, on its face, evidence a discriminatory intent: "statistics are not by themselves sufficient to disclose a practice which could be classified as discriminatory."[381] Because the special school system was not introduced "solely" to "cater for Roma children," the Court accepted the Czech Republic's argument that the basis for sending Roma children to special schools was "their learning disabilities as revealed in the psychological tests."[382] The Court did not examine the tests themselves to determine whether they were fair or culturally biased.

The decision in *D.H.* represents a significant retrenchment of the rights guaranteed by the European Convention. The Court's decision to ignore the disparate impact argument raised by the Roma plaintiffs because no *de jure* policy of segregation was present and because the special school system was not set up "solely" to cater to Roma children is particularly troubling and seems to indicate hostility to the notion of *de facto*, unofficial segregation. However, the impact of the Court's decision is sharply undercut by its reliance on the fact that a substantial number of the Roma plaintiffs voluntarily sent their children to special schools: "[P]arents failed to take any action, despite receiving a clear written decision informing them of their children's placement in a special school; indeed, in some instances it was the parents who asked for their children to be placed or

374 *See id.*
375 http://www.arts.uwaterloo.ca/MINELRES/coe/court/Belglin.htm (last visited July 22, 2006).
376 *Id.* at 23.
377 *See* European Roma Rights Center, *European Human Rights Court to Hear Roma School Segregation Complaint*, http://www.errc.org/cikk.php?cikk=2248 (last visited July 22, 2006).
378 *See id.*
379 *See id.*
380 *See D.H. and Others v. Czech Republic,* Application No. 57325/00, Feb. 7, 2006, *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=roma&sessionid=5969214&skin=hudoc-en (last visited July 22, 2006).
381 *Id.* ¶ 45.
382 *Id.* ¶ 48.
383 *Id.* ¶ 50.

to remain in a special school."[383] With regard to *de facto* educational segregation in Romania, Roma parents have not requested that their children attend classes without non-Roma. On the contrary, as examined *infra*, Roma parents generally want their children to attend mixed classes.

2. EUROPEAN SOCIAL CHARTER

The revised European Social Charter ("ESC") guarantees a number of social rights ranging from the right to housing to the right to collective bargaining.[384] Romania ratified the ESC on July 1, 1999; it entered into force on the same day. It therefore constitutes a legal obligation binding on the Romanian government.

Most of the rights enshrined in the ESC relate to the rights of workers, such as the right to work and the right to "just conditions of work."[385] Article 17(2), however, obligates States to "provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."[386] This Article is noteworthy for two reasons. While the ICESCR requires only the "progressive introduction of free [secondary] education,"[387] the ESC requires that both primary *and* secondary school be free. Second, the ESC obligates States to "encourage regular attendance at schools."[388] This language would appear to go beyond the ICESCR's requirement that primary school be compulsory. The term "compulsory" indicates the government's duty to make school attendance mandatory; the phrase "encourage regular attendance" indicates a duty to take affirmative steps to ensure that children are, in fact, attending school. Moreover, while the ICESCR makes only primary education compulsory, the ESC obligates governments to encourage regular attendance at both the primary and secondary level.

The ESC also contains a general right to protection against poverty and social exclusion, which also deals with education:

> With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:
>
> a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
> b. to review these measures with a view to their adaptation if necessary.[389]

Read in conjunction with Article 17, this Article points to a heightened obligation of governments to ensure that impoverished children have meaningful access to education and that the government affirmative take steps to ensure that these children attend school regularly.

B. European Union Obligations

At the time of writing, Romania was not a member of the European Union. Since then, however, Romania has acceded to the EU. Although Romanian accession in 2007 was considered extremely likely at the time of the Mission, it was not guaranteed. In order to join the EU, a candidate State must demonstrate that it is democratic, has a competitive market economy, and is willing and able to implement EU laws and policies.[390] These requirements are known collectively as the *acquis communautaire*.[391] The *acquis communautaire* are not themselves legal obligations on the Romanian state; instead, they constitute the EU admission criteria.[392] However, given how important EU accession is to the Romanian government, satisfying the *acquis communautaire* has become one of the top priorities.

1. THE SUBSTANTIVE RIGHT TO EDUCATION UNDER EUROPEAN UNION LAW

a. Resolution on Freedom of Education in the European Community

One of the earliest European Union[393] initiatives on education is the 1984 Resolution on Freedom of

384 *See* European Social Charter (Revised) July, 1999, Europ. T.S. No. 163 [hereinafter ESC], *available at* http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm.
385 *Id.* Part I.
386 *Id.*
387 ICESCR, *supra* note 271, art. 13(2)(b).
388 ESC, *supra* note 384, art. 17(2).
389 *See id.* art. 30.
390 *See* Heather Grabbe, *European Union Conditionality and the Acquis Communautaire*, 23 Int'l Pol. Sci. Rev. 249 (2002), *available at* http://ips.sagepub.com/cgi/reprint/23/3/249.
391 *See id.*
392 *See id.*
393 At the time, the entity now known as the European Union was called the European Community. The entity is referred to as the European Union throughout this section.

Education in the European Community ("Resolution on Freedom of Education").[394] As a resolution of the European Parliament, it is not a formally binding legal document. And while not formally an element of the *acquis communautaire,* the Resolution on Freedom of Education does indicate what the European Union's expectations are regarding education.

The Resolution on Freedom of Education guarantees that "[e]very child and young person shall have the right to education and teaching without any discrimination based on sex, race, philosophical or religious beliefs, nationality, social class or economic standing."[395] This language is significant insofar as it combines the right to education and the right not to be discriminated against in a single statement, thus indicating the indivisibility of the positive right to education and the negative right not to be discriminated against. As if this language were not clear enough, the following clause states that a child's admission to a publicly-funded school may not be dependent upon "the parent's economic standing nor the social, racial or ethnic background of the child."[396] The two clauses read in conjunction indicate that all children have the right to education and, if anything, impoverished children and children belonging to a lower social class, are entitled to bolstered protection.

b. Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union ("EU Charter") serves as the EU's Bill of Rights.[397] It was signed and proclaimed by the Presidents of the European Parliament, the Council and the EU Commission on December 7, 2000. The exact legal status of the EU Charter is currently ambiguous.[398] The EU Charter was to be incorporated into the European Constitution, but given "no" votes in several referenda, its status is unclear. However, the EU Charter represents an authoritative enunciation of basic rights agreed upon by EU Member States.

Article 14 of the European Charter sets forth the right to education:

> 1. Everyone has the right to education and to have access to vocational and continuing training.
> 2. This right includes the possibility to receive free compulsory education.

The Article expands upon previous iterations of the right to education. First, it extends the right of education to include vocational and continuing education. Second, it obliges States to make "education" free and compulsory without specifying what level of education is covered. Read in conjunction with the Resolution on Freedom of Education, it would seem as though under the EU Charter, both primary and secondary education must be free and compulsory (but not higher education).

2. THE PROHIBITION ON DISCRIMINATION UNDER COUNCIL OF EUROPE LAW

a. Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities ("Framework Convention") is the most significant Council of Europe instrument dealing specifically with the protection of minorities. Romania was one of the first countries to ratify it on February 1, 1998; it entered into force on the same day.

One issue which immediately springs to mind is whether the Roma are covered by the Framework Convention. A "national minority" is typically someone whose ethnicity is that of country that is not the one in which he or she lives, for example, the Hungarian or Ukrainian minority in Romania. The Roma, lacking their own State, would not naturally appear to be a "national minority." However, the Romanian government has indicated that it considers the Roma a minority group that is covered by the Framework Convention.[399]

The Framework Convention creates both negative and positive duties for States. On the one hand, States Party have a negative obligation not to discriminate: "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the

394 Resolution on Freedom of Education in the European Community, O.J. C 104/69 (1984), http://portal.unesco.org/education/en/ev.php-URL_ID=15019&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited July 22, 2006).
395 *Id.* art. I(2).
396 *Id.* art. I(3).
397 Charter of Fundamental Rights of the European Union, O.J. C 364/1 (2000), *available at* http://www.europarl.eu.int/charter/pdf/text_en.pdf.
398 *See* Christopher McCrudden, The Future of the EU Charter of Fundamental Rights, Jean Monnet Working Paper No.10/01 (2001), *available at* http://www.jeanmonnetprogram.org/papers/01/013001.html. *See also* Europa Website, About the Charter: Legal Status, http://ec.europa.eu/justice_home/unit/charte/en/about-status.html (last visited Aug. 28, 2006).
399 *See* Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Romania, ¶ 13, Apr. 6, 2001, *available at* http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/4._Opinions_of_the_Advisory_Committee/1._Country_specific_opinions/1._First_cycle/PDF_1st_OP_Romania.pdf.

The Framework Convention for the Protection of National Minorities is the most significant Council of Europe instrument dealing specifically with the protection of minorities. Romania was one of the first countries to ratify it on February 1, 1998.

law."[400] At the same time, they also have a positive duty to "undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority."[401] These affirmative measures include undertaking to "promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."[402]

Article 12 of the Framework Convention deals with education. Naturally, it includes language that prohibits discrimination: States must "promote equal opportunities for access to education at all levels for persons belonging to national minorities."[403] Even the language framing a negative duty of non-discrimination is framed in a positive way: States must not simply not discriminate—they must also promote equal opportunities for minorities. Beyond simply allowing minorities opportunities for education, the Framework Convention mandates that States embrace minority cultures in the context of the education system: "[W]here appropriate," States must take measures within the education system to "foster knowledge of the culture, history, language and religion of their national minorities and of the majority."[404] Whereas other human rights instruments merely prohibit discrimination in education, the Framework Convention obligates States to teach schoolchildren about the culture of national minorities alongside that of the majority. In order to accomplish this, States must "provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities."[405]

b. Recommendation No. R (2000) 4 on the Education of Roma/Gypsy Children in Europe

Recommendation No. R (2000) 4 on the Education of Roma/Gypsy Children in Europe ("Recommendation") is one of the only Council of Europe documents to deal specifically with Roma education.[406] As the name implies, the document is merely a recommendation and therefore is not legally binding. It does indicate the particular importance of anti-Roma discrimination in the education systems in Europe, as well as the importance ascribed to the issue by the Council of Europe. Moreover, the Recommendation's Guiding Principles provide a conceptual framework for policies designed to improve Roma education.

The Recommendation's perambulatory clauses note the problems suffered by the Roma in the field of education, including the "high rates of illiteracy or semi-literacy among them, their high drop-out rate, the low percentage of students completing primary education and the persistence of features such as low school attendance."[407] It also notes that the problems of the Roma in the field of education stem from a variety of factors having economic, social, and cultural aspects, as well as from racism and discrimination.[408]

The Guiding Principles underscore the importance

400 Framework Convention, art. 4(1).
401 *Id.* art. 4(2).
402 *Id.* art. 5(1).
403 *Id.* art. 12(3).
404 *Id.* art. 12(1).
405 *Id.* art. 12(2).
406 Council of Europe, Committee of Ministers, Council of Europe, Recommendation No. R 4 (2000), *available at* http://www.hri.ca/fortherecord2000/euro2000/documentation/comminister/r20004.htm.
407 *Id.*
408 *See id.*

of devoting sufficient resources to improve Roma education and of coordinating on the international, national, regional, and local level.[409] They also stress the importance of preschool education.[410] In terms of curriculum reform, the Recommendation echoes the Framework Convention in calling for broad intercultural policies and in introducing teaching materials that include Roma culture and history.[411] While Roma language classes should be offered, there should not be a separate curriculum for Roma students, as this "might lead to the setting up of separate classes."[412] The Roma community should be involved in designing the revised curricula.[413] States should do more to train and recruit Roma teachers, and should use Roma mediators to mediate between the Roma community, the majority community, and the school.[414] As noted *infra*, many of these initiatives have been attempted in Romania, but not on a widespread or concerted basis.

c. Protocol 12, European Convention for the Protection of Human Rights and Fundamental Freedoms

Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Protocol 12") adds a substantive right of non-discrimination to the European Convention.[415] As noted *supra,* Article 14 of the European Convention mandates that the enjoyment of *other* substantive rights in the Convention shall be secured on a non-discriminatory basis. The non-discrimination principle of Article 14 acts in conjunction with other rights; it is not a stand-alone right. To remedy this, Protocol 12 was signed and entered into force on April 1, 2005. Protocol 12 mandates that States ensure that the enjoyment of *any* legal right (including those arising out of domestic law) "shall be secured without 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."[416] It would also prohibit discrimination by any public authority on any of those grounds.[417] Romania signed Protocol 12 in April 2000, but at the time of writing, had not ratified it. Protocol 12 is thus not binding on Romania, although under international law Romania may not defeat the object and purpose of the treaty.[418]

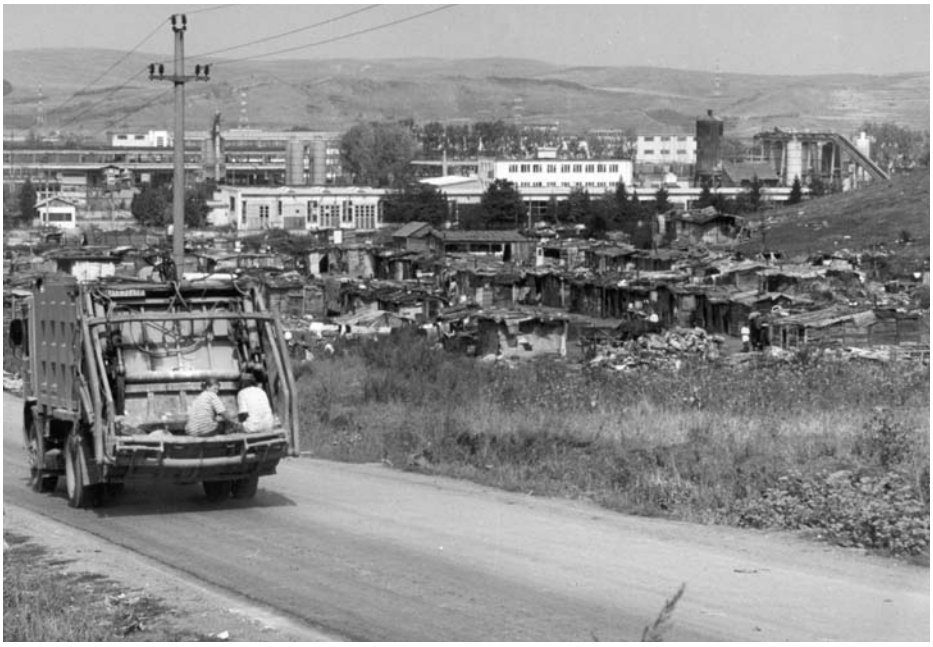
3. THE PROHIBITION ON DISCRIMINATION UNDER EUROPEAN UNION LAW

Numerous EU documents prohibit discrimination based on social or ethnic origin, and a full discussion of all of them could fill an entire volume. One recent example is European Union Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin ("Race Directive").[419] In the perambulatory section, the Council of the European Union notes that in order to develop democratic and tolerant societies, nondiscrimination must extend beyond the workplace and into other areas, including education.[420]

Not surprisingly, the Race Directive bans discrimination on the basis of racial or ethnic origin. What is noteworthy, however, is that the Race Directive's conception of discrimination is extremely broad and embraces both direct discrimination as well as indirect discrimination, which is defined as a situation where "an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons" unless the provision, criterion, or practice is appropriate and necessary to achieving a legitimate aim.[421] The Race Directive's scope is similarly broad, and applies to "all persons, as regards both the public and private sectors, including public bodies" in relation to a variety of fields, including education.[422] The Race Directive permits States to adopt positive action to help remedy prior racial or ethnic discrimination.

While the Romanian government has taken some steps to ameliorate the plight of Roma children, it has plainly fallen short of its admittedly lofty obligations under domestic law and under the international and European instruments examined above. Naturally, the abolition of Romania's historic system of *de jure*

409 *See id.* Guiding Principles 1, 2.
410 *See id.* Guiding Principle 4.
411 *See id.* Guiding Principles 8, 9.
412 Council of Europe, Committee of Ministers, Council of Europe, Recommendation No. R 4 (2000), *supra* note 406.
413 *Id.* Guiding Principle 14.
414 *See id.* Guiding Principles 15, 20.
415 Protocol 12, European Convention for the Protection of Human Rights and Fundamental Freedoms, *available at* http://www.echr.coe.int/Convention/webConvenENG.pdf.
416 *Id.* art. 1(1).



De facto discrimination is also the product of factors other than anti-Roma animus: bureaucratic inflexibility and apathy; a lack of sufficient funding to implement programs to assist the Roma; the failure of Roma families to push their children to stay in school; and the acceptance of child marriage (with the resultant abandonment of school by many girls) in some Roma communities.

discrimination against the Roma is to be cheered. At the same time, the elimination of legally mandated, *de jure* discrimination obscures the fact that a substantial *de facto* system of discrimination continues to exist. And Romania's obligations under international and European law do not prohibit merely *de jure* discrimination; *de facto* discrimination is also prohibited.

The reasons for this system of *de facto* discrimination are many. They include anti-Roma prejudice on the part of many local, regional, and national officials. And naturally, *de facto* discrimination brought about by ethnic enmity is prohibited by the instruments examined above. However, *de facto* discrimination is also the product of factors other than anti-Roma animus: bureaucratic inflexibility and apathy; a lack of sufficient funding to implement programs to assist the Roma; the failure of Roma families to push their children to stay in school; and the acceptance of child marriage (with the resultant abandonment of school by many girls) in some Roma communities. But the instruments examined above bind the Romanian state, which has an obligation to see to the education of its children—regardless of their ethnicity—notwithstanding the attitudes of government officials, school personnel, or Roma parents and families. Even the lack funding—a perpetual problem—does not permit Romania to derogate from its obligation not to permit *de facto* discrimination to occur in its education system.[423]

417 *See id.* art. 1(2).
418 *See* Vienna Convention on the Law of Treaties, art. 18.
419 European Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin adopted on 29 June 2000, *available at* http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf.
420 *See id.* Perambulatory Clause 12.
421 *See id.* art. 2(2)(a)-(b).
422 *Id.* art. 3(1).
423 *See, e.g.,* Committee on Economic, Social & Cultural Rights General Comment 13: The Right to Education (Article 13), 21st Sess., U.N. Doc. E/C.12/1999/10 (1999) [hereinafter Comment 13], *available at* http://cesr.org/generalcomment13 (last visited July 25, 2006).

Conclusion

On New Year's Day 2007, the day Romania joined the European Union, the president of the European Commission and EU-enlargement commissioner took part in a celebration that featured the music of Damian Draghici, a world-famous Roma panflutist who has performed with the likes of James Brown and Joe Cocker.[424] Draghici grew up in Romania, fleeing the country only months before Ceauçescu was deposed.[425]

Eager to put a positive light on Romania's accession to the EU (and perhaps equally eager to show off its improved treatment of the Roma), the Romanian foreign ministry sponsored several Draghici concerts in Brussels, London, and Dublin. Yet, while Draghici and his music have been embraced across Europe, his standing at home is dramatically less impressive. Indeed, the foreign minister has come under fire for sponsoring the tour. Gheorghe Funar, a nationalist senator, criticized the minister for wanting Europe "to believe that in Romania there are only Gypsies."[426] To many Europeans, Draghici may be a star performer, but to too many Romanians, he is just another "Gypsy."

The disparate reaction of Europeans and Romanians to Draghici is a microcosm of the situation of the Roma in today's Romania. Outside institutions—the European Union, UNICEF, the World Bank, the Open Society Institute, and others—generally prioritize Roma issues more than Romanian institutions, including the Romanian government. The result is that many of the initiatives aimed at aiding the Romanian Roma population were conceived—and often, implemented—by international organizations and NGOs rather than the Romanian government.[427] Even some of the initiatives nominally proposed by the Romanian government were, in fact, devised by international organizations and NGOs.[428]

Romania's recent EU accession brings with it new opportunities and challenges for Romania's Roma, including Roma children. As noted throughout, the European Union has done a great deal to promote respect for human rights in Romania, and has emphasized Roma rights. The fact that Romania's accession to the EU was, at least nominally, contingent on its continued respect for human rights meant that the EU was able to exert tremendous pressure on Romania's government to improve the condition of the Roma. Now that Romania has acceded to the EU, this form of pressure will no longer be available. And, moreover, much of the EU's assistance to Roma was implemented through the PHARE program—a program to assist candidate countries meet EU accession requirements. It is too early to determine, now that Romania has acceded to the EU, whether the government will continue to prioritize Roma rights.

And, for that matter, it remains to be seen whether the EU's commitment to Roma rights will continue now that Romania has acceded.[429] Shortly after Romania's accession, a "Roma ambassador" to the European Parliament was selected.[430] On paper, this is a tremendous development, with the potential of raising the stature of Roma issues significantly (as noted earlier, the Roma comprise the largest ethnic group in Europe without a state of their own). But the choice of ambassador, Joaquin Cortes, a Roma flamenco dancer and former Armani model, leads one to wonder how significant a post this will be.[431]

Since accession, Romania's government has been lukewarm about its continuing obligation to improve the condition of the Roma. In early 2007,

424 *Top Gypsy Musician Celebrated Around World–Scorned by Many Back Home*, Int'l Herald Trib., Jan. 30, 2007.
425 *Id.*
426 *Id.*
427 This is certainly true of the Iliescu government. The Băsescu government has a substantially better record on Roma rights, though his election in December 2004 also coincided with heightened EU involvement in Roma issues as Romania prepared for its 2007 EU accession.
428 For example, several interviewees noted that even where the Romanian government applied for grants from international organizations or NGOs to implement Roma-assistance projects, the plans themselves were largely created by the international organization or NGO, which would give the plan to the government so that the government could in turn seek a grant from the international organization or NGO to implement the plan.
429 Romania's accession and representation in the European Parliament may hinder the development of Roma rights. Romania's 35 MEPs include five members of the Greater Romania Party, a far-right-wing party founded by Corneliu Vadim Tudor, described as "the former court poet of Nicolae Ceauçescu and an unapologetic racist and chauvinist." Matthew Brunwasser, *EU Newcomers Bolster the Far Right*, Int'l Herald Trib., Jan. 15, 2007, at 1.

In early 2007, Romanian president Traian Băsescu delivered a speech to the European Parliament. His speech mentioned the Roma, but only in passing: "Roma people are being integrated, but there is still some way to go." While President Băsescu's acknowledgement of the continuing plight of the Roma is a positive development, his statement can only generously be described as a grave understatement.

Romanian president Traian Băsescu delivered a speech to the European Parliament. His speech mentioned the Roma, but only in passing: "Roma people are being integrated, but there is still some way to go."[432] While President Băsescu's acknowledgement of the continuing plight of the Roma is a positive development, his statement can only generously be described as a grave understatement.

The future holds great opportunities for Romania's Roma, but also great challenges. Without a doubt, Romania's accession to the EU will mean that Roma rights will be respected—at least officially. The hundreds of years of governmentally sanctioned anti-Roma discrimination are at an end. On the legal front, at least on the national level, Roma rights are on the table, if not at the fore.[433] But what remains to be seen is whether these legal advances will translate into real "on-the-ground" changes in the everyday lives of Roma children, many of whom continue to endure discrimination in their schools. Because for all of the importance of eloquent and grandiose statements of law in the halls of power in Bucharest or Brussels, what may matter most are the actions of those who directly affect the lives of Roma children: individual teachers, principals, school inspectors, mayors, and other local officials. For all of the formal legal changes at the national and European level, these are the people who will ultimately determine whether Roma children enjoy an education equal to that of ethnic Romanian children, or whether they continue to be shunned, segregated, and left behind.

430 Graham Keeley, *Flamenco Dancer is Appointed Roma's Ambassador to the EU,* INDEPENDENT (UK), Feb. 9, 2007.

431 Although Cortes has been engaged in Roma-rights advocacy for seven years, it appears that his main role will be fronting a series of arts events during 2007, "The Year of the Roma." *Flamenco Dancer to be EU Roma Champion,* EUObserver.com, Feb. 9, 2007, *available at* http://euobserver.com/844/23460?rss_ rk=1.

432 *Address to MEPs by Traian Băsescu, President of Romania,* U.S. FEDERAL NEWS, Jan. 31, 2007, *available at* 2007 WLNR 2005623 (Westlaw).

433 For example, the Slovakian Constitutional Court recently compensated three Roma women who were sterilized without their consent between 1999 and 2002. *Slovakia Court Compensates Gypsy Women,* UPI Top Stories, Feb. 5, 2007.

ANNEX I: A Note on Terminology

In the often-heated context of ethnic politics, semantics and terminology can be extremely important. In the United States, for instance, there is considerable debate whether the term "black" or "African-American" is preferable to describe Americans of African descent.[434] The case of the Roma is no different, particularly because historically, the name used to describe the Roma ethnic group has been one invented by outsiders, not by the Roma themselves.

For centuries after the Roma arrived in Europe, their Indian origins were shrouded in mystery. Some incorrectly believed that the Roma had migrated from Egypt. This is the origin for the English term, "Gypsy": the term comes from the Middle English "Gypcian", short for "Egipcien", meaning "Egyptian." Dr. Ian Hancock, a well-regarded Roma expert, notes that the term "Egyptian" was historically "'used in a vague way for any exotic, or Eastern, Islamic peoples,' and was applied to [the Roma] early on."[435] In fact, the Roma have no cultural or linguistic link to Egypt or the Middle East. The Spanish word *"gitano"* and the French word *"gitan"* are of the same derivation.[436]

Elsewhere, the Roma were wrongly thought to be an offshoot of the *Atsinganos* (literally, "untouched" or "untouchable"), a sect of soothsayers and magicians from Asia Minor.[437] The terms used to describe the Roma in most European languages—*"ţigane"* in Romanian, *"tsigane"* in French, *"zigeuner"* in German, and *"zingaro"* in Italian, are derived from this word.

In contrast, the word, "Roma" derives from the Romani[438] word "Rom," which is what the majority of Roma call themselves.[439] The etymology of the word "Rom" is uncertain, but it may derive from the Indian word, *dom,* meaning "man."[440] The plural of "Rom" is either "Rom" or "Roma" depending on the dialect of Romani being spoken.[441]

In Romania, the terms "Roma" and *"ţigane"* (the Romanian word for "Gypsy") carry considerable baggage. The younger generation of Roma is more likely to use the term "Roma," as are Roma activists and elites. The older generation, on the other hand, is more likely to use the term *ţigane,* despite the term's sometimes negative connotation.[442]

In this Report, we use the term "Roma" as opposed to *ţigane* or Gypsy. Not only is the term "Roma" one that was created by the Roma themselves, but it is also the term used by Roma activists, the international community, academics, and increasingly, by the Roma themselves. As Viorel Achim, author of *The Roma in Romanian History* notes, while the term "Gypsy" may be accurate in speaking of the past, "[t]he term 'Roma' represents the new emerging ethnic identity."[443]

An additional complication is the spelling of "Roma." As noted, the word, "Roma" comes from the Romani language, which in turn is derived from the languages of northern India. It is unrelated to "Romania," (or *România,* which is the Romanian spelling) which derives from the word *"Român,"* which is derived from the Latin "Roma," referring to the Roman Empire. Given the similarities between "Roma" and "Romania," some have argued that the word "Roma" should be written with a double "R" (i.e., "Rroma") to distinguish the word from "Romania," "Rome," or other words with similar stems.[444] Most international organizations use the single "R" spelling, and this Report does the same.

434 *See, e.g.,* Lee Sigelman, Steven A. Tuch & Jack K. Martin, *What's in a Name?: Preference for 'Black' Versus 'African-American' among Americans of African Descent*, 69 Public Opin. Q. 429-38 (2005).

435 Helsinki Watch, *supra* note 42, at 614 (quoting Ian Hancock, "The Romani Diaspora: Part I," The World and I (Mar. 1989).

436 Donald Kenrick, Historical Dictionary of the Gypsies (Romanies) 69 (1998).

437 Prevention of Discrimination Against and the Protection of Minorities: The Human Rights Problems and Protections of the Roma—Working Paper Prepared by Mr. Y.K.J. Yeung Sik Yuen Pursuant to Sub-Commission Decision 1999/109, Commission on Human Rights, 52nd Sess., Agenda Item 8, ¶ 10, U.N. Doc. E/CN.4/Sub.2/2000/28.

438 The term "Romani" (also "Romany") is the language spoken by some Roma. The language is a member of the north Indian group and is related to Punjabi and Hindi. *See* Kenrick, *supra* note 435, at 136.

439 *See id.* at 135.

440 *See id.*

441 *See* Kenrick, *supra* note 436, at 135.

442 The clash of terminology was on display at the June 1, 2005 conference entitled "Promoting Human Rights for the Roma" hosted by the U.S. Fulbright Commission in Romania. During a panel presentation, a Roma activist denounced a self-described "simple Roma peasant woman" for calling herself *ţigane,* saying that she had adopted the language of the oppressor. The Roma woman responded that only Roma elites who did not speak for the community used the term "Roma," and that she was proudly born a *ţigane* and would die a *ţigane*.

It is clear that the *de facto* system of segregation present in the Romanian school system is not an accidental offshoot of twentieth-century urbanization or the product of a too-hasty transition from communism to democracy, but the culmination of hundreds of years of systematic discrimination.

ANNEX II: History of the Romanian Roma

It is impossible to understand and appreciate fully the plight of the Roma in contemporary Romania without first examining the history of Romanian Roma. Because unlike Maghrebi Arabs in France or Turkish *gastarbeiter* in Germany, the plight of Romanian Roma is not a phenomenon whose roots go back decades or even a century. Rather, Roma have been a quasi-permanent underclass in Romania for centuries. And in light of that background, it is clear that the *de facto* system of segregation present in the Romanian school system is not an accidental offshoot of twentieth-century urbanization or the product of a too-hasty transition from communism to democracy, but the culmination of hundreds of years of systematic discrimination.

1. Early History

The Roma migrated to Eastern Europe from India. Although there is some dispute as to when the Roma first entered Romania, most evidence indicates they arrived in Wallachia in the twelfth century and later in Moldavia.[445] Their presence in the region thus actually predates the formal creation of both Wallachia and Moldavia.[446] These two regions, the two primary regions comprising historical Romania, have a "special—and ignominious—place in Gypsy history, for there the Gypsies were systematically turned into slaves."[447] Initially, the Roma worked as skilled metalsmiths and craftsmen.[448] Soon, however, they were enslaved. Indeed, the first references to Roma date from 1385, and indicate that by that time they had already been reduced to slavery. In the document, the sovereign of Wallachia gives to a monastery forty Roma families.[449] A Moldavian document from 1428 similarly records a gift of 31 "tents" of Roma given by the sovereign to a monastery.[450] During the fifteenth century, Vlad IV Tepeş brought back more than 10,000 Roma from the Ottoman Empire back to Wallachia.[451] The Roma were not merely enslaved; many

443 Achim, *supra* note 10, at 1.
444 There appears to be some dispute as to whether the impetus to spell "Roma" with a double "R" came from Roma activists or Romanian government officials. *Compare* Jennifer Tanaka, *Rroma in Romania: Struggle for Self-Identification*, Patrin (1995), *available at* http://www.geocities.com/Paris/5121/rroma.htm (last visited July 30, 2006) ("Members of Rroma associations have recommended the use of double 'r'"), *with* Alexandra Nacu, *Poverty, Ethnicity, and Identity in Romania: Reflections on the Status of the Roma*, 5 RFE/RL East European Perspectives 12 (2003), *available at* http://www.rferl.org/reports/eepreport/2003/06/12-110603.asp (last visited July 30, 2006) ("fear of confusion between 'rom' and 'Romanian' led the authorities to impose the doubling of the 'r.'").
445 *See* David M. Crowe, A History of the Gypsies 107 (1994) [hereinafter Crowe, History of Gypsies].
446 *See id.* at 107.
447 Angus Fraser, The Gypsies 57 (1992).
448 *See* Crowe, *supra* note 33, at 61.
449 *See* Fraser, *supra* note 447, at 58.
450 *See id.*
451 *See* Crowe, *supra* note 33, at 62. Vlad IV Tepeş is the historical figure popularly known today as Dracula.

were killed for Vlad's amusement.[452] In Moldavia, Stephen the Great brought back some 17,000 Roma to use as slave labor.[453]

During the fifteenth century, the status of Roma as slaves was institutionalized.[454] Roma slaves were categorized according to who owned them and the type of work they did. For instance, those whose duties included washing gold became the *rudari;* those who trained bears became the *ursari;* and those who carved spoons became the *lingurari.*[455] These categories persisted over time, and became the basis for Roma clan identifications that continue to the present, even though in most cases the Roma affiliated with those clans no longer perform these jobs. In addition to the nobility and crown, the Romanian Orthodox church also held Roma slaves *(sclavi monastiveşti).*

The Roma remained slaves for the next several hundred years.[456] While the condition of serfs and peasants improved somewhat during this time, the condition of the Roma in the eighteenth century took a turn for the worse as Wallachia and Moldavia lost their independence to the Ottoman Empire.[457] It was not until the nineteenth century that Roma slavery finally came to an end—and only then due to external forces. Following the Napoleonic Wars, Russian forces occupied much of present-day Romania.[458] The Russian governor, Pavel Kiselev, sought to abolish Roma slavery, but was forced to retreat from this position in the wake of strong opposition from the nobility. Nonetheless, Kiselev did institute moderate reforms to lessen the impact of slavery. For instance, under a new penal code set forth by Kiselev, the children of a Romanian male and a Roma slave were to be freed upon his death.[459] Nonetheless, Roma slavery continued into the mid-Eighteenth Century. Mihail Kog lniceanu, a progressive social critic and founding father of the modern Romanian state, wrote in 1837 of his childhood memories of Roma slavery:

> I saw human beings wearing chains on their arms and legs, others with iron clamps around their foreheads, and still others with metal collars about their necks. Cruel beatings, and other punishments such as starvation, being hung over smoking fires, solitary imprisonment and being thrown naked into the snow or the frozen rivers, such was the fate of the wretched Gypsy.[460]

As Enlightenment and revolutionary fervor began to spread across Europe in the 1830's and 1840's, Roma slavery was increasingly seen as a remnant of a backward, bygone era. In the 1830's, the governor of Wallachia freed his slaves and granted them the same status enjoyed by non-Roma serfs.[461] In the 1840's, the Moldavian ruler emancipated his Roma slaves as well as the Moldavian church slaves.[462] In 1848, revolution struck Wallachia when revolutionaries read a declaration calling for, among other things, the emancipation of the Roma. In 1855, the ownership of Roma slaves became illegal in Moldavia; Wallachia followed suit a year later.[463] Full freedom was extended to the Roma in 1864.[464]

While emancipation was a tremendous leap forward, the everyday life of most Roma improved little. Although writers at the time saw a rosy picture of emancipation,[465] contemporary historians strongly dispute this view. In contrast to Kogălniceanu's account, many Roma continued to live a traditional lifestyle. Roma expert Ian Hancock noted that most Roma "stayed mainly in the areas in which they had been traditionally located."[466] This meant that Roma communities continued to exist on the estates of the nobility, as well as "around the monasteries, which had owned many of the slaves."[467] Many Roma "with no money or possessions, and having nowhere to go, offered themselves for resale to their previous owners."[468]

The condition of the Roma began to improve in the 1920's. In 1926, a group of Roma intellectuals founded the General Union of Rumanian Romi, which published a journal, *Neamul Ţiganesc.*[469] In

452 One account, whose veracity cannot be conclusively confirmed, states that Vlad IV Tepeş "invited [Roma slaves] to a festival, made them all drunk, and threw them into the fire. Another amusement of his was the construction of an enormous cauldron, into which he thrust his victims. Then, filling it with water, he made it boil, and took pleasure in the anguish of the sufferers…Some were compelled to eat [a] man roasted." Ian Hancock, The Pariah Syndrome: An Account of Gypsy Slavery and Persecution III (1987), *available at* http://www.geocities.com/~patrin/pariah-contents.htm. Vlad IV Tepeş remains a popular folk hero in Romania.
453 *See* Crowe, *supra* note 33, at 62. Stephen the Great also remains a popular folk hero in Romania.
454 *See id.*
455 *See id.* at 63.
456 *See* Crowe, History of Gypsies, *supra* note 445, at 109-20.
457 *See id.* at 110.
458 *See id.* at 112.
459 *See id.* at 114.
460 *Quoted in id.* at 114-15.
461 *See id.* at 115.

Ceauçescu's efforts at systemization had an enormous impact on the Roma and have dramatically influenced the situation of the Roma to this day. His policies led to a shift of Roma from skilled jobs to unskilled jobs, from rural areas to urban centers, and from nomadism to tenement living.

1933, the group sponsored a Roma conference in Bucharest with the aim of improving Roma civil rights. The condition of the Roma improved steadily through the 1930's, as one historian noted:

> In the last few decades [prior to World War II], the number of nomadic Gypsies has decreased since they started to settle down. There are Gypsies working in agriculture, some of whom have become excellent farmers and sent their children to school. [These children] have grown up and become professors, lawyers, priests, doctors, military officers, etc. Nevertheless, the majority of Gypsies stayed in cities and in market areas, doing all sorts of jobs.[470]

It is a sad irony of history that the slow ascendancy of Roma self-awareness in Romania almost coincided with the lead-up to World War II.

2. World War II

Romania allied itself with the Axis Powers during the Second World War. While Nazi Germany paid "great attention to Romania's handling of 'the Gypsy problem,"' large-scale deportations were not commenced until 1942.[471] In all, roughly 25,000 Roma were deported.[472] Although this number represented only a small percentage of all Roma, roughly 2.5 percent, "those who were deported experienced sufferings identical to those of the Jews."[473] Perversely, those

462 *See id.*
463 *See* Crowe, History of Gypsies, *supra* note 445, at 119.
464 *See id.* at 120.
465 Romanian author and nationalist Kogălniceanu wrote in 1891 that within a decade of emancipation, Roma began to establish themselves as businessmen, artists, surgeons, and even parliamentary speakers. *See id.* at 122.
466 Hancock, *supra* note 452, at v.
467 *Id.*
468 *Id.*
469 *See* Crowe, *supra* note 33, at 129.
470 *Id.* at 131 (quoting George Potro).
471 Radu Ioanid, The Holocaust in Romania 226 (2000).
472 *See id.*
473 *Id.* at 225.

deported included Roma who were already on the eastern front, fighting as members of the Romanian army.[474] Anti-Roma sentiment bubbled to the surface, and "nearly the entire Romanian political class […] remained indifferent to [their tragedy]."[475] Although the deportation of Roma was eventually abandoned, this was apparently due to administrative difficulties rather than a change of public sentiment.[476] Although the persecution of the Roma in Romania during the Second World War was substantially less than that suffered by Jews,[477] the evidence is clear that Romanian sentiment favored deportation or even liquidation of the Roma, and had Nazi Germany prevailed in Europe, large numbers of Romanian Roma would have followed their Jewish countrymen to German death camps.[478]

3. Communist Era

Paradoxically, the Roma went from a hated minority group during World War II to a non-entity during the Communist period. Indeed, during the Communist era, the Roma were not considered a national or ethnic minority at all.[479] Helsinki Watch notes that a 1972 publication entitled *Romania's Population* lists Romanians, Hungarians, and Germans as constituting almost 99 percent of the population, with "other nationalities" including "Ukrainians, Ruthenians, Hutsulains, Serbians, Croats, Slovaks, Russians, Tatars, Turks, Jews, etc." comprising the remaining one percent.[480] The fact that the Roma were not classified as a national minority combined with historic anti-Roma sentiments, meant that the Roma did not enjoy the modest civil protections granted to recognized minorities.[481] In order to be granted even any sort of civil protection, the Roma were required to "adopt a more settled, cultured Romanian life-style."[482]

Beginning in the 1960's, Romanian Communist authorities went about forcibly settling nomadic Roma.[483] A Roma man in Braşov described it as follows:

> The police came and took my horse. Others, my brother-in-law, many others, lost wagons. It was my way of making a living, but no one cared. They just wanted us to stay in one place. It was a shock. I could never understand why.[484]

Significantly, the forcible settlement of nomadic Roma was not formally directed at the Roma *qua* Roma, though it affected them almost exclusively. The official party line was, in effect, that there was no such thing as Roma—only Romanians. Indeed, "[b]y the early 1970s, the official policy was simply to ignore the existence of Gypsies."[485]

The Romanian Communist Party changed course by the late 1970's, apparently due to a growing awareness of the problems of the Roma.[486] According to an American anthropologist conducting research at the time, the Roma were seen "in an embarrassing light, as a primitive people practicing ancient forms of life and therefore not a true reflection of the progress achieved by a modernizing and communizing Romania."[487] The integration program launched in the late 1970's again sought to force Roma to abandon their distinctive culture and migratory ways and assimilate into the Romanian Communist state.

The program of integration, or systemization as it was later called, mandated the destruction of entire districts, to be replaced by modern high-rise apartment buildings.[488] "Entire areas of…towns were flattened, without sparing historical buildings or even tiny segments of the traditional urban landscape."[489] These construction projects, along with confiscations of Roma horses and wagons, led to large numbers of Roma migrating toward large cities. In some cases, Ceauçescu turned over houses confiscated from emigrants to the Roma, causing tremendous resentment among those living in neighboring areas.[490]

Integration also affected the Romanian employment structure. Historically, Roma worked independently as artists and artisans.[491] The Communist system, however, had no place for independent artisans;

474 *See id.* at 226.
475 *Id.* at 228.
476 *See* Ioanid, *supra* note 471, at 236.
477 *See id.*
478 *See id.* at 237.
479 *See* Helsinki Watch, *supra* note 42, at 16.
480 *See id.*
481 *See* Crowe, *supra* note 33, at 71.
482 *See id.*
483 *See* Achim, *supra* note 10, at 191.
484 *Quoted in* Helsinki Watch, *supra* note 42, at 17.
485 *Id.* at 18.
486 *See id.*
487 *Quoted in* Helsinki Watch, *supra* note 42, at 19.

An integration program launched in the late 1970's sought to force Roma to abandon their distinctive culture and migratory ways and assimilate into the Romanian Communist state. The program of integration, or systemization as it was later called, mandated the destruction of entire districts, to be replaced by modern high-rise apartment buildings.

the state was to control all means of production. As one Roma man noted, "Our traditional profession is brick building. We worked from May to August. But under Ceauçescu it was forbidden to make bricks. The state took the monopoly and only the state could make bricks."[492] Similarly, Roma farmers saw the land they worked on collectivized and turned over to the government. Trading was illegal under Romanian law, and Roma traders were frequently targeted by the police.[493] Like the great Communist model, the Soviet Union, Romanian industrial policy focused on large, heavy industries such as concrete, brick and steel production.

This assimilation included a wholesale denial of Roma culture. During the entire Communist period, the Romani language was not taught in schools, nor were Roma history or culture a part of the school curriculum.[494] No books or newspapers were printed in Romani, nor were there any publications in Romanian that targeted a predominantly Roma audience.[495] A Roma musician noted that while Roma musicians might be recorded, a Romanian would be selected to play along with the music on television, giving viewers the mistaken impression that the artist was not, in fact, Roma.[496] The state prohibited Roma music or singing in Romani.[497]

Ceauçescu's efforts at systemization had an enormous impact on the Roma and, as examined below, have dramatically influenced the situation of the Roma to this day. His policies led to a shift of Roma from skilled jobs to unskilled jobs, from rural areas to urban centers, and from nomadism to tenement living. In the realm of education, some progress was made to improve the lives of Roma, who under Communism were the least advantaged educationally.[498] Nonetheless, Roma parents were stymied both by poverty and discrimination.[499] Helsinki Watch reports that teachers looked down upon Roma students, many of whom were not dressed well.[500] The Roma students were shunned and put in the back of the class where they would not be seen; the teachers "looked at their clothes and thought poverty was the same as stupidity. The children felt this animosity and, as a result, they often left school."[501]

488 *See id.* at 22-23.
489 Lucian Boia, Romania 135 (2001).
490 *See* Helsinki Watch, *supra* note 42, at 23.
491 *See id.* at 26.
492 *Quoted in* Helsinki Watch, *supra* note 42, at 27.
493 *See id.* at 28.
494 *See id.* at 20.
495 *See id.*
496 *See id.* at 21.
497 *See id.*
498 *See* Helsinki Watch, *supra* note 42, at 24.
499 *See id.* at 25-26.
500 *See id.* at 25.
501 *Id.* (quoting a Roma man from Craiova).

Leitner Center
for International Law and Justice

Fordham Law School
33 West 60th Street
Second Floor
New York, NY 10023
212.636.6862

www.leitnercenter.org